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1 (The following was heard in open court at  
2 1:19 p.m.)

3 THE COURT: Good afternoon, everyone.

4 ALL: Good afternoon, Your Honor.

5 THE COURT: Please be seated. We are ready  
6 to proceed with testimony on the petition for an award  
7 of common benefit attorneys' fees filed by the Avandia  
8 fee committee, and to that end I have received the  
9 motion, the supporting memorandum, the table of  
10 exhibits, the actual exhibits, copies of them, a  
11 loose one which is a timeline, which I think is up  
12 there.

13 I have also received this date a proposed  
14 draft order, and that includes proposed findings of  
15 fact and conclusions of law. Was there anything else I  
16 should have received or reviewed?

17 MS. NAST: No, Your Honor, I believe that is  
18 a complete listing.

19 THE COURT: Thank you. I have not received,  
20 nor has the docket shown that any responses were filed.

21 MS. NAST: We have not, either, nor have we  
22 received any e-mails, or letters, or anything.

23 THE COURT: All right. Thank you. We will  
24 proceed in any event to make as full a record as  
25 possible. Given the time we have today and given your

1 witnesses, whoever they may be, if you want to call  
2 them out of order because some may need to fly home  
3 that is fine with the Court.

4 MS. NAST: Shall we proceed?

5 THE COURT: Yes, please do. I do note the  
6 presence of both Mr. Merenstein and Mr. Chirls. I  
7 thank you for coming. Mr. Kiesel is here, although he  
8 is not particularly involved in this. I think he is,  
9 as the leader, the remaining leader of the PSC. So,  
10 thank you for staying.

11 MS. NAST: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MS. NAST: My name is Dianne Nast. I am your  
14 federal state liaison counsel, a member of the standing  
15 advisory committee, chair of the fee committee, and a  
16 former member of the steering committee.

17 I am appearing here today as chair of the fee  
18 committee. All of the members of the fee committee are  
19 in the courtroom, Mr. Andrus, Mr. Aylstock, Mr.  
20 Cartmell, Mr. Corr, Mr. Kiesel, Mr. Robins, and Mr.  
21 Zonies.

22 Your Honor, by pretrial order number 170,  
23 arranged a schedule. In compliance with that schedule  
24 we filed the documents that the Court just referred to.  
25 When you appointed us you ordered us to render a

1 recommendation as to what we believe is an appropriate  
2 fee, and that is what our efforts have gone toward for  
3 the last few months.

4           You will hear testimony about this. We have  
5 completed our work, this stage of our work. We have  
6 met in person 19 times. Some of those meetings went 11  
7 or 12 hours, some of us recall with not so much  
8 fondness. We have literally scores of e-mails and we  
9 have literally scores of conference calls. It has been  
10 a remarkably smooth process.

11           All of our disagreements, and there have been  
12 many, have been civil and reasonably, and have resolved  
13 in each instance to the satisfaction of all concerned.  
14 So, it has been a very good and very smooth process.

15           Our starting point for deliberations, of  
16 course, was our goal of achieving a fair percentage and  
17 having that cross-checked as is our policy in our  
18 circuit by the lodestar.

19           Much of our efforts were directed to the  
20 lodestar cross-check, which is precisely what the  
21 judicial opinions and the task force on fees suggest  
22 that the courts not have to do. So, it has been done  
23 to a fare-thee-well at this point, and you will hear  
24 detail about in the testimony, as well.

25           We did not consider this, and you can of

1 course tell us if we are misguided here, an argument on  
2 the law, we briefed it pretty thoroughly in our brief.  
3 Your Honor knows the law very well, so we thought we  
4 would get right to the testimony.

5 The way we expect the hearing to proceed  
6 today is the first witness that we are going to call is  
7 Joe Zonies. I forgot to tell you, with the Court's  
8 permission we will mark all of our exhibits EFH, which  
9 means Avandia fee hearing, and then of course they will  
10 be numbered sequentially.

11 The first witness will be Joe Zonies, who  
12 will testify about the history of the litigation, which  
13 is what you see in very summary form on this large  
14 chart, and everyone that is in the room has smaller  
15 copies of the chart in case they can not see this  
16 one quite so well. He will be examined by Mr.  
17 Cartmell.

18 The second witness we are going to call is  
19 Mr. Corr, who will testify about how the steering  
20 committee collect the time and expense records, and in  
21 more detail what the fee committee did with those time  
22 and expense records, what those procedures were. He  
23 will be examined by Mr. Aylstock.

24 Our final witness will be Mr. Alan Winikur,  
25 the court appointed CPA, and he will testify on his

1 work, most particularly his work with the fee  
2 committee.

3 Then, we will ask Mr. Andrus to make a few  
4 brief closing remarks. He has got to keep them brief  
5 because as you mentioned there are plane schedules.  
6 So, with that I think we are ready to proceed and we  
7 will call Mr. Zonies to the stand.

8 THE COURT: Thank you, and as he takes the  
9 stand I wish to also acknowledge for the record and for  
10 all purposes the presence of GSK, Nina Gussack, George  
11 Lehner remain and they are permitted remain, of course,  
12 but I don't know how much, if any, you will  
13 participate.

14 MS. GUSSACK: You wouldn't deny us the  
15 opportunity to cross-examine Mr. Zonies, would you,  
16 Your Honor?

17 THE COURT: You know, we might make a special  
18 exception.

19 MS. GUSSACK: We have been planning. Thank  
20 you, Your Honor.

21 JOSEPH ZONIES, Plaintiffs' Witness, Sworn.

22 AUDIO OPERATOR: Please state your full name  
23 and spell your last name for the record.

24 THE WITNESS: Joseph Jacob Zonies,  
25 Z-O-N-I-E-S.

AUDIO OPERATOR: Thank you.

DIRECT EXAMINATION

BY MR. CARTMELL:

Q Good afternoon, Mr. Zonies.

A Good afternoon, Mr. Cartmell.

Q I have been waiting for this day for a very long time. Why don't you go ahead and briefly tell us your background and the positions you have held in this Avandia litigation?

A I was appointed by the Court to the original plaintiffs' steering committee in the Avandia MDL. I was then subsequently appointed to the advisory committee when the PSC was reconstituted, and currently am a member of the Avandia fee committee in this litigation.

Q Okay. You are testifying here today in your capacity as a PSC member and as a member of the advisory committee, is that correct?

A I am testifying as a member of the PSC on the factual basis of our petition for the PSC and as the advisory committee member, yes.

Q Tell us why you are here today testifying, please.

A In part, or I think largely the testimony is to support the factors, the Gunter and Prudential factors recognized in the Third Circuit, and the factual basis



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1 for why those factors are satisfied in our fee  
2 petition, including the risk of the undertaking, the  
3 quality of the lawyers involved, the quality of the  
4 work involved, and ultimately the benefit that was  
5 conferred upon Avandia claimants and counsel across the  
6 United States.

7 Q Okay. And you are familiar with the Gunter  
8 factors?

9 A I am.

10 Q And that those are factors that Third Circuit  
11 courts use and refer to when deciding whether or not a  
12 fee is appropriate in a mega-fund case like this, is  
13 that correct?

14 A That's correct.

15 Q And you understand that I am going to ask you  
16 questions about the work that has been completed in  
17 this litigation, focusing specifically on those  
18 factors?

19 A Yes, and I think we have a stipulation that you  
20 will limit it to those and nothing else.

21 Q All right. I will try to do that.

22 MR. CARTMELL: Your Honor, may I approach?

23 THE COURT: Yes, you may.

24 MR. CARTMELL: If I could, I would like to  
25 hand you the exhibits. There is only three that we are

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1 going to use during his examination. I think you may  
2 have said you have one.

3 THE COURT: I do have the timeline.

4 MR. CARTMELL: You have that.

5 THE COURT: Yes.

6 MR. CARTMELL: I have marked one of those  
7 with a sticker, Exhibit 1, and then there is two other  
8 exhibits that I will go ahead and hand up.

9 THE COURT: All right. So, our deputy can  
10 have the timeline and I will take the other two, thank  
11 you.

12 MR. CARTMELL: I had told Mary Beth that I  
13 was going to give her a copy. I have handed copies of  
14 the exhibits already to Mr. Merenstein, Mr. Chirls, and  
15 to GSK's counsel.

16 THE COURT: Very well.

17 BY MR. CARTMELL:

18 Q Okay. Mr. Zonies, we have a copy, I think you have  
19 it in front of you, a copy of what has been marked as  
20 Avandia fee hearing Exhibit 1.

21 There is also a blowup in front of us for you  
22 to look at it if you need to and refer to. Why don't  
23 you go ahead, though, and tell us what that is, Exhibit  
24 1?

25 A I actually created Exhibit 1 to just sort of show

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1 the flow of the litigation in a summary format from the  
2 creation of the MDL itself until February of 2012 when  
3 the PSC was not renewed at that time by the Court to  
4 sort of show some of the work in a summary fashion that  
5 was done. It is primarily based upon the depositions  
6 taken in the case.

7 Q Okay. So, is Exhibit 1 an exhaustive timeline of  
8 all the work that was done in the litigation?

9 A It is not.

10 Q Okay. Now, was there an event that gave rise to  
11 this litigation, the Avandia case?

12 A Yes, I think it is pretty well recognized that the  
13 publication of Dr. Steven Nissen's study in the New  
14 England Journal of Medicine in May of 2007 was really  
15 the catalyst that launched the Avandia litigation.

16 Q Okay. And when was it, why don't you just briefly  
17 tell us when it was that the Avandia litigation was  
18 launched, when coordination began, and basically what  
19 work was being handled at that time?

20 A Well, it really is one of the remarkable aspects of  
21 this litigation that shortly after the release of the  
22 study attorneys from across the country started to get  
23 together and work cooperatively to prosecute the  
24 litigation even prior to motions to create a  
25 multi-district litigation and, in fact, through when

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1 one that MDL was originally created.

2 So, I think it is well known that that effort  
3 was really created and led by Vance Andrus and Bryan  
4 Aylstock very early in the litigation to coordinate  
5 counsel from across the country.

6 Q All right. I want to talk more about Exhibit 1 and  
7 the work that was performed by the common benefit  
8 counsel, but before I do that let make one distinction  
9 before we move on. Common benefit counsel means what?

10 A In this instance, common benefit counsel isn't  
11 simply limited to the attorneys who were appointed by  
12 the Court to the PSC. Over time, the initial  
13 appointment included 15 attorneys. I believe that grew  
14 to 18 until the reconstitution period.

15 This was again through the efforts of the  
16 early leaders in the litigation a open forum for  
17 everybody to get together and really work well  
18 together, and ultimately we had over 50 law firms from  
19 across the country involved in the case and over 150  
20 attorneys who were actively working in the trenches on  
21 the case. It was a massive undertaking.

22 Q Okay. When you are referring to the PSC you are  
23 referring to the plaintiffs' steering committee, is  
24 that correct?

25 A Correct.

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1 Q Okay. And the plaintiffs' steering committee was,  
2 I think you mentioned, a group of attorneys from across  
3 the nation that were appointed by Judge Rufe, is that  
4 right?

5 A Yes.

6 Q Tell us the process that you recall related to the  
7 appointment of the plaintiffs' steering committee?

8 A As I have said, the MDL itself was formed in  
9 October of 2007. During the period leading up to  
10 October of 2007 and the appointment of the plaintiffs'  
11 steering committee in April of '08 there was a  
12 significant amount of work done, and it was by this  
13 group of attorneys that had been put together.

14 In fact, very early on our esteemed opposing  
15 counsel, Pepper Hamilton, Ms. Gussack, and her team, we  
16 had multiple meeting with them here in Philadelphia,  
17 three or four meetings attempting to lay out the  
18 foundational documents and structure of how the  
19 litigation would move forward, even before people  
20 applied to get onto the PSC.

21 It was the applications for the PSC, I  
22 believe there were over 30 applicants, including some  
23 of the best attorneys from across the country in mass  
24 torts.

25 Ultimately, Judge Rufe called the attorneys

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1 into the first case, the initial case management  
2 conference where each attorney introduced themselves,  
3 and of the 30 attorneys 14 were appointed to the PSC in  
4 the first instance and Mr. Mellon was appointed as  
5 liaison counsel for a 15 member PSC.

6 Judge Rufe also left two slots open that were  
7 later filled by, fortunately or unfortunately for us,  
8 filled by you and Ms. Menzies, and Sam Lanham was also  
9 added to that initial PSC.

10 Q Okay. Let me stop you right there and I want to  
11 ask you about one of the Gunter factors which is the  
12 skill of the attorneys involved in the litigation.

13 Do you understand, Mr. Zonies, that one  
14 factor that courts in the Third Circuit look at when  
15 looking at the reasonableness of a fee request in a  
16 case like this is the skill of the attorneys that are  
17 involved?

18 A Yes.

19 Q Okay. Why don't you tell us briefly about the  
20 skill of the attorneys involved, specifically referring  
21 to the PSC members that were appointed by Judge Rufe at  
22 that time?

23 A Again, the applications themselves were fabulous,  
24 the attorneys and the caliber of the attorneys, and the  
25 ultimate appointment of the PSC, while not everyone

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1 made that, really I think took a nice cross-section of  
2 the attorneys geographically across the United States,  
3 and ultimately some of the co-lead counsel in the Vioxx  
4 litigation, co-lead trial counsel in the Vioxx  
5 litigation.

6           You, as co-lead trial counsel in the  
7 Bextra/Celebrex litigation, Bryan Aylstock and Vance  
8 Andrus. Vance, who of course, goes back to the breast  
9 implant cases, and our esteemed state liaison counsel  
10 who probably has a resume that is longer than anyone  
11 else's as to the number of cases and complex cases,  
12 including anti-trust and mass tort cases that she has  
13 been involved in.

14           Then, other attorneys who didn't necessarily  
15 have a resume as long as Ms. Nast's, but who were up  
16 and coming and I think ready to work hard and together,  
17 and much of that is evidenced by looking around the  
18 room at who is on current PSCs that are active, members  
19 of the Zolofit executive committee and co-lead counsel  
20 in that case, members of the leadership in the  
21 Transvaginal Mesh litigation, and any number of any  
22 other litigations were also members of this PSC. So,  
23 it was, I think a talented crop.

24 Q So, the PSC had undoubtedly members with experience  
25 in pharmaceutical litigation, correct?

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1 A Members with extensive experience in pharmaceutical  
2 litigation through trials.

3 Q And extensive experience in MDLs in the past?

4 A Extensive experience in MDLs in the past, as well  
5 as other complex litigation, including class  
6 litigation, et cetera.

7 Q Now, you mentioned common benefit counsel also  
8 worked throughout the course of the case. Can you  
9 tell us a little bit about the experience, the skill of  
10 the common benefit counsel that contributed to the  
11 case?

12 A Well, we were lucky enough that even if someone  
13 didn't necessarily make it onto the PSC in that first  
14 go around, because the judge had left opportunity for  
15 people to later come onto the PSC, I think we saw a lot  
16 of good work from excellent counsel contributing to the  
17 case who in and of their own right there were enough  
18 attorneys of great caliber to make up a second or third  
19 PSC. Most of those counsel stuck with us throughout  
20 the case and contributed significantly to the ultimate  
21 outcome.

22 Q You mentioned I think before that there were up to  
23 150 or approximately 150 lawyers working nationwide on  
24 this litigation for the common benefit. Is that  
25 something that you have looked into, reviewed, and



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1       figured out from the records on your own?

2       A     I did. I reviewed the time records of everyone who  
3       applied for common benefit time, and I am using that as  
4       a -- it is a very conservative figure because I frankly  
5       just went through the people that I had done work with,  
6       and it was about 150 of just the ones that this PSC was  
7       actively involved with and we could recognize as  
8       someone who contributed significantly to the case.

9       Q     Any doubt in your mind that the skill of the  
10       attorneys involved nationwide, not just the PSC, but  
11       the common benefit counsel contributed to the ultimate  
12       success and outcome in this case?

13       A     No question.

14       Q     Okay. I want to talk now about another Gunter  
15       factor. Is it your understanding another Gunter factor  
16       that is looked at by courts in the Third Circuit  
17       related to the reasonableness of a fee is the risk of  
18       non-payment?

19       A     Yes.

20       Q     Okay. Tell us what your understanding of that is.

21       A     Well, the risk of non-payment as it relates to this  
22       case, particularly in the early goings, was very high.  
23       It was at a time when it was a cardiac and  
24       cardiovascular related case, and it was at a time when  
25       Vioxx was still ongoing and was extremely hard fought,

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1 and I think that made a significant number of lawyers  
2 hesitant to get involved in another cardiac case.

3 In part that was because another high risk  
4 was ultimately proving specific causation in a cardiac  
5 case can be very difficult, and here as an additional  
6 risk compared to Vioxx these clients would necessarily  
7 by definition all have diabetes, type 2 diabetes and,  
8 therefore, be at a higher risk for cardiovascular  
9 adverse events.

10 So, the science piece of the case was also a  
11 difficult piece of the case. As I said early on, we  
12 learned who our opposing counsel would be and one does  
13 not tread lightly into the waters when Pepper Hamilton  
14 is across the table because you know it is going to be  
15 a hard fought battle.

16 Q So, is it your belief, based on your experience in  
17 this litigation, that the science piece of the  
18 litigation, the fact that the clients were diabetics  
19 and that diabetics are at an increased risk for cardiac  
20 events, strokes, things of that nature, increased the  
21 risk of non-payment in this case?

22 A There is no question that that was a primary factor  
23 early on and why some attorneys who otherwise would  
24 have been involved decided not to get involved.

25 Q Again, the fact that this was going to be defended

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1 by Pepper Hamilton on behalf of GSK was another factor  
2 that was taken into consideration increase the risk in  
3 this case?

4 A There is no question that counsel of that caliber  
5 makes people think twice.

6 Q What about the fact that this drug that was the  
7 subject of this litigation was still on the market,  
8 that it was a billion dollar drug, did things like that  
9 increase the risk to this litigation?

10 A Clearly, another clear difference between Avandia  
11 and Vioxx, Vioxx was pulled from the market when that  
12 litigation began. Here in Avandia it was an active  
13 product with six billion or so in sales, I think, in  
14 the year that the litigation began.

15 It was a major pharmaceutical company, and we  
16 knew that it would be vigorously defended. At the  
17 beginning of the litigation the primary science was a  
18 single scientific study extremely well done in my  
19 opinion, but still it was a meta-analysis that had some  
20 weaknesses with its design, only because it was a  
21 meta-analysis.

22 So, we did not have a mountain of scientific  
23 evidence to move forward on, we did not have a clear  
24 randomized controlled trial that demonstrated risk, and  
25 so that also added to the concerns for a lot of

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1 counsel.

2 Q Was there anything about the legal climate or the  
3 state of the law related to pharmaceutical litigation  
4 that increased the risk of non-payment at the beginning  
5 of this case?

6 A At the time Wyeth v Levine was actively being  
7 litigated in the supreme court, and had that case,  
8 which was narrowly decided in plaintiffs' favor, I  
9 would say had that case gone the other way there is a  
10 very real chance that Ms. Gussack would have been out  
11 of a job.

12 Q Now, based on your experience did you actually  
13 witness or visit with experienced pharmaceutical  
14 counsel who passed on this litigation for these  
15 reasons?

16 A Yes. In fact, the first gathering that I think was  
17 held nationwide was in Denver, down the street at my  
18 good friend's office, at Vance's office, and in that  
19 room I think there were probably 50 firms who were  
20 looking at it, another 20 clearly on early e-mails from  
21 Vance inviting everyone to stay involved in the  
22 litigation, and ultimately those numbers dwindled as  
23 the rubber started to hit the road.

24 Q Now, you have covered that the risk at inception  
25 was high. Did the risk of non-payment related to this

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1 case continue throughout the litigation, or were there  
2 events that transpired that increased the risk  
3 throughout?

4 A You know, I would say it was an ebb and a flow.  
5 There were good days and there were bad days.  
6 Certainly, there were times when certain regulatory  
7 actions or inactions impacted the risk in the case,  
8 primarily making it more risky.

9 GSK's ongoing clinical trials, in particular  
10 the record trial when that was completed and published,  
11 and reflected that there was -- in theory, it reflected  
12 that the risk was actually not there.

13 That impacted the risk in the litigation to  
14 an extreme amount, and then at some point the risk was  
15 altered in part by plaintiffs' own actions. There were  
16 settlements in 2010 and that changed, I think, the risk  
17 dynamic somewhat.

18 I'm not sure which way, there are arguments  
19 on both sides of that, and then risk, I believe, came  
20 extreme as we approached Daubert and specific causation  
21 in particular.

22 Q Were common benefit counsel, including the PSC,  
23 actually asked to contribute monetarily to the  
24 litigation, and so that the risk were monetary, as  
25 well?

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1 A Yes, it wasn't just hours and the investment of  
2 hours and human capital, which were extreme. It was  
3 investment of hard dollar capital for an extended  
4 period of time, at some points with individual PSC  
5 members carrying costs and assessments in excess of  
6 three-quarters of a million to a million dollars.

7 Q So, based on your experience in this litigation is  
8 there any question in your mind that there was extreme  
9 risk of non-payment at the inception of this case and  
10 it continued throughout?

11 A It continued until the day the documents were  
12 signed.

13 Q Okay. Now, another Gunter factor that I would like  
14 to talk about is the complexity and the duration of the  
15 litigation. What is your understanding with respect to  
16 what those Gunter factors refer to?

17 A In particular, the --

18 Q Not in this case, but in general?

19 A In general, the complexity of the litigation  
20 meaning what type of skills needed to be brought to  
21 bear on the litigation, both scientific, legal, and  
22 human capital, again what kind of army you could muster  
23 to bring to the litigation.

24 Q Is it your belief that this litigation over the  
25 last four and a half or five years has been complex,

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1 and if so, why?

2 A I would say that this litigation probably addressed  
3 every issue that I could think of that might or might  
4 not come up in a litigation, in large part because of  
5 our adversaries and their tenacity in pushing us to the  
6 limits in just about every area of complexity within  
7 this case.

8 The easiest place to look for complexity was  
9 in the science, of course. This was a complex science  
10 case. We were at the edge of cardiovascular science in  
11 a lot of ways, and not that we were creating novel  
12 theories, but certainly we were there with the  
13 publications of the novel theories as they became sound  
14 medicine on lipid markers on other cardiovascular risk  
15 factors, cardiovascular risk markers in the stroke  
16 science.

17 The legal and briefing team again was  
18 complex. The sheer production of 30,000,000 plus pages  
19 of documents and analyzing those, and getting those  
20 into a usable form of some sort was in and of itself  
21 complex, and the legal arguments made by opposing  
22 counsel were often-times novel and complex.

23 Q We will talk about those in a little more detail in  
24 a bit, but did the sheer number of plaintiffs that were  
25 in this litigation filed in the MDL or tolled in this

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1 MDL contribute to the complexity of the case?

2 A It did on a lot of different levels. There were  
3 different -- I say cardiovascular injuries, those were  
4 the primary injuries, but that includes heart attacks,  
5 CHF, we had stroke cases as well, and a number of other  
6 injuries that we had to examine and determine whether  
7 or not we were going to pursue those.

8 So, you had tens of thousands of claimants  
9 across the country of varying ages and health status.  
10 In addition, because the drug came on the market in  
11 '99, you had a long period of time. You know, during  
12 the litigation we hit a decade of the drug being on the  
13 market. So, that added to the complexity, as well as  
14 things changed between '99 and 2009.

15 Q And one of the things courts look at is whether or  
16 not there are any novel issues, or events, or  
17 happenings within the litigation. Was there anything  
18 novel that you believe occurred in the litigation from  
19 the plaintiffs' perspective in this case that was  
20 complex and added to the complexity of the case?

21 A Well, I think there were a number of things. For  
22 example, one of the complexities was the issue  
23 associated with the concerns of medical records, et  
24 cetera, and I believe that the Court created a novel  
25 system to approach that in what was called, at least



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1 Lone Pine I, which really was a physician certification  
2 to deal with, frankly, the large number of cases and  
3 the issues associated with that.

4 The science itself certainly was -- our  
5 experts -- a novel outcome in this case was is that GSK  
6 agreed to produce under a super confidentiality order  
7 the patient level clinical trial data for some of its  
8 key clinical trials that the drug came to market on.

9 Our experts were able to analyze that data  
10 and make some assessments with that data that I think  
11 ultimately became one of the key scientific issues in  
12 the case, being able to get the clinical trial level  
13 data, patient level data, and work that into the  
14 science.

15 Q And so rather than going to the external studies,  
16 the literature, the published, you were able to get  
17 their data. Had you ever heard of that happening in  
18 pharmaceutical litigation before

19 A You know, I don't. Often, we would get adverse  
20 event data from the pharmaceutical company, but patient  
21 level data I think is often produced in a manner that  
22 is not highly usable, but in this instance with  
23 cooperation from, and understanding, and an order from  
24 the court GSK was required to produce that in a usable  
25 format to us that allowed it to -- I have never seen it

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1 actually come in as a key to a science presentation.

2 Q What about the document management system that was  
3 ultimately adopted in this litigation, was that  
4 something that was somewhat novel in your mind?

5 A It was at the time. It may not sound like a big  
6 deal now. I know in the legal intelligence here this  
7 morning there was a article about predictive coding,  
8 and I don't think any of us knew what that was when  
9 this started. I am even a techno-geek and I am not  
10 sure I did.

11 But, during this litigation we originally  
12 started in the old fashioned way with a vendor who --  
13 where we were paging through documents one at a time,  
14 and halfway through the litigation we were able to  
15 change platforms to what is now called Corela West.  
16 Corela West is now in at least a half of a dozen  
17 litigations, I think, as a vendor.

18 It allowed us to use advanced analytics to  
19 push through the documents in a much more efficient  
20 manner, primarily by grouping documents and being able  
21 to say well, when you have 30,000,000 pages of  
22 documents you need to decide what to look at first, and  
23 the analytics primarily helped us say we are not going  
24 to look at these for a while, we are going to start  
25 here.

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1           It allowed us to identify the documents that  
2           were most relevant to the litigation very early on, and  
3           then eventually GSK agreed to start producing some  
4           documents in native format which advanced that ball  
5           even more.

6           Q   We have alluded to it, but what was the duration,  
7           or what is the duration of this litigation?

8           A   Well, that's a little fuzzy. It depends what you  
9           say, but as I said, probably in June of '07 a lot of  
10          the attorneys in this room began, and I am sure Ms.  
11          Gussack started before this, a lot of attorneys in this  
12          room started working on this litigation, and a lot of  
13          the attorneys in this room are still working on this  
14          litigation on, for example, with Mr. Merenstein on the  
15          lien and reimbursement obligations and the Medicare  
16          Part C issues.

17                 So, you could say it spanned from June of '07  
18          until today. But, in reality, the period that we are  
19          covering, the Court first appointed this PSC in April  
20          of 2008, and the first resolutions in the case were  
21          roughly April of 2010. So, you know, you could argue  
22          that it was a two year period where the case went from  
23          soup to nuts for at least some clients in this  
24          litigation.

25          Q   The work product that was developed by the common

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1 benefit counsel has still been used and is continuing  
2 to be used today, is that correct?

3 A There is no question. Subsequent to the first,  
4 what we will call the first round of settlements, in  
5 that ensuing year we created Daubert and specific  
6 causation, and took a case trial ready to pick a jury  
7 the week of trial, and all the way through February of  
8 2012.

9 So, I think it is fair to say it is a four  
10 and a half to five year undertaking that continues in  
11 some way to this day of information, and rulings, and  
12 science, and legal precedent that was created over that  
13 period of time for the benefit of anyone who ever took  
14 Avandia.

15 Q Okay. The last Gunter factor that I would like us  
16 to address and talk about is the amount of time devoted  
17 to the litigation, and that entails us going through  
18 the work that was performed.

19 MR. CARTMELL: We have put in our brief, Your  
20 Honor, obviously a very specific outline of all the  
21 work that was done. Today we would just like to  
22 highlight sort of the high points and the areas where a  
23 substantial amount of time was put in.

24 BY MR. CARTMELL:

25 Q Let me ask you first, though, Mr. Zonies, do you

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1 have an understanding of how many hours were actually  
2 put in by common benefit counsel in this litigation?

3 A Yes, approximately 144,000 hours were submitted to  
4 Mr. Winikur for common benefit work. Of that, I  
5 believe it is 134,068 that have been approved at this  
6 time.

7 Q Okay. So, I am putting up a blowup entitled "Total  
8 hours per month."

9 MR. CARTMELL: Bryan Aylstock made me say,  
10 Your Honor, that this is his chart. He put it  
11 together, he wants full credit and I can only use it  
12 briefly, and he will talk about it more later.

13 THE WITNESS: It seems significantly smaller  
14 than mine.

15 MR. CARTMELL: Yes, it does.

16 THE WITNESS: Okay.

17 BY MR. CARTMELL:

18 Q At any rate, why don't you tell us what this  
19 reflects, this chart?

20 A That chart reflects the hours per month over the  
21 life of the litigation, with a spike clearly there in  
22 2009 and then a second spike in 2010.

23 Q Okay. Now, the approximately -- what did you say,  
24 how many hours?

25 A Approximately 134,068 hours.

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1 Q Okay. Now, does that number include hours that  
2 counsel, common benefit counsel, all counsel around the  
3 country spent on their individual cases?

4 A No, no, that is just for common benefit, hours that  
5 were put in for ultimately what the fee committee with  
6 Mr. Winikur determined were for the common benefit of  
7 all Avandia counsel and claimants across the United  
8 States, where there was some common benefit that could  
9 be derived from the hours that were put in.

10 From my own experience, and I think from  
11 counsel across the country there are, depending on how  
12 many claimants one represents, thousands if not tens of  
13 thousands of additional hours associated with  
14 individual client cases, managing the clients  
15 internally, keeping clients abreast of updates and what  
16 is going on in the litigation, which can be cumbersome  
17 over a five year litigation, ordering medical records  
18 for each of these clients, and often very difficult  
19 given that some were in 1999 and 2000.

20 Clients move around the country in that ten  
21 year period of time and often unsure of where they were  
22 in the country, completing what became the plaintiffs'  
23 fact sheet if a case was tolled or filed, getting the  
24 medical records, reviewing them, and ultimately to this  
25 day attempting to get those cases through a resolution

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1 process.

2 Q Okay. In some instances counsel would submit those  
3 hours for payment as a part of the common benefit, but  
4 those hours were not allowed, is that correct?

5 A That is correct. We reviewed all time submissions  
6 to insure that the time that was approved was, indeed,  
7 common benefit time and not time associated with  
8 individual case.

9 I will say that we did determine that certain  
10 cases within the litigation were deemed bellwether  
11 cases, and that work on bellwether cases was often for  
12 the common benefit because it was an issue that could  
13 impact the entire litigation, pushing a case through to  
14 trial.

15 Q Okay. Let's talk more about the specific work that  
16 was performed by the common benefit counsel. I want to  
17 refer you now to Exhibit 3, which is the pretrial  
18 orders and significant pleadings and court orders. It  
19 is marked as Avandia Fee Hearing Exhibit 3 today.

20 MR. CARTMELL: Your Honor, for your reference  
21 it is in our pleadings that we filed, and I believe it  
22 is marked as Exhibit 1 in that.

23 THE WITNESS: It is 1 in the pleadings and I  
24 thought we had marked it as 3 today.

25 MR. CARTMELL: That's right.

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1 THE COURT: Right.

2 BY MR. CARTMELL:

3 Q Okay. Why don't you go ahead and tell us what  
4 Exhibit 3 is, please?

5 A Again, Exhibit 3 is a summary of pretrial orders  
6 and what were deemed significant pleadings. Is that  
7 the exhibit you mean?

8 Q Yes.

9 A Okay. I thought that was 2, but that's okay.

10 Q Okay.

11 A Across the litigation, and what you can see is is  
12 from PTO number 1 until PTO number 154 on the last page  
13 the Court had a significant amount of work of its own  
14 involved in this litigation.

15 It highlights also some of the significant  
16 pleadings in the case. Again, it is not all-inclusive,  
17 it's meant to sort of -- it is all-inclusive of the  
18 pretrial orders.

19 Q Right.

20 A But, it is not all-inclusive of the major  
21 happenings in the case.

22 Q There are 223 entries. Does that mean there were  
23 223 orders that were entered by the Court during the  
24 course of this litigation?

25 A It doesn't. Upon review of this, not every entry



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1 is an order of the Court necessarily.

2 Q Okay.

3 A Some are reports of the parties, as you can see in  
4 number 10 on the first page, and some are joint  
5 proposed orders between the parties, et cetera.

6 Q Okay. At any rate, in excess of 150 orders we know  
7 were entered by the Court during the course of this  
8 litigation?

9 A That's correct, from October until the cut-off for  
10 this hearing's purposes, which was February 16th. I  
11 think the orders continue to come.

12 Q Okay. If you want, go ahead and just tell us about  
13 a few examples. What I am interested in hearing about  
14 is how these orders came to be, whether or not there  
15 was work involved from the standpoint of the common  
16 benefit counsel, typically, as these orders developed?

17 A Right. It is often easy to look up and see an  
18 order come down on the ECF and think no big deal about  
19 it, but if you have spent 14 hours in a room with Ms.  
20 Gussack and her team, and in particular Mr. Fahey  
21 negotiating those orders, there was a lot of work  
22 associated with getting these proposed orders in a  
23 place where the parties could agree, and if they  
24 couldn't agree, getting to a place where the issues  
25 that needed resolution were well-defined for the Court.

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1           So, the fact that it shows up on an ECF and  
2           it looks like any other order typically is not what  
3           happened there. So, for example, the early orders  
4           regarding the coordination, the preservation of  
5           evidence, PTO number 2, PTO number 3, those were during  
6           the period of time from even prior to the PSC being  
7           appointed, those were the orders that we would fly to  
8           Philadelphia and work with Ms. Gussack and her team on  
9           getting those orders in some sort of shape, negotiating  
10          those orders, fighting ruthlessly about those orders  
11          and the language in those orders.

12        Q    Okay. And other sort of initial case management  
13          orders included a tolling agreement, is that correct?

14        A    Yes, and the tolling agreement is an example of  
15          something where it appears to be very simple. The  
16          tolling agreement, I think it is an order with a couple  
17          of pages attached and it looks simple.

18                The fact of the matter is is that the tolling  
19          agreement early in the case was tied to any number of  
20          other issues. One, it was tied to the consolidated  
21          filings by the plaintiffs.

22                So, for example, in PTO-4 the parties were  
23          trying to figure out how to protect the statute of  
24          limitations, but we were still, frankly, fighting about  
25          the plaintiffs' fact sheet because that had to be filed

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1 if you tolled a case. So, the tolling was tied to the  
2 plaintiffs' fact sheet.

3 So, we reached an agreement which I thought  
4 was a great way to handle it with opposing counsel to,  
5 and at the leisure of the Court to allow consolidated  
6 filings in PTO-4.

7 Well, when we finally did reach and agree to  
8 a tolling agreement and when we finally did agree to  
9 the plaintiffs' fact sheet that would be required for  
10 that tolling agreement, and when we finally worked with  
11 GSK's counsel to resolve personal injury class actions  
12 across the country which were no needed for tolling,  
13 frankly, when all of those issues came together we  
14 agreed to PTO-15, which was then subsequently the  
15 severance of all of the consolidated filings.

16 So, it appears to be a simple tolling  
17 agreement, but it includes quite literally hundreds,  
18 and hundreds, and hundreds of hours, and trips, and  
19 sitting in conference rooms with opposing counsel to  
20 work through all of those to come up with something  
21 that simple.

22 Q What other early case management administrative  
23 orders, or management orders were the common benefit  
24 counsel working on early in the case prior to the  
25 discovery getting started?

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1 A We worked on pretty much anything up to 10. Early  
2 work included the work on the protective order. Again,  
3 it looks fairly straightforward, but that led to  
4 litigation in the case because of a word here or a word  
5 there, and each and every one of those words were  
6 heavily negotiated.

7 Mr. Vale certainly availed himself of many of  
8 those in many of those conferences to work on the  
9 protective order. That did ultimately get litigated  
10 and brought before the Court because there was a motion  
11 to, what did we call it, we de-confidentialized  
12 documents at one point.

13 Again, that early work and how well it was  
14 done by the experienced attorneys who could see three  
15 years, two years down the road what a change in  
16 language would mean was critical at that point. So,  
17 the protective order was an early negotiation.

18 The negotiation about whether or not there  
19 would be a master complaint and/or master answer also  
20 went on. We determined, and I think both sides would  
21 agree, correctly that a master complaint was not  
22 necessary, in part because allowing the defendant to  
23 file a master answer sort of helped the clerk of the  
24 court, and the Court itself, and counsel, and then we  
25 understood that at some point as cases became

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1 identified as cases that might go to trial, that  
2 pleadings would become more significant in those cases.

3 It was really an effective, efficient way for  
4 the defendant and the plaintiffs, and I believe the  
5 Court, as well, to process thousands of cases through  
6 the Court.

7 Q Is it fair to say there were thousands of hours  
8 spent on these initial administrative case management  
9 orders by groups of attorneys?

10 A No question.

11 Q And I forgot to ask you, how was it that the PSC  
12 and the common benefit counsel were structured? Was  
13 there a leadership structure within that was put in  
14 place?

15 A When the Court appointed the plaintiffs' steering  
16 committee, the Court did not assign any formal  
17 structure, and I think the Court was saying I am going  
18 to leave you to figure that out, folks, and I thought  
19 that in this instance that worked very well because in  
20 this instance it was already a core group of people,  
21 Corr, Steve, core group of people who were working well  
22 together.

23 I think the Court recognized that the Court  
24 did not need to get involved in that. So, the  
25 plaintiffs' steering committee really self-structured

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1 with leadership at the beginning of Vance Andrus, Bryan  
2 Aylstock, and Mark Lanier.

3 Then, under that leadership structure there  
4 were committees established with specific focus for  
5 each of the committees, law and briefing committee that  
6 had chairs including Ms. Nast and her firm, a  
7 commercial or marketing committee, a science committee,  
8 and each of the committees also had chairs that would  
9 then help lead each of those areas.

10 Often what we would have is every committee  
11 working together to move forward at the same time so  
12 that we could push the whole litigation forward at the  
13 same time, so that we weren't just doing one piece or  
14 another piece. It was a push forward for defense and  
15 for the plaintiffs.

16 Q Okay. After completing sort of the administrative  
17 orders work, and I want to talk about the time before  
18 all of these depositions place, and specifically talk  
19 about document production. A substantial amount of  
20 time was spent related to document review in the case,  
21 is that correct?

22 A Yes.

23 Q Why don't you just generally talk about the initial  
24 production and how things evolved, and the time that  
25 attorneys were spending related to the documents?

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1 A Okay. So, as in most of these cases, the initial  
2 production was the IND/NDA, the investigation on new  
3 drug application, and Pepper Hamilton invited members  
4 of the plaintiffs' steering committee, and it may have  
5 been even before that, into their offices where there  
6 were 400 dusty boxes filled with reams and reams of  
7 paper for us to review, the IND/NDA in its original  
8 format, so to speak.

9 So, we sent a team out to start looking at  
10 those documents and identifying the documents that we  
11 thought were relevant in the really, really old  
12 fashioned way, except it wasn't in a warehouse. At  
13 least it was in their offices, which were nice. They  
14 had better coffee. So, that is how the first sort of  
15 round of production started.

16 Then, GSK rolled document, had we called a  
17 rolling production. What really happened is is that  
18 the PSC served initial document requests and ended up,  
19 I think, into the fifth document request by the end of  
20 the litigation if not beyond that.

21 What really happened is it sort of evolved  
22 into a custodial production, which is why the  
23 depositions often drove the production, where a  
24 custodian's documents would be produced in the time  
25 period before that custodian's deposition was upcoming.

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1           Early in the case, however, and I think a  
2 critical factor that both parties recognized to keep  
3 the litigation focused were the 30(b)(6) depositions  
4 across the different departments within GSK.

5           So, we had a 30(b)(6) deposition in the  
6 marketing department so we could understand what that  
7 looked like and who the key players were, and where  
8 hopefully we found the key players, and we would direct  
9 our discovery.

10           Without that early marketing 30(b)(6) we  
11 would not have known where to go, frankly, for a long  
12 period of time and we would have been wandering around.  
13 It was the same thing for 30(b)(6) of regulatory,  
14 30(b)(6) of the IT, as well, to understand the  
15 databases so we knew how the data and electronic  
16 information was stored.

17           Those 30(b)(6) depositions allowed us then to  
18 direct our discovery and our deposition through the  
19 next two years of the litigation.

20 Q   Okay. You mentioned I think there were 30,000,000  
21 pages ultimately produced in the litigation?

22 A   There were 30,000,000 pages ultimately produced.  
23 Through the advanced analytics that we were able to  
24 employ we were able to, first of all, de-duplicate  
25 across those so you didn't review the same document



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1 1,000 times, but we did that de-duplication on our side  
2 so we could insure that we would know who received  
3 every document and then we could determine how to  
4 de-duplicate that.

5 There was actually a discovery battle in  
6 front of Special Master Shestack regarding who did the  
7 de-duplicating and was it vertical or across  
8 litigations, across custodians.

9 By using the analytics we were able to say  
10 that these, literally these 10,000,000 pages we don't  
11 need to get to right now.

12 Q So, how was it that you would have lawyers -- well,  
13 let me ask you, were there lawyers around America that  
14 could review these documents, these 30,000,000 pages of  
15 documents remotely?

16 A Yes.

17 Q Tell us how that process went.

18 A These were all hosted electronically. There was a  
19 secure sign-in to the site to review the documents.  
20 Documents were reviewed by -- I will give you an  
21 example.

22 If we had a deposition coming up, often a  
23 single custodian would have 1,000,000 pages of  
24 documents or a half a million pages of documents, and  
25 that deposition would be noticed 45 days out or 60 days

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1 out, and we would assign a document review team to  
2 prepare --

3 We would first assign the two lawyers taking  
4 the deposition who would put together, frankly, their  
5 own team with whoever was available to review those  
6 documents, bubble up what was significant in the case  
7 based upon how everyone was trained on the system and  
8 trained on what the case was about.

9 So, it took educating everyone on the  
10 science, educating everyone on the marketing, everyone  
11 on the legal issues, and those would all bubble up to  
12 the attorneys who were walking into the deposition so  
13 that they could walk in literally in some instances  
14 with a book that contained all of the excerpts from the  
15 documents in the case.

16 Q Okay.

17 A It was fabulous.

18 Q I want to talk about deposition in a minute, but  
19 real quick, you mentioned Special Master Shestack.

20 A Yes.

21 Q Special Master Shestack was early on in the case  
22 appointed to be the special master by Judge Rufe,  
23 correct?

24 A Yes.

25 Q Were there times when dispute would arise when the

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1 parties would be needing Special Master Shestack's  
2 assistance?

3 A Probably more often than he desired, yes.

4 Q Okay. Just tell us, give us a brief, you know, the  
5 complete summary of those types of interactions and  
6 what work went into those?

7 A Well, as Mr. Chirls can testify to in the early  
8 goings, and as Mr. Merenstein could, those disputes, I  
9 think there were over 15, maybe 17 or so reports and  
10 recommendations that ultimately issued from the special  
11 master.

12 I will say that that is not a definition of  
13 how many disputes he dealt with. Those were just the  
14 ones that required a formal recommendation. There  
15 were, I would say, hundreds of disputes.

16 Again, the way that they would arise is we  
17 had a very professional relationship with opposing  
18 counsel, where we would ask for what we needed and/or  
19 they would ask for they needed. We would reach  
20 disagreement and impasse. We would try to refine what  
21 the issue was that was the real impasse and then  
22 through letter brief or letter motion to Mr. Shestack  
23 we would raise it.

24 He often would have counsel into his  
25 conference room where on one side of the table we would

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1 yell and on the other side of the table Mr. Fahey would  
2 yell, and ultimately that battle would be taken under  
3 consideration.

4 He would often before issuing a formal ruling  
5 and recommendation give a heads-up about whether or not  
6 people wanted to discuss this before a formal ruling  
7 would issue.

8 Q Okay.

9 A And it was an effective way, I think, to move  
10 things forward, although it is never quite as quick  
11 when there is a discovery dispute. But, the best  
12 example is on the privilege log issues where we had --  
13 GSK had marked as privileged over 80,000 documents.

14 We were concerned that that privileged  
15 designation was not proper some of those documents. A  
16 novel technique was created where we chose 100 randomly  
17 of the 80,000, and we didn't do so blindly because we  
18 did have advanced analytics to sort of identify the  
19 ones that we thought likely were not properly  
20 privileged.

21 We chose 100 documents, I believe, put those  
22 before the special master. He reviewed those in camera  
23 if special masters have that, and drafted guidelines,  
24 and again GSK and its counsel, to their credit,  
25 re-reviewed all of those designations, voluntarily

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1 produced a significant number of those documents.

2 Ultimately, that ended up before Judge Rufe and back  
3 down again before Special Master Shestack.

4 Q Okay. As we all know, ultimately we have lost Mr.  
5 Shestack as a special master and Mr. Merenstein  
6 replaced him at the appointment of the Court, is that  
7 correct?

8 A Yes, when Mr. Shestack passed Mr. Merenstein was  
9 appointed as special master.

10 Q And that process continued thereafter, just with  
11 Mr. Merenstein, is that correct?

12 A And to this day.

13 Q Okay. All right. I want to talk about the  
14 depositions, and you have mentioned the timeline.  
15 Again, this timeline does not include all of the  
16 depositions that were taken in the case?

17 A It does not. It is difficult to know where to draw  
18 the line, but there were well over 200 depositions  
19 taken in the case. The Exhibit 2, I believe, lists 220  
20 and some-odd depositions. Ultimately, there more than  
21 that if you start counting, for example, individual  
22 case depositions for discovery pool cases, et cetera.

23 Q Okay. I want to break that down to make that  
24 clear. On Exhibit 1, the timeline that you have  
25 created, there are gray boxes. Most of those are at

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1 the beginning of the timeline. Tell us what those are.

2 A The gray boxes are primarily employees of  
3 GlaxoSmithKline, custodial depositions including the  
4 30(b)(6) depositions, and it includes some third  
5 parties who were associated with GSK, and it also  
6 included FDA depositions.

7 Q I want to ask you about that in a minute, but as  
8 far as the GSK representatives, the depositions that  
9 were taken by common benefit counsel, how many of those  
10 were done throughout the litigation?

11 A You know, I believe it is above 60-plus depositions  
12 that were GSK employees or former employees.

13 Q And for each of those depositions would there be a  
14 deposition team that would be put in place to attend  
15 those depositions and to help prepare for those  
16 depositions?

17 A There would be a deposition team put in place.  
18 That team would have its support team around it doing  
19 the document review and preparing that team for the  
20 deposition.

21 We also typically had to coordinate those  
22 depositions with any state court attorneys who were not  
23 directly involved in the MDL, and those state court  
24 attorneys were permitted by both the PSC and GSK's  
25 counsel to participate in those depositions, as well.

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1 Q Okay. The case specific depositions, you mean the  
2 depositions of the plaintiffs in cases that had been in  
3 the discovery pool or the bellwether pool, also  
4 including treating physician depositions and things  
5 like that?

6 A Yes, hundreds of those, as well.

7 Q Okay. Those were a part of the common benefit, or  
8 for the common benefit if what? In other words, how  
9 was it that we would decide that that would be for the  
10 common benefit of the case?

11 A Again, if the fee committee determined that the  
12 case was a bellwether case and that having that case  
13 move toward trial and get close to trial was a benefit  
14 to the momentum of the litigation for plaintiffs, then  
15 that was deemed to be a common benefit case.

16 The easiest example is the Burford case here  
17 before the Court. It was clearly a momentum changing  
18 case. Simultaneously with Burford in the Philadelphia  
19 Court of Common Pleas we also were pursuing Buford, and  
20 that case also was deemed by the committee as a common  
21 benefit work because those two cases were moving  
22 forward, and the committee believed it helped resolve a  
23 significant number of cases.

24 Q Okay. Now, as far as the depositions, how long  
25 were the typical depositions of the GSK employees?

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1 A Typically, we could do it in a day, but we were  
2 permitted to do two day depositions, and we exercised  
3 our discretion on that in, I believe, very few, less  
4 than a half dozen instances where we needed to go into  
5 a two day. I see Mr. Dubay (ph), Pichetto (ph), Murray  
6 Stewart, and Lorraine Capone, Jeffrey, so probably  
7 fewer than eight where we did a two day deposition.

8 Q Okay. As you can see from the exhibit, those  
9 depositions of GSK of employees or representatives  
10 continued all the way into 2011, is that correct?

11 A That's correct. When the PSC -- the red box on  
12 that board is the initial trial setting for the Burford  
13 case in this court. After resolution of that case the  
14 employee depositions continued, and also third party  
15 depositions are represented on there.

16 Q You've mentioned third party depositions. Did the  
17 common benefit counsel also seek depositions from third  
18 parties related to this case and, if so, tell us about  
19 that.

20 A Well, on that right-hand side, for example, there  
21 are medical writing companies and research companies  
22 where depositions were taken. Some of the depositions  
23 were custodial depositions, but there was a deposition  
24 of a key opinion leader who had drafted a study in the  
25 case, a study about Avandia. In addition, a deposition



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1 of a former FDA medical officer who reviewed the drug  
2 during the congestive heart failure period.

3 So, there were third party depositions as  
4 well, and three trips to the UK associated with these  
5 depositions as well because GSK PLC is headquartered in  
6 London, and some of the witnesses were in the UK. So,  
7 PSC members had to make, I think it ended up being  
8 three trips over there for depositions.

9 Q Switching gears real quick. I take it from a  
10 management standpoint of the common benefit counsel,  
11 including the PSC, there was work that needed to be  
12 done to coordinate with all common benefit counsel, is  
13 that correct?

14 A All of the time, yeah.

15 Q Okay. Briefly tell us, if you will, what work or  
16 how were the PSC members, the common benefit counsel,  
17 coordinating with each other and making sure that all  
18 counsel had access to the work product and was involved  
19 in the litigation?

20 A Well, as I said from the beginning, this was a very  
21 open PSC from day one. So, Mr. Andrus became famous  
22 for his e-mails updating everyone on the status of the  
23 litigation, which they were regular e-mails to a very  
24 large, in some instances some of us felt too large,  
25 population of people about what was going on in the

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1 litigation.

2 In addition to those efforts, the Court  
3 itself, of course, undertook efforts to keep counsel  
4 across the U.S. involved which included the appointment  
5 of Ms. Nast as liaison counsel who would report  
6 regularly on what was going on in the other state court  
7 actions, who kept the Court in touch with what was  
8 happening in those actions.

9 The Court established a website that was  
10 specific to this litigation where orders were posted  
11 and where attorneys and claimants could watch the  
12 progress of the litigation.

13 Then, throughout every year there were  
14 multiple opportunities where the PSC invited attorneys  
15 from across the country to various seminars to update  
16 them on the litigation, to get them up to speed on the  
17 work product that the PSC had been generating.

18 And at those meetings, some of them with 80  
19 plus attorneys, those meetings, the PSC was very open,  
20 shared their work product, shared their thoughts and  
21 their strategy about the litigation and it was, I  
22 think, very comprehensively thought out plan to ensure  
23 everyone knew what was going on at all times.

24 Q Okay.

25 A All attorneys also had access to the electronic

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1 review platform at any time.

2 A Okay. Thank you. Now, turning to another area of  
3 the litigation that included an extensive amount of  
4 time, I want to talk now about the science and expert  
5 area of the litigation.

6 You mentioned previously that there was a  
7 science and expert committee, is that correct?

8 A There was, yes.

9 Q Okay. And how large was that committee  
10 approximately?

11 A It grew well beyond a dozen attorneys and plus  
12 their support people.

13 Q Were there sub-groups within the science committee?

14 A There were -- certainly initially there were  
15 sub-groups whose focus -- there was one group that was  
16 focused on stroke, CHF and cardiovascular injuries sort  
17 of melded together fairly quickly as the case pushed  
18 forward.

19 Q What about a Daubert committee? Was there a  
20 Daubert committee?

21 A There was a Daubert committee included a  
22 cross-over. You weren't assigned to a committee and  
23 only limited to that committee, but that became one of  
24 your primary responsibilities.

25 So, the Daubert committee certainly crossed

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1 over with the law and briefing committee when the time  
2 came to start drafting.

3 Q Why don't you briefly summarize for us what work  
4 the science and expert committees were doing early in  
5 the litigation prior to the time of the identification  
6 of experts, things like that?

7 A Early in the litigation, literally just after the  
8 May publication, the science teams began. It was a  
9 bunch of attorneys who had to become cardiologists  
10 pretty quickly, easier for me than others because of my  
11 family, but the attorneys had to learn the cutting edge  
12 of cardiovascular science very quickly.

13 There were, by the end I think we had over  
14 1,000 scientific articles in what I will call our  
15 science paper, our internal working science paper which  
16 was drafted throughout the litigation and constantly  
17 updated.

18 So, early on it was learning what  
19 thiazolidinediones did, why they did what they did,  
20 comparing it to other TZDs like Resilin and Actos and  
21 trying to understand the impact on the body.

22 Q And did the Daubert committee perform research  
23 related to Third Circuit law in Daubert as well as  
24 nationwide?

25 A Yes.

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1 Q Okay. Now, the expert witness work, tell us about  
2 the work that was done by the committees related to  
3 identifying and retaining experts.

4 A Again, that started very early in the process where  
5 identifying experts, flying out, typically flying out  
6 in person to meet with experts early on, to go through  
7 the scientific literature to gauge the experts'  
8 capabilities and interest in the litigation, and then  
9 working with those experts all of the way through  
10 until, frankly, we were preparing them for trial the  
11 week of the Burford trial.

12 Q How many experts did the common benefit counsel  
13 reach out to interview, discuss related to the case, do  
14 you have any idea?

15 A Yeah. I think it is probably near 40 if not more  
16 than 40. Ultimately, we narrowed that down. We did  
17 have the, what turned out to be prescient concern that  
18 we were going to have multiple trials going in multiple  
19 venues. So, a single expert in a single field may or  
20 may not be sufficient.

21 So, for some of the primary testifying  
22 experts we had to engage two experts, if not more, to  
23 be able to field multiple trial teams in multiple  
24 venues if we have to.

25 Q Now, ultimately the Court ended up setting a

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1 scheduling order and certain cases were on a track to  
2 go to trial, is that correct?

3 A Yes, the way that that worked is that the Court and  
4 through the services of Mr. Shestack and Mr. Chirls and  
5 Merenstein at the time created what was deemed the  
6 discovery pool, and that pool of cases which I think  
7 was in a fithel (ph) order, the first 100 cases became  
8 the cases where the potential focus would be for  
9 trials.

10 That was narrowed down to, ultimately, a  
11 trial pool of cases, and those cases got worked up to  
12 the extreme in those cases.

13 Q Exhibit 1 indicates the expert witnesses that were  
14 identified for those trials by the plaintiffs in blue,  
15 is that correct?

16 A The general causation experts are identified in  
17 blue. I am not sure that we did the case specific  
18 experts up there. I don't see Dr. Melnick, so I think  
19 those are the general causation experts.

20 Q Okay. And how many of those were there?

21 A There were initially 11 general causation experts,  
22 that also includes marketing expert and regulatory  
23 experts.

24 Q Okay. And is it correct that those experts were  
25 identified, I believe, in January of '10, is that

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1 correct?

2 A Yes, it was a lovely Christmas.

3 Q Okay. And how was it that those expert reports and  
4 the experts were monitored or managed during that  
5 period of time? Were there teams assigned to each  
6 experts, essentially?

7 A There were. There were teams assigned to each  
8 expert. Again, lots of overlap. You didn't just have  
9 a single expert to deal with, but there were teams  
10 assigned to experts.

11 Experts were all over the country, so there  
12 are a number of us who spent the entire months of  
13 November and December in Portland, in New Haven, in  
14 Montreal, all over, frankly, the world. We did some  
15 expert work in the UK at one point.

16 The teams would go out and meet with those  
17 experts for multiple days, review the science, the  
18 documentary evidence and work with the experts to  
19 prepare them for the drafting of their reports.

20 Q And what were the specialties of the experts that  
21 were identified by the common benefit counsel as the  
22 general causation experts for trial?

23 A The primary general causation experts were  
24 biostatisticians, epidemiologists, cardiologists,  
25 endocrinologists, diabetologists, regulatory experts

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1 and marketing expert as well.

2 Q Okay. And then there were also case specific  
3 experts that were retained and worked with, is that  
4 correct?

5 A Yes, for the -- ultimately the Burford case was the  
6 plaintiffs' trial pick and Snyder was the defendant's  
7 trial pick. So, we had to prepare experts for those  
8 cases, because Burford was a death case we, in addition  
9 to Dr. DePace as the testifying cardiologist, we had  
10 Dr. Melnick as a pathologist.

11 Q Okay. Now, Exhibit 1 includes sort of orange  
12 boxes. Can you tell us what those are?

13 A The orange boxes are the defendant's experts that  
14 were identified.

15 Q Okay. And those were the defense experts that were  
16 identified as general causation experts in preparation  
17 for the trials that were upcoming?

18 A Correct. These were the general causation experts,  
19 although as in our case, some of the general causation  
20 experts, for example Dr. Keeney also were specific  
21 causation experts.

22 Q Okay. And so tell us what you recall about the  
23 months, essentially, of February through June of 2010  
24 when the 11 general causation experts needed to be  
25 produced by the common benefit counsel and the ten



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1 general causation experts identified the defendant's  
2 needed to be -- those depositions needed to be  
3 taken?

4 A I recall far too many days with you during that  
5 period of time to tell you the truth, but the work  
6 associated with preparing the experts, getting the  
7 reports ready, and when the reports issued we had to  
8 prepare for the depositions of those experts. The  
9 defendant's experts were -- ours which were very highly  
10 qualified including some of the leaders in lipid  
11 dynamics in the world.

12 Q Tell us a little bit about the qualifications, the  
13 level of experts the plaintiffs identified?

14 A It is -- Dr. Snyderman was the -- who testified  
15 here ultimately at Daubert is quite literally  
16 considered the grandfather of Apo A and Apo B.  
17 Nicholas Jewell literally wrote the book on  
18 biostatistics that is used.

19 Dr. Britton was a key opinion leader and  
20 thought leader for GSK who when upon review of some of  
21 the patient level data, determined that he would  
22 testify for the plaintiffs in the case. World class  
23 cardiologists and regulatory experts.

24 On the other side, of course, GSK and Pepper  
25 Hamilton had a number of experts who literally wrote

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1 the book including Anakin who has written the book on  
2 epidemiology, Gotto who has written the book on  
3 cardiovascular issues in a lot of ways, Burkhardt who  
4 as a regulatory expert is well, well credentialed and  
5 some UPenn physicians who are at the top of the  
6 cardiovascular game.

7 Q Okay. Ultimately there was a time when although  
8 the expert reports were produced by the plaintiff and  
9 the defendant, FDA hearings occurred, is that  
10 correct?

11 A That's right, and the Court may recall that during  
12 the period -- the reports were issued and the Court had  
13 set a trial for October of that year and Daubert  
14 earlier than that, the FDA determined to hold an  
15 advisory committee meeting which members of the PSC,  
16 including myself, attended and the Court permitted  
17 supplementation of the expert reports after that  
18 advisory committee hearing which ultimately led to the  
19 two day Daubert hearing in September.

20 Q And a trial setting that was moved from October to  
21 late January, is that correct?

22 A That's correct.

23 Q Okay. What other work did that create, other than  
24 supplementing the expert reports, obviously, for the  
25 common benefit counsel? I am talking about the FDA

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1 hearings.

2 A Well, the FDA hearings were really  
3 non-determinative of anything. It was not a win or a  
4 loss for I think either side at the FDA hearing. So,  
5 it created additional work for us to push forward on  
6 causation and demonstrate what we believe to be  
7 true and ultimately our experts were cleared to  
8 testify.

9 Q New studies resulted though, as a result of those  
10 hearings? In other words, were rolled out at that  
11 hearing?

12 A Yes. Well, the records study in particular was --  
13 which was a primary defensive study prior to this FDA  
14 hearing, the record in particular sort of came apart at  
15 that hearing and thereafter, and the FDA required the  
16 company to effectively re-adjudicate record.

17 Q Okay.

18 A And the Tide trial was -- which never really got  
19 underway.

20 Q Right. Exhibit 1 indicates in a yellow box, I  
21 believe it was in September there was a Daubert  
22 hearing, is that correct?

23 A In this courtroom.

24 Q And Judge Rufe hosted a two day Daubert hearing.  
25 Tell us about that and the work involved from the

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1 common benefit counsel in that regard.

2 A Right. I just took a quick look at the hours  
3 between the end of that -- the expert hours between the  
4 start of the expert prep and that hearing and just two  
5 of the common benefit firms had in excess of 7,500  
6 hours in that period of time.

7 It was an around the clock project, around  
8 the clock work. Judge Rufe invited Judge Moss to the  
9 courtroom to attend those hearings, and in addition  
10 invited the courts from California to participate in  
11 person and/or telephonically.

12 Another, I think, novel thing is that those  
13 hearings ultimately were posted to the ECF as audio  
14 files which I thought was fabulous. I can listen to  
15 myself talk any time.

16 Q We all know that.

17 A And so the hearings, themselves, the first day was  
18 essentially three hours and three hours of presentation  
19 and then you put on three witnesses, three of our  
20 witnesses.

21 Again, I think a novel and great approach  
22 which was a witness sort of from each key area instead  
23 of -- they filed 11 motions, Daubert motions, but the  
24 Court permitted three, sort of, representative experts  
25 to testify on each of the critical areas.

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1 Q Okay. So, other than the presentations for the two  
2 day Daubert hearing the Daubert work included  
3 responding to the 11 motions to strike each and every  
4 one of the plaintiffs' experts, is that correct?

5 A Yes.

6 Q We also, as common benefit counsel on behalf of the  
7 plaintiffs, filed Daubert motions as well, is that  
8 right?

9 A We did, one directed at the record and I am not  
10 sure if the other was directed at Dr. Hitchen, I can't  
11 remember as I sit here.

12 Q All right. Now, at that point, the work obviously  
13 was all directed to storming towards the January, 2011  
14 trial, is that correct?

15 A Yes.

16 Q Why don't you go ahead and briefly, but completely,  
17 summarize that work that was created by common benefit  
18 counsel?

19 A Well, just because we were taking all of GSK's  
20 expert depositions, defending our experts' depositions,  
21 the underlying liability work continued. As you can  
22 see on the chart, the deposition of Moncef Slaoui at  
23 the time, I think, number three in command occurred and  
24 a number of other factual depositions.

25 Motions in limine were then filed by GSK that

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1 were, you know, well written, tenacious, well directed  
2 motions that required significant response to, and then  
3 argument later on those motions as we drove toward that  
4 trial date.

5 Q In excess of, I believe, 20 motions in limine filed  
6 by GSK, is that correct?

7 A Yes.

8 Q Okay. And filed on behalf of the plaintiffs,  
9 several motions as well?

10 A Yes.

11 Q The law and briefing committee was extremely busy  
12 during that period of time, is that correct?

13 A Law and briefing committee was extremely busy.

14 Q Okay. As far as motion practice, during that  
15 period of time there was motions for summary judgment  
16 and responses, and a briefing schedule for that as  
17 well?

18 A There were a number -- there was a motion for  
19 summary judgment in the Burford case directed at that  
20 case and there was a response for that and argument on  
21 that, and there were, I believe at that time, also  
22 filed was the motion for Lone Pine (1), the motion for  
23 summary judgment on CHF.

24 Q Okay. As far as trial preparation, and I am  
25 not talking about responding to motions and things

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1 like that, but as far as jury research, focus groups,  
2 mock trials, did the common benefit trial teams spend  
3 substantial periods of time performing those  
4 functions?

5 A Yes, and actually there were a number of those  
6 throughout the litigation to help guide our discovery  
7 and help guide our case, but near the end there were  
8 the -- in the month prior to the trial setting, there  
9 were weeks at a time spent working with focus groups,  
10 trial strategists and getting the most efficient  
11 directed case ready for trial.

12 Q And ultimately did two trial teams actually move to  
13 Philadelphia in preparation for those trials?

14 A Yes, they did.

15 Q Okay. And tell us briefly about that.

16 Q Two trial teams, I think it was at the time at its  
17 peak, probably around 20 personnel moved into the City  
18 for a 30 day stint to prepare for those two separate  
19 trials, which at the time I think were set a week apart  
20 or less than that.

21 Q Okay. Ultimately those trials were both settled,  
22 correct?

23 A Both of those cases were, indeed, settled.

24 Q And you were part of that trial team, so actually  
25 at that time you settled, is that correct?

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1 A That's correct.

2 Q All right. At that point in time there was a  
3 transition of the PSC, is that right?

4 A In March of that year, 2011, the Court  
5 reconstituted, what we call "reconstituted" the PSC,  
6 yes.

7 Q Okay. And you stayed involved in the litigation in  
8 your capacity as a member of the advisory committee?

9 A At that time the Court appointed Mr. Aylstock, Ms.  
10 Nast, you, me, and Vance I believe to the advisory  
11 committee and, of course, Mr. Corr and Mr. Mellon  
12 stayed on as liaison.

13 Q Okay. So, let's talk about the work that was  
14 performed for the common benefit from the end of  
15 January of 2011 with the new PSC that was  
16 reconstituted?

17 A The new PSC sort of broke itself into two groups.  
18 One was the governmental entity group headed up by Mr.  
19 Kiesel and the other being sort of the continuation of  
20 the personal injury, bodily injury cases initially led  
21 by Mr. Lanham and then certainly Mr. Robins came to the  
22 fore on that as well.

23 That team continued, as you can see there, to  
24 take underlying liability depositions. They did,  
25 themselves, make a trip to London for depositions of



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1 two of the authors of the record trial and I think  
2 other witnesses as well.

3 They continued to work up the stroke case,  
4 because the Court desired to have a Daubert on the  
5 stroke injuries. So, they needed to work up the stroke  
6 injury case, including designating an expert for that  
7 and dealing with the Daubert briefing on that.

8 That same team had to respond to the summary  
9 judgment on congestive heart failure, which they won  
10 and frankly, that had a large impact on ensuring that  
11 probably tens of thousands of cases, CHF cases, were  
12 going to get paid at the end of the day.

13 Q Okay. And during this period of time were there  
14 also bellwether trials set in state courts around the  
15 country?

16 A The PSC, at the request of the judge, reidentified  
17 100 cases in this court as potential trial pool  
18 discovery cases. That was a fairly large undertaking  
19 ensuring that the cases were good cases.

20 In addition to the work of identifying trial  
21 cases here, PSC members were working, either working  
22 directly or working with attorneys in New Mexico and  
23 California and other jurisdictions to push cases toward  
24 trial in those jurisdictions which ultimately this  
25 Court coordinated with those judges to ensure that the

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1 case continued to move forward efficiently without any  
2 delay.

3 Q A great deal of the common benefit work at that  
4 time was in preparation for a trial in California,  
5 I believe it was called the Bennett case, is that  
6 right?

7 A Oh, ultimately a case was set for trial in January  
8 of 2012, approximately a year after the Burford trial  
9 and during that week of when I believe the jury was  
10 getting picked this Court had established a mediation  
11 program using the services of Mr. Juno, and GSK and  
12 counsel, Bill Robins and others utilized those  
13 mediation services and GSK reached an agreement with  
14 those firms to resolve their cases --

15 Q Okay.

16 A -- the week of trial.

17 Q And then in February of 2012 I believe this Court  
18 recognized that approximately 50,000 cases had been  
19 settled, is that right?

20 A I think that's right. Obviously, the settlements  
21 are all confidential and the numbers are a little hard  
22 to put your finger on, but I think it is a fair  
23 estimate that somewhere around 50,000 cases resolved  
24 through, I would say through this MDL, and there are  
25 certainly other cases outside of the MDL that also

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1 resolved.

2 Q Okay. And that included, obviously, settlements by  
3 the PSC members who had been reconstituted at that  
4 time?

5 A Correct.

6 Q And so at that time the PSC was no longer in  
7 existence and was not renewed, is that correct?

8 A The PSC was not -- February 12th, 2012 or right  
9 around Valentines Day, I think it was the 14th  
10 actually, the Court determined that the PSC need not be  
11 renewed, however, the Court simultaneously appointed  
12 the fee committee and kept Mr. Kiesel as the  
13 coordinating counsel, Mr. Corr, of course, and Mr.  
14 Mellon as liaison.

15 Q Okay. I think that's all I have. I want to ask  
16 you one more thing.

17 Is it your opinion, Mr. Zonies, that as a  
18 member of the PSC, as a member of the advisory  
19 committee, that the work that was done and detailed  
20 here today was for the common benefit of claimants  
21 nationwide?

22 A No question.

23 Q And bestowed a benefit upon claimants and counsel  
24 nationwide?

25 A Very much so. I mean, there were a number of

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1 points throughout this litigation where there wouldn't  
2 have been a benefit for anyone had things gone  
3 differently.

4 Q Okay. I appreciate -- all right, thanks.

5 MR. CARTMELL: I don't have any further  
6 questions, Your Honor. I would like to offer into  
7 evidence Exhibits 1 through 3 though.

8 THE COURT: All right. And I hear no  
9 objection, so we will admit the Exhibits 1, 2 and 3 as  
10 they have been identified.

11 (Plaintiffs' Exhibits 1, 2 and 3, documents,  
12 are admitted into evidence.)

13 THE COURT: And the exhibits that were  
14 submitted with the motion, of course, have been  
15 reviewed for purposes of this record. Would you like  
16 to wait until the end to see which ones are left and  
17 then move them in?

18 MR. CARTMELL: Yes, let's do that. I think  
19 each witness is going to present a portion of those,  
20 and then we will probably offer them at the end of  
21 their examination.

22 THE COURT: Thank you.

23 MR. CARTMELL: Thank you, Your Honor.

24 THE COURT: All right. We do have the next  
25 witness to hear. I think we need a brief recess,

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1 however.

2 MS. NAST: Yes, Your Honor. We are certainly  
3 ready to go forward. Did Your Honor want to take a  
4 short break?

5 THE COURT: Yes, I do.

6 MS. NAST: Okay.

7 THE COURT: I need a few minutes and next we  
8 will hear from Mr. Corr.

9 MS. NAST: Yes.

10 THE COURT: Okay. Thank you.

11 (Recess, 2:47 p.m. to 2:57 p.m.)

12 MS. NAST: We are, Your Honor.

13 THE COURT: All right.

14 MS. NAST: We would like to call Mr. Corr to  
15 the stand, please.

16 THE COURT: Very well.

17 MS. NAST: And Mr. Aylstock will conduct the  
18 examination.

19 STEPHEN CORR, Plaintiff's Witness, Sworn.

20 AUDIO OPERATOR: Please state your full name  
21 and spell your last name for the record.

22 THE WITNESS: Stephen Corr, C-O-R-R.

23 AUDIO OPERATOR: Please be seated.

24 MR. AYLSTOCK: Good afternoon, Your Honor,  
25 Bryan Aylstock on behalf of the Avandia fee committee.

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1 May it please the Court.

2 THE COURT: Good afternoon, yes it may.

3 MR. AYLSTOCK: May I approach your law clerk  
4 to provide her with some additional copies?

5 THE COURT: Of course.

6 MR. AYLSTOCK: I provided to Your Honor's  
7 deputy during the break the copies of the exhibits I  
8 hope to use during the questioning of Mr. Corr, and I  
9 will hopefully go through them in the order that they  
10 are before you.

11 DIRECT EXAMINATION

12 BY MR. AYLSTOCK:

13 Q But, if I could, Mr. Corr, could I ask you to  
14 remind this Court when the Avandia fee committee was  
15 formed?

16 A It was formed at the hearing on February 14th, 2012  
17 and then subsequently it was formalized in an order  
18 dated February 16th, 2012, pretrial order 154.

19 Q And what did the Court charge the committee to do  
20 in its order?

21 A The committee was charged to develop a plan for  
22 allocation and payment of interim and final awards of  
23 counsel fees and costs among entitled petitioners.

24 Q And who are the members of the fee committee?

25 A Well, there is Vance Andrus and yourself, me, Tom

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1 Cartmell, Joe Zonies, Diane Nast, Paul Kiesel and Bill  
2 Robins.

3 Q Now, following this order, did the fee committee  
4 meet to determine how best to discharge its duty to the  
5 Court?

6 A Yeah. The fee committee in total met in person I  
7 believe 19 times. The first meeting we had actually  
8 was on February 14th. We, after that hearing, went  
9 into the jury deliberation room here in the courthouse  
10 and had our first initial meeting.

11 The first plan there was to, since we had  
12 eight members that we knew that we were going to have  
13 scheduling issues, so the first thing we did is we set  
14 some meeting times aside that we could all get  
15 together, and I believe the first one thereafter was  
16 March 5th here in Philadelphia.

17 Q Throughout the course of the litigation, had the  
18 leadership of the plaintiffs' steering committee  
19 required plaintiffs firms who might later seek common  
20 benefit funds to provide hours and a description of  
21 those hours?

22 A Yes. I think that was actually set out by the  
23 Court in, I think, PTO-70 that plaintiff attorneys who  
24 were doing common benefit work were required to  
25 maintain records of -- contemporaneously maintain

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1 records of the hours they were working for the common  
2 benefit of all plaintiffs.

3 Q Following PTO-70, was a mechanism put in place for  
4 firms to send in their hours --

5 A Yes.

6 Q -- to the leadership?

7 A Shortly after that order was entered I believe you  
8 and Vance, who were then the leaders of the PSC, put  
9 out an e-mail that talked about how to keep track of  
10 your time.

11 You provided from your firm a sample  
12 spreadsheet that people could keep time on. It would  
13 be kept on an individual time entry basis on a tenth of  
14 an hour and also a summary sheet was to be supplied to  
15 your office.

16 Then your office, since I also acted as a  
17 liaison, your office created a master database that all  
18 that time was just put into.

19 Q Okay. So, at the time the fee committee was  
20 formed, hours had already been submitted to the  
21 leadership throughout the course of the litigation?

22 A Yes.

23 Q And how many hours had been submitted or ultimately  
24 submitted to the Avandia fee committee?

25 A The total number of hours that were submitted was



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1 146,608.4 hours.

2 Q Okay. And what did the committee do with those  
3 hours?

4 A Well, the first thing that the committee did was  
5 you had circulated the database for us to look at. So,  
6 the first thing to do was to make sure that we had  
7 actually gotten all of that time into the database and  
8 then to make sure that the data we were using was good  
9 data.

10 So, the first thing that we did, I believe,  
11 at that March 5th meeting was to review to see if there  
12 was anything in the database that we noticed needed  
13 work, which we did. I mean, there was some duplicates  
14 in there because of the way people were submitting  
15 their time. There was -- clearly there was time that  
16 was missing that had not gotten into the database.

17 So, a letter was then sent out to the firms  
18 who had provided common benefit time, and they were  
19 asked to make sure that all of their time had been  
20 submitted, and we gave them a deadline in that.

21 Q Is that the letter that has been marked for  
22 identification as Avandia Fee Hearing number four --

23 A Yes.

24 Q -- dated March 5th?

25 A Yes. It's March 5th of 2012, yeah, that's the

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1 letter.

2 Q Okay. And did that letter allow any -- well, first  
3 of all, who was the letter sent out to?

4 A The letter was addressed to all attorneys  
5 potentially eligible for common benefit fees. That's  
6 how it was addressed.

7 Q And ultimately, how many firms, individual law  
8 firms, submitted time for review for the Avandia fee  
9 committee?

10 A Fifty-eight firms submitted time.

11 Q Did this letter provide those firms with an  
12 opportunity to check their own time and make  
13 corrections and ensure that the time was accurate?

14 A It did, and it gave them a date by March 15th,  
15 2012. So, it gave them ten days from the date of the  
16 letter to make sure that they had corrected their time  
17 and had submitted all of their time reports.

18 Q If you turn to the second page of the --

19 A If I could just go back? In addition to the time  
20 sheets that we accepted, firms were also given the  
21 opportunity on a monthly basis to provide a monthly  
22 narrative summarizing their time and then ultimately,  
23 maybe it is even in this letter, but ultimately they  
24 were --

25 Q It is on page two, where I was going to next

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1 A Okay, sorry. Ultimately they were also allowed  
2 then to provide a five page narrative to the committee  
3 summarizing their time and explaining anything they  
4 wanted to in the time.

5 Q Now, throughout the course of the litigation, were  
6 firms also provided the opportunity to provide  
7 narratives with their monthly time reports?

8 A Yes.

9 Q Okay. And did the fee committee review all of  
10 those narratives that were submitted in considering the  
11 task at hand?

12 A We did. We reviewed the monthly time, that was  
13 optional, so when plaintiff lawyers are allowed to do  
14 something optionally they frequently opt out, but we  
15 reviewed those monthly ones and then also those who  
16 submitted a summary, a five page summary, we also  
17 reviewed them.

18 Q Did the March 5th, 2012 letter from the fee  
19 committee also require those firms to supply a  
20 verification with the time?

21 A Yes.

22 Q And what was the verification requirement, if you  
23 turn to the last page?

24 A Yes. All time entries shall be certified by the  
25 senior partner in the firm attesting to the accuracy of

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1 the summaries.

2 Q Okay. So, following this March 5th letter did, in  
3 fact, the committee receive additional time and  
4 corrections to the time that had been previously  
5 submitted?

6 A It did, and we worked with your IT people to make  
7 sure that the time was accurate in the database, and we  
8 reviewed it several times, actually, and made sure that  
9 what we got was accurate and we took out any duplicates  
10 that we could see were obvious by either technology or  
11 something like that.

12 Q Once all of the discrepancies in the submitted time  
13 and any corrections and opportunity for corrections  
14 were made, what did the committee do with the submitted  
15 time?

16 A Once we were sure that we had -- the integrity of  
17 the data was good we then individualized the time. We  
18 were able to using Excel spreadsheets break out the  
19 time by firm so that we would have a separate  
20 spreadsheet for each firm that would identify the firm  
21 name, the individuals who submitted the time, the  
22 actual time entry, the time that was submitted for the  
23 work that was done. We also had categories in there as  
24 well.

25 Q Did the Avandia fee committee invite the court

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1 appointed CPA, Mr. Alan Winikur to this March 5th and  
2 6th meeting?

3 A Yes, Mr. Winikur was at the March 5th -- he was  
4 there one of those days, I believe, he came in for the  
5 meeting.

6 Q Okay. And did he have input on how these forms  
7 could be created and discrepancies resolved?

8 A Yeah. I think Joe Zonies referred to himself as a  
9 techno-geek in the earlier testimony and I guess I was  
10 the second of that, because I was contacting Mr.  
11 Winikur before this.

12 I think I had sent out a protocol at some  
13 point for how to review cases or review time entries  
14 using Excel, and then we came up with a protocol that  
15 we wanted to use for highlighting things. I reviewed  
16 that with Mr. Winikur. I actually sent him, I think,  
17 some samples to see if that was going to be okay with  
18 him the way we were doing that.

19 But, we wanted his input on what we were  
20 doing and how we were doing it procedurally, but  
21 also wanted to make it as easy for his office as we  
22 could.

23 Q Did the fee committee develop guidelines for review  
24 of the time?

25 A We did.

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1 Q Are those reflected in Exhibit 5 marked for  
2 identification?

3 A Yes, yes. So, the guidelines came in a memo form  
4 from Ms. Nast and it was after getting input from the  
5 committee at our meeting on how we should go about  
6 reviewing the time.

7 We had some guidelines from PTO-70 that the  
8 Court had set out what was time that was going to be --  
9 should be considered valid time for common benefit  
10 work.

11 We tried to come up with our own --  
12 incorporate those into our own guidelines so that we  
13 could have an objective criteria to use that we could  
14 all then implement on our own, but we were all using  
15 the same guidelines and criteria for it, and that's  
16 what this Exhibit 5 is.

17 Q Okay. And does this reflect the objective criteria  
18 that were used by the committee for evaluating the  
19 time?

20 A Yes.

21 Q And do these incorporate the Court's instructions  
22 from PTO-70?

23 A Yes.

24 Q And are there any additional objective guidelines?

25 A Yeah. Like I know one of the additional, the

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1 obvious one that jumps out is number six which was all  
2 pre-MDL time.

3 So, we excluded, after much debate within the  
4 committee we decided that we needed to have a bright  
5 line for the start of when people could submit common  
6 benefit time.

7 So, we decided that all pre-MDL time would be  
8 stricken and removed from this, even though we  
9 recognized that much of that MDL time which Mr. Zonies  
10 just testified to I think began in probably May of  
11 2007.

12 Much of that time was very important to the  
13 common benefit, but we thought that objectively because  
14 that was a lot of the time from people on the committee  
15 itself we thought, objectively, that we needed that  
16 bright line to cut it off and start it when everybody  
17 was then aware of the MDL. So, we started it on the  
18 date the MDL was formed.

19 Q Did that disproportionately -- did that disallow  
20 time that was going to be applied on that objective  
21 basis disproportionately affect numbers of the fee  
22 committee?

23 A I think it, yes, I mean I think certainly you had a  
24 lot of time that was cut from that which we will be  
25 able to see. Vance had a lot of time, Joe Zonies had a

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1 lot of time that was cut from that. I think I had some  
2 time that might have been cut from that as well, I  
3 don't remember.

4 Q Okay. And was that cut to maintain that bright  
5 line rule, even though some of that time was clearly  
6 for the benefit?

7 A Lest the debate in the committee.

8 Q Okay. Ultimately was a consensus reached that all  
9 of that time should, in fact, be disallowed?

10 A Yes, I think consensus was reached at all times. I  
11 will say this for the Court's benefit, that the  
12 committee worked very well. I mean, despite debate,  
13 despite arguments and our chair made sure that we were  
14 all fair and --

15 Q On task?

16 A -- acted properly, but we always came to consensus.

17 Q Can you describe for the Court the manner in which  
18 the hours were reviewed by the committee?

19 A Yes. After our first meeting we decided that the  
20 best method to do this would be to have -- and each  
21 firm's time would be reviewed by two individual members  
22 of the fee committee independent of one another.

23 So, a chart was put out listing all of the  
24 firms that had submitted time and next to the firm name  
25 were two members of the committee so that everybody had



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1 an equal number of primary reviews and an equal number  
2 secondary reviews.

3 By that I just mean that if my time was being  
4 submitted no individual could review their own time.  
5 So, if my time, I don't remember who reviewed it, but  
6 say it went to you as the primary reviewer, Bryan  
7 Aylstock would review my time, he would put in, using  
8 these codes off the guidelines, if he thought cuts had  
9 to be made or he was going to recommend a cut to Mr.  
10 Winikur you would put in a code next to the time, and  
11 then once you completed your review -- and you would  
12 highlight that entry so that it stood out that that was  
13 one that was being cut.

14 Then you would send it on to Joe Zonies who  
15 was doing the secondary review. He was actually doing  
16 a full review of the time again. He had the benefit of  
17 looking at what you had already done, but he would do  
18 his own review.

19 If he disagreed with something that you had  
20 cut, he might put in a note there that would say I  
21 wouldn't cut this, let's talk about it, or he could --  
22 the time that you didn't cut that he thought should  
23 have been, he could then put his own entry in,  
24 highlight that and then ultimately we came back, I  
25 think, at our meeting in Chicago, the committee as a

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1 whole reviewed every entry of all 58 firms.

2 So, we spent probably 14 hour days in  
3 Chicago, I would say at least that long, probably  
4 longer than that. We were really late into the night.  
5 We looked at every single entry, which I don't know how  
6 many entries that is, but it was an awful long time and  
7 I don't ever want to look at time entries again, that's  
8 for sure.

9 Q Why did the committee feel the need to have every  
10 member review every submission in toto?

11 A I don't know that there was a need to do it. I  
12 think it was that we wanted to make sure that we were  
13 doing the right thing. So, we had an individual look  
14 at the first -- take a first look, we had an individual  
15 take a second look and the committee just decided that  
16 before we sent these time sheets on to Mr. Winikur, we  
17 wanted to make sure that we were applying these  
18 objective criteria in a uniform manner and there was  
19 discussion about that.

20 I think then, you know, even these criteria,  
21 we have 11 criteria, we marked some time on different  
22 things. We used -- this goes down to 11, so we used 12  
23 and 13 just to mark time so that we could come back and  
24 have a discussion about that time, and it was usually  
25 issue specific.

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1           So, if there was a motion that was out there  
2           and we noticed that there was an awful lot of time  
3           spent on that motion, it was something we would mark  
4           with a 12 just so that we could come back and talk  
5           about it, but we wanted to make sure everything was  
6           being done uniformly before we sent it on to Mr.  
7           Winikur.

8           Q   Ultimately, did the committee reach consensus with  
9           regard to the recommendations that it was going to send  
10          to Mr. Winikur about the time that was submitted for  
11          each individual law firm?

12          A   Absolutely. At that Chicago meeting I believe we  
13          finalized what we were going to send to Mr. Winikur,  
14          and I believe we even brought him on the conference  
15          call during that meeting to make sure that he was ready  
16          to accept all of the time and we got it over to him  
17          electronically.

18          Q   Ultimately was Mr. Winikur instructed by the  
19          committee to re-review all of the time?

20          A   I believe he was instructed by the Court and he  
21          discussed that with the committee, that he was going to  
22          do an independent review of all of the time.

23          Q   And is that what he did?

24          A   Yes.

25          Q   Ultimately did Mr. Winikur, after review of the

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1 time, inform all of the 58 law firms about the  
2 individual cuts of those law firm times?

3 A He did. He prepared a letter for every law firm.  
4 I believe they were all sent electronically. I think  
5 he can probably -- I know most of them were, because we  
6 get copies of those e-mails. We were copied on the  
7 e-mails. He sent a letter summarizing it.

8 Q Is one of those reflected in Exhibit 6?

9 A Yes.

10 Q Is that the letter to my law firm?

11 A This was the letter to your law firm dated June  
12 25th, 2012. I don't remember if they were all done the  
13 same day, but they were all right around that same  
14 time.

15 He sent a letter just like 6, same form,  
16 different hours obviously in the one paragraph, but he  
17 sent that letter to every firm electronically along  
18 with a copy of their spreadsheet and also a copy of the  
19 guidelines we were using so that the firms could then  
20 cross-reference using the guidelines. They would look  
21 at the number that was in the column for the denial  
22 code, they could go right to their cheat sheet, the  
23 guidelines.

24 Q Was each of these 58 firms told specifically what  
25 their allowed hours were and what their disallowed

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1 hours were?

2 A Yes.

3 Q And did Mr. Winikur inform each individual law firm  
4 of the opportunity to schedule an interview to discuss  
5 any of the disallowed time?

6 A Yes, he did in that letter, in that cover letter of  
7 June 25th.

8 Q And, in fact, was each and every of the 58 law  
9 firms provided that opportunity with both Mr. Winikur  
10 and the full committee?

11 A They were.

12 Q Okay. And do you recall how many of the 58 law  
13 firms actually requested interviews?

14 A Yeah, it was at least a dozen that we actually -- I  
15 think a dozen -- we had interviews with a dozen. I  
16 think maybe 14 or 16 may have requested them and some  
17 then opted out.

18 Q Now, did Mr. Winikur, when he did his review, make  
19 any additional cuts or recommend any additional cuts  
20 beyond what was recommended by the committee?

21 A Well, yes. I mean, what the committee was doing  
22 was making recommendations based on our experience.  
23 Mr. Winikur was the one who ultimately decided whether  
24 that was a valid cut, and there were times when he cut  
25 additional time and there were times when he suggested

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1 to us that time should be put back in. So, yes, he did  
2 his independent review.

3 Q Okay. And following these interviews that were  
4 scheduled, were changes made -- well, can you describe  
5 the interview process to the Court just briefly?

6 A Yeah. So on I believe it was July 9th and 10th we  
7 met here in Philadelphia at Galco. We had a conference  
8 room there, and the firms that wanted to have their  
9 interview, each were assigned a time they could call  
10 in.

11 They were given 15 minutes to make their  
12 presentation. Some went over that time, some under,  
13 and there was at least 15 minutes in between calls so  
14 that after the call we could discuss the call or the  
15 interview that we had just conducted.

16 And in the room in Philadelphia was the eight  
17 committee members and Mr. Winikur, and ultimately Mr.  
18 Winikur would make the final decision on what was going  
19 to happen.

20 We could -- we could give him the substantive  
21 issues of well, this is what this means or this is what  
22 was happening in the litigation, that kind of thing.  
23 But, ultimately on the time, Mr. Winikur made that  
24 decision.

25 Q Did the information obtained during those

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1 interviews assist the committee and Mr. Winikur in  
2 understanding some of the time entries such that some  
3 of the time was able to be allowed?

4 A Yes.

5 Q Okay. And ultimately did Mr. Winikur have the  
6 final say as to whether an hour would be allowed or  
7 disallowed?

8 A Until today.

9 MR. AYLSTOCK: If I could I would like to  
10 show the Court a copy of the ultimate Excel spreadsheet  
11 that was put together as a result of Mr. Winikur's work  
12 of the allowed time, which is reflected as Exhibit 7.  
13 It will actually be introduced as a CD to the Court.

14 BY MR. AYLSTOCK:

15 Q Is this a copy of the spreadsheet that is on  
16 Exhibit 7?

17 A Yes. So just to give you the basis of the exhibit  
18 itself, when the database was broken down -- the  
19 database that Mr. Aylstock's firm provided to us had  
20 all of the time into one spreadsheet.

21 We were able to break that down just using  
22 the Excel commands to break it down into individual  
23 spreadsheets by law firm. Ultimately, I think,  
24 probably -- I think on the committee Joe Zonies and I  
25 were in charge of the spreadsheets.

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1 We would work with the spreadsheet like this,  
2 and then this, what is now Exhibit 7 is the final -- we  
3 put them all into one -- different sheets within one  
4 file and I burned the CD last night.

5 Q Ultimately following all of the committee's work  
6 and Mr. Winikur's work and following these interviews,  
7 how many hours were approved pursuant to Mr. Winikur's  
8 recommendation?

9 A Well, as I mentioned, 146,608.4 hours were  
10 submitted, 12,596.32 hours were disallowed for a  
11 remaining balance of 134,039.68 hours which were  
12 allowed.

13 That is on the first tab of the file, the  
14 first sheet is a summary of every firm, number of hours  
15 submitted, number of hours disallowed, total number of  
16 hours allowed. I believe on that first sheet also may  
17 have been the lodestar.

18 Q Once the committee was able to winnow down the  
19 hours to the allowable hours, did the committee look at  
20 any other metrics beyond the individual time entries to  
21 determine whether over all of the hours for this MDL  
22 seemed reasonable?

23 A Yes. So, you know, we had 19 meetings in person.  
24 We had multiple telephone conferences. All of the time  
25 we were working on the individual time, we were also



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1 looking at the bigger picture, because our first  
2 objective was to figure out what was a fair, global  
3 fee, and we knew that we had to look at the  
4 jurisprudence in the Third Circuit, but we also looked  
5 at the jurisprudence in other circuits, other MDLs.

6 We wanted to look at globally how are these  
7 things done, how can we do this in the most fair way to  
8 all of the plaintiffs, and one of the other things we  
9 wanted to look at was, okay, well how did the things  
10 happen monthly?

11 Now, when Joe testified, everybody wants to  
12 take credit for my charts, I did all of the charts.  
13 Bryan just blew them up, but this, for example, the  
14 chart that you have up here now says total --

15 Q Is that Exhibit 8 for the record?

16 A It is. It may have been -- was it marked earlier?

17 Q I think it has been previously marked for  
18 identification as Exhibit 8.

19 A Okay.

20 Q Does that chart reflect the total hours submitted  
21 by month?

22 A It is. So, one of the things that I did was I took  
23 -- at one point we were trying to figure out how can we  
24 look at this in a different way and look at it  
25 graphically.

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1           So, we took all of the time, I put it, just  
2 on my own, just kind of made it into -- moved all of  
3 the time by month and then created this bar chart to  
4 show how much time was billed in each month, and did  
5 that really reflect our recollection of what was  
6 happening in the litigation and things like that.

7           And it really did, it really showed -- if you  
8 see those peaks, those peaks were happening at the time  
9 of discovery, the 2009 peak, right, so that goes up.  
10 We could look at the time entries and see that there  
11 was a lot of discovery that was going on.

12           We were leading up to experts, expert reports  
13 were due some time in there, I remember, and I am just  
14 going off the top of my head now. Then, 2010-2011  
15 trials were coming up, there was Daubert hearings,  
16 things like that.

17           So, those peaks were coming at times that we  
18 knew there was, you know, real important activity in  
19 the litigation. So, that was one just graphical way of  
20 us confirming what our recollection was and what the  
21 time sheets were showing.

22       Q   Did you or did the committee also look at the time  
23 by year graphically just as an additional approximation  
24 of what was going on?

25       A   Yeah. We were trying to look at different ways to

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1 do this graphically. So, I think there may be three or  
2 four graphs that we made up.

3 Q And this is Exhibit 10, showing total hours by  
4 year. How was that helpful to the committee?

5 A I think that is 9.

6 THE COURT: 9.

7 THE WITNESS: So, this is Exhibit 9, and it  
8 is just captioned "Percent of total hours per year."  
9 So, we were able to look at that also and see, you  
10 know, on a pie chart, okay, how much time, what  
11 percentage of the time was entered during these years,  
12 and that was able to -- just a graphical way, again,  
13 of looking at did this comport with what we were seeing  
14 in the time entries of important work being done and  
15 our recollection of what was happening in the  
16 litigation.

17 BY MR. AYLSTOCK:

18 Q Did the committee also look at the hours per PSC as  
19 the PSC became reconstituted over the years to look and  
20 see if that comported with what the committee knew  
21 about the work that was being done over time?

22 A Exactly, and we were constantly thinking about the  
23 Gunter factors and other cases that we had been reading  
24 along the way and that's another reason to look at this  
25 graphically, well what was happening? When was the

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1 important work? What was the quality of work? What  
2 was the, you know, the work that was being done.

3 And so we could look at PSC one, the members  
4 of PSC one, PSC two and PSC three, they were on the  
5 committee. So, we were able to kind of pick a date,  
6 and this is a rough estimate of the percentage of time  
7 done during each PSC iteration.

8 Q Is it Exhibit 10 --

9 A It is.

10 Q -- that is that rough estimate?

11 A It is.

12 Q Let me show you Exhibit 11. Did the committee also  
13 compare the total number of hours that were approved in  
14 the Avandia MDL with other MDLs and complex litigation  
15 as an additional metric to evaluate the reasonableness  
16 of the hours?

17 A Yeah. So we were always looking at, like I said,  
18 as we were talking about the individual time entries of  
19 people, we were also looking at what was happening in  
20 other MDLs, or what was happening in other mega-fund  
21 cases. When we read the opinions from those cases we  
22 were able to find some that actually had the number of  
23 hours in them and things like that.

24 So, we created this bar graph just to show  
25 that in comparatively with other mega-fund cases the

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1 number of hours that had been accepted here was really  
2 in line with these other mega-fund cases, you know, and  
3 then we could compare and see where we fit in with  
4 them.

5 Q Can you describe for the Court what the committee  
6 did to help it determine the size of the overall  
7 recovery so that the -- to ensure that the award that  
8 would be reasonable in light of that overall reward?

9 A Well, the settlements in the cases, as the Court  
10 knows, are confidential. So, there was no real way of  
11 putting our finger on how many cases had settled and  
12 therefore -- and how much money was out there in the  
13 settlements.

14 But, we had an idea among ourselves because  
15 we each had our own settlements. But, again, we  
16 couldn't discuss them because of confidentiality. What  
17 we did do was we looked at, you know, different news  
18 articles.

19 We looked at some of the business journals,  
20 we looked at some of the filings, GSK information, we  
21 looked at our own experiences. So, from there we had a  
22 general idea of where this was, but more importantly we  
23 retained an expert, Dr. Glenda Glover to go ahead and  
24 look into these same things to come up with a  
25 reasonable estimate of what the settlement or the

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1 amount of the settlement was.

2 Q Does Dr. Glover have expertise in value in  
3 corporations and settlements in business related  
4 matters?

5 A She does, and we submitted that with our  
6 memorandum, her resume, which I think speaks for  
7 itself.

8 Q Okay. And was the Dr. Glover's report, and I  
9 understand the Court allowed it to be filed under seal  
10 in light of the confidential nature of the settlements,  
11 but did the Court -- I am sorry, did the committee  
12 provide that report to each and every of the common  
13 benefit attorneys under seal?

14 A Yeah. I believe that the report was provided to  
15 GSK's counsel, and then it was -- after it was filed  
16 under seal, I believe, then it was also provided to  
17 members of the common benefit attorneys were able to  
18 receive it, but with the understanding that it was  
19 under seal and to be kept confidential.

20 Q And following the submission of that report to GSK  
21 and the other common benefit attorneys, was there any  
22 concern expressed by anyone about the valuation of the  
23 total settlements?

24 A No, it was the -- the report was then submitted to  
25 the Court under seal and there was no objection to it.

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1 Q Okay. Now, did the committee, in light of the size  
2 of the expected award, evaluate whether or not the  
3 seven percent assessment that the Court had ordered  
4 to be set aside in PTO-70, whether that appeared fair  
5 in light of the results and the number of hours  
6 obtained?

7 A Yes, we were constantly looking at other cases.  
8 So, you know, we would go to meetings and talk about  
9 case law and maybe, you know, in a phone conference  
10 somebody would say hey, you know, read this case, you  
11 know, Diane would say look at this case and let's focus  
12 on what they were doing and then we can go look at this  
13 other case and those kinds of things.

14 Q I am showing you the chart that is Exhibit 13, and

15 MR. AYLSTOCK: I should have mentioned for  
16 the record that Dr. Glover's report marked for  
17 identification is Exhibit 12.

18 BY MR. AYLSTOCK:

19 Q But, does Exhibit 13 provide graphically a chart  
20 for the committee and ultimately the Court to evaluate  
21 how the seven percent set aside in PTO-70 compares to  
22 other mega-fund cases?

23 A Yeah, and this chart actually was contained within  
24 the brief that we submitted, and you can see that the  
25 seven percent falls right in line with what is going on

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1 here.

2 I mean, you know, Royal Hold, NASDAQ, Tyco  
3 International, Shaw, these are double the percentage  
4 that was set aside in this case. This case is right in  
5 line with diet drugs, Vioxx, Visa Check. I mean, these  
6 are all in the seven percent range as well.

7 Q And in looking at the percentages, if we look back  
8 at Exhibit Number 11, the comparison of the hours  
9 approved in some of these other mega-fund cases, how  
10 does the Avandia MDL line up, for example, with the  
11 NASDAQ case and the number of hours?

12 A Yeah. I think the number of hours were almost  
13 identical. We have submitted slightly more than the  
14 NASDAQ, so there is more time put in, but NASDAQ there  
15 is a 14 percent award. Here we are asking for a seven  
16 percent award, so I think graphically you can see it.

17 Q Did the committee also undertake a lodestar  
18 cross-check as a further assurance as to the  
19 reasonableness of the fees?

20 A We did. We spent a lot of time. Obviously, you  
21 heard Mr. Zonies testify about the Gunter factors and  
22 we spent a lot of time with looking at Gunter and Judge  
23 Becker's opinion in that case. He relied heavily on  
24 the Third Circuit's report on fees and we looked at  
25 those factors and tried to guide ourselves along them.



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1 Q Okay. How did the committee go about determining  
2 the appropriate hourly rate to be assigned to each  
3 individual lawyer or paralegal who had submitted hours?

4 A Well, first we relied on Gunter. We also relied on  
5 the Interfaith case that talks about using the  
6 geographical area or the location of the litigation for  
7 determining hourly rates.

8 So, we wanted to look on a national basis,  
9 and we did that.

10 Q Is that reflected in Exhibit 14?

11 A Right. So, Exhibit 14 shows, from the National Law  
12 Journal, hourly rates for national law firms. We  
13 looked at that just for guidance on how we should go  
14 about setting the rates in this case.

15 Q Did the committee also look at billing rates for  
16 other complex types of litigation, like bankruptcy?

17 A We did, we looked at bankruptcy cases, and that's  
18 Exhibit 15 that we have here. We looked at the  
19 bankruptcy law firms and their billing rates, and  
20 then we broke it down into looking at Interfaith and  
21 Gunter.

22 We went then and looked at Philadelphia firms  
23 and we broke it down into that, and looked at the  
24 Philadelphia firms for their rates as well.

25 Q Is that reflected in Exhibit 16?

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1 A It is.

2 Q And graphically can you describe for the Court what  
3 the committee found in looking at rates of the  
4 Philadelphia law firms?

5 A Sure. I mean, looking at this, you know, from the  
6 National Law Journal there are five law firms on this  
7 and it shows billing rates for, you know, full-time  
8 equivalent attorneys, billing partners and partners and  
9 things like that.

10 So, I mean partner billing rates range in  
11 this report from \$725 an hour to \$900 an hour.

12 Q Did the committee in assigning the rates to the  
13 individual firms and lawyers within those firms, also  
14 look at other Gunter factors such as the nature of the  
15 services provided?

16 A Exactly. So, we looked at the services that were  
17 provided. We looked at that not only for the  
18 individuals who were there, but also on the time  
19 entries.

20 When there were time entries, maybe questions  
21 would come up about a certain topic or something, what  
22 is the nature of the service being provided, doc  
23 review, for example. Somebody might put in document  
24 review, well, what is the nature of that.

25 What we did then was we created categories of

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1 people and then we assigned, using the data we had  
2 gathered from these sources we then assigned rates to  
3 those individual categories.

4 Q And, ultimately, when all of those rates were  
5 assigned and applied to all of the hours that had been  
6 approved by Mr. Winikur, what was the lodestar amount  
7 that was arrived at by the committee?

8 A \$55,133,965.

9 Q And once that amount was arrived at, did the  
10 committee apply a lodestar cross-check and look at any  
11 other cases of similar nature to determine the  
12 appropriateness of the lodestar?

13 A Yeah. We were constantly looking at cases trying  
14 to determine how did this fall within other mega-fund  
15 cases.

16 Q And when the committee did that, what did the  
17 committee find?

18 A This is certainly in line with -- you know, when we  
19 look at multipliers and things of that nature, this is  
20 certainly in line with and actually at the low end of  
21 where other cases were falling.

22 So, on Exhibit --

23 Q 17.

24 A -- 17 you can see the chart was -- I believe this  
25 was included in the brief as well, but you can see that

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1 the multiplier to get to the seven percent is 2.607 is  
2 the multiplier.

3 Q Is that in line with other similar cases that had  
4 been approved?

5 A It is at the low end of what we see here. So, yes,  
6 I would say yes, it definitely is.

7 MR. AYLSTOCK: Your Honor, I would like to  
8 move all of the Exhibits 4 through 17 that had been  
9 previously marked for identification into evidence.

10 THE COURT: Any objection?

11 (No response heard.)

12 THE COURT: Hearing none, we will admit the  
13 Exhibits 4 through 17.

14 (Plaintiffs' Exhibits 4 through 17,  
15 documents, are admitted into evidence.)

16 MR. AYLSTOCK: Your Honor --

17 THE COURT: That one on the right is 13,  
18 isn't it? I think, yes?

19 MR. AYLSTOCK: Yes, Your Honor. This is  
20 the -- that's Exhibit 13.

21 THE COURT: Thank you.

22 MR. AYLSTOCK: And for the record, Exhibit 7  
23 is the CD that was provided to the Court. It has each  
24 individual law firm's time and reflects work product  
25 that in light of the ongoing litigation, we would

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1 request that that also be placed under seal.

2 THE COURT: All right. We will seal the CD.

3 MR. AYLSTOCK: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. AYLSTOCK: No further questions.

6 THE COURT: Thank you. Thank you, Mr. Corr.

7 (Witness excused.)

8 (Pause in proceedings.)

9 MS. NAST: Thank you, Mr. Corr. Thank you,  
10 Mr. Aylstock. Your Honor, may we now call Mr. Alan  
11 Winikur to the stand?

12 THE COURT: Yes.

13 MS. NAST: And, Your Honor, as a preliminary  
14 matter, whenever we submit time reports to the Court,  
15 the daily time records to any Court, we always request  
16 that they be submitted under seal because they do  
17 reveal our work product.

18 THE COURT: Yes, they do.

19 MS. NAST: And it was doc, I believe, number  
20 seven. And, well, 12 is already under seal.

21 THE COURT: 12 is sealed because of the  
22 Glover report.

23 MS. NAST: Right. But number seven, which is  
24 the CD, which contains the daily time records would  
25 also be submitted under seal.

1 THE COURT: We will do so.

2 MS. NAST: Okay. Now, Mr. Winikur, now  
3 several of the questions I was going to have to ask you  
4 have already been covered by Mr. Corr, so --

5 THE COURT: Well, we'll have him sworn in.

6 MS. NAST: -- we'll go through them just very  
7 quickly.

8 First of all --

9 THE COURT: Ms. Nast, we'll have him sworn in  
10 first.

11 MS. NAST: Oh, I'm sorry, I thought we did  
12 that.

13 ALAN B. WINIKUR, Plaintiffs' Witness, Sworn.

14 COURTROOM DEPUTY: Please state your full  
15 name, spell your last name for the record.

16 THE WITNESS: Alan B. Winikur,  
17 W-I-N-I-K-U-R.

18 COURTROOM DEPUTY: Please be seated.

19 DIRECT EXAMINATION

20 BY MS. NAST:

21 Q Mr. Winikur, do you serve by court appointment in  
22 this litigation?

23 A Yes, I do.

24 Q And what is that court appointment?

25 A It's pretrial order 109.

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1 Q And the Court in that order requested you to  
2 perform what function?

3 A Basically to review the time and expense reports of  
4 the Common Benefit law attorneys.

5 Q Okay. And may I ask you what are your professional  
6 qualifications for undertaking such a task?

7 A Prior to this case I was court appointed by Judge  
8 Louis Bechtel on the orthopedic bone screw litigation.  
9 Also appointed by him in the diet drugs litigation. By  
10 Judge Donald Middlebrooks in the Trasylol Products  
11 litigation.

12 Just as of September the 10th, I was  
13 appointed by Judge Anita Brody in the NFL's player  
14 concussion injury litigation.

15 MS. NAST: Your Honor, may I approach the  
16 witness?

17 THE COURT: Yes, of course.

18 BY MS. NAST:

19 Q Can you identify this document for us, please?

20 A Yes. This is my CV.

21 Q Okay. Can you just quickly highlight some of your  
22 other professional accomplishments --

23 A Yes.

24 Q -- based on your CV?

25 A I'm a CPA. I'm accredited in business evaluations

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1 and certified in financial forensics. I'm a member of  
2 the State Planning Council, the Institute of Business  
3 Appraisers. I've done substantial valuations and  
4 forensic accounting in various types of litigation.

5 Q Thank you.

6 MS. NAST: And, Your Honor, may we mark that  
7 document as Exhibit Number 17, please.

8 THE COURT: I think that's the Loadstar  
9 multiplier chart, so we'll do 18.

10 MS. NAST: Oh, well, then we're 18?

11 THE COURT: I think we're up to 18.

12 MS. NAST: Okay. Thank you.

13 THE COURT: Thank you.

14 BY MS. NAST:

15 Q Mr. Winikur, you mentioned some court appointments  
16 that you had for timely expense committees.

17 A That's correct.

18 Q Have you ever worked as a court appointed person to  
19 help with the fee committee?

20 A Yes, I have.

21 Q Can you tell us that, please, those cases?

22 A That was with Diet Drugs and with the current case.

23 Q And we did hear testimony that you are working with  
24 the current case here today?

25 A Yes.



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1 Q Can you describe your work with the committee. And  
2 to try and break it down, let's start with March when  
3 we just began?

4 A Yes, and I met with the fee committee in March  
5 where the members of the fee committee had been  
6 conducting the initial review of the time submissions  
7 by the Common Benefit law firms.

8 After surviving tax season we began receiving  
9 time records from the fee committee.

10 Q So we're assuming April is out the window?

11 A Yes.

12 Q Yes, okay.

13 A Yes. In which we conducted our own line-by-line  
14 review of all firms submitting their time. And from  
15 our analysis we made a determination of the time  
16 allowed and disallowed, of course, conferring with the  
17 fee committee on certain items that we thought might be  
18 subjective and we weren't quite sure about.

19 Q So when you reviewed -- you've heard Mr. Corr  
20 testify that the records that were sent to you included  
21 comments from the fee committee?

22 A Yes.

23 Q But when you received those records, you conducted  
24 an independent start-over brand new review?

25 A Yes, we did. I mean some of the examples of time

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1 disallowed were excessive time reading e-mails,  
2 excessive time reading pretrial orders, first class air  
3 travel, incomplete descriptions, limited descriptions,  
4 say, this doc review that Mr. Corr had mentioned, and  
5 that type of things that we looked at to try to expand  
6 on what we had from the fee committee.

7 Q And so there were instances in which you allowed or  
8 disallowed time that we had not recommended that they  
9 be disallowed, but based on your background you were  
10 able to make those decisions?

11 A That's correct, and also time that we disallowed  
12 and subsequently determined that it was allowable. For  
13 instance, in Mr. Aylstock's firm, because he had the  
14 responsibility to act as a clearing house to conform  
15 all the Excel spreadsheets in the same way, and the  
16 format in the same way, we had saw a substantial amount  
17 of time entry, not realizing that was a specific thing  
18 that he was responsible for. So that was time that was  
19 eventually allowed.

20 Q So just to be sure and clear on that, one of the  
21 areas of time that was not permitted as Common Benefit  
22 was complying with the time and expense recording --  
23 reporting guidelines of PTO70?

24 A Correct.

25 Q And just to clarify that, for example, if I spent a

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1 half an hour reviewing our time report after it was  
2 prepared, that time was not compensable as Common  
3 Benefit?

4 A That's correct.

5 Q But what you determined was that Mr. Aylstock was  
6 the person in charge of collecting all of those  
7 records --

8 A That's correct.

9 Q -- and so that time was restored to his time?

10 A And that was restored, right.

11 Q And did you work from a set of guidelines?

12 A Well, the pretrial order guidelines and then also  
13 guidelines that were compiled by the fee committee,  
14 specifically listed as any pre-MDL time that was not  
15 allowed.

16 Q All right. And we've heard testimony about --

17 A Yes.

18 Q -- why that decision was made. And we understand  
19 from Mr. Corr's testimony that you had occasion on June  
20 22nd to notify -- on or about June 22nd, because I'm  
21 not certain that the letters aLL went out the same day.  
22 I think they did.

23 A Most of them were dated the 22nd. We sent letters  
24 via e-mail to over 50 Common Benefit firms stating that  
25 I was the account assigned to review the time and

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1 expense reports under the audit guidelines established  
2 by PTO70.

3 And included with these letters was an  
4 attachment of each firm's time records reflecting total  
5 hours submitted, hours disallowed and the net hours  
6 that can be considered compensable.

7 The audit considerations compiled by the fee  
8 committee, these were in addition to the guidelines of  
9 PTO70, were also included, numbered and with the  
10 applicable disallowance code as a cross-reference for  
11 those Common Benefit attorneys to review what I had  
12 stated in the letter.

13 MS. NAST: And, Your Honor, I believe that  
14 letter has been previously marked as exhibit seven to  
15 Mr. Corr's testimony.

16 BY MS. NAST:

17 Q Mr. Winikur, in that letter we've heard that you  
18 offered people an opportunity to have an interview with  
19 yourself and with the fee committee. And I believe Mr.  
20 Corr testified that we ended up with about 12  
21 interviews, do you recall that?

22 A That's correct.

23 Q You also offered people an opportunity in your  
24 letter to submit a written statement even if they  
25 didn't want to have an interview. Did you receive any

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1 such statements?

2 A There were several who affirmatively said that they  
3 were satisfied with our findings, our conclusions and  
4 they did not want an interview.

5 Q And other than those, do you recall any other  
6 communications with the applicant counsel, by that I  
7 mean, people petitioning for counsel fees?

8 A As far as interviews, there were about a dozen or  
9 so firms wanted interviews.

10 Q And those interviews were granted?

11 A Yes.

12 Q And other than those contacts were there other  
13 occasions when you contacted fee applicants for  
14 clarification or additional information?

15 A Yes, there was because that was just part of the  
16 process. If I found -- thought that something was  
17 incomplete and I had a question, I would certain  
18 entertain any feedback that could clarify the  
19 situation.

20 Q Did you have occasion, and just give me a second to  
21 put my hand on this, to send another letter on July  
22 3rd?

23 MS. NAST: Your Honor, may I approach the  
24 witness?

25 THE COURT: Yes.

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1 BY MS. NAST:

2 Q Do you recall this letter?

3 A Yes.

4 Q Can you tell us the purpose of this letter?

5 A Well, this was a reminder for all the members who  
6 had -- we had sent letters out, those June 22nd letters  
7 to respond by telephone as far as the meetings, and  
8 that we would let them know, you know, when that would  
9 happen.

10 Q And then the interviews were conducted?

11 A The interviews were conducted and that they should  
12 be limited to 15 minutes.

13 Q And they were more or less?

14 A Sometimes a little more.

15 Q Sometimes a little more and sometimes -- I don't  
16 remember any that were less actually, but did you --  
17 were there any changes that were made to time as a  
18 result of those interviews?

19 A Yes.

20 Q Do you recall any particular example?

21 A Certain times certain firms, one firm in particular  
22 had for whatever reason had not included a number of  
23 months with their submission. It was determined that  
24 was compensable time after review by myself and the fee  
25 committee and we allowed that time.

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1 Q So they had omitted that time --

2 A They had omitted that time --

3 Q -- from their initial reports --

4 A That's correct.

5 Q -- and you permitted them to send them in even  
6 though it was --

7 A That's correct.

8 Q -- it wasn't noted before that they were missing?

9 A Correct.

10 MS. NAST: And, Your Honor, that document, I  
11 believe, I'm afraid to say this, should be marked as  
12 exhibit 19?

13 THE COURT: Actually you can mark it as seven  
14 because his first e-mail, June 25th, we marked as six  
15 and admitted it, and we don't have a seven.

16 MS. NAST: Oh, okay.

17 UNIDENTIFIED COUNSEL: The CV is seven.

18 THE COURT: Oh, the CV is seven.

19 MS. NAST: Oh, the CV is seven.

20 THE COURT: I'm sorry. Okay. Then we are  
21 back to 19.

22 MS. NAST: Back to 19. Okay.

23 THE COURT: Great.

24 BY MS. NAST:

25 Q And just a last couple of questions. We've heard

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1 testimony about this, but I think we would like to hear  
2 it from you as the final arbiter of the time that was  
3 spent.

4 What were the final number of hours that were  
5 reported?

6 A The final number of hours were 146,608.4, I  
7 believe.

8 Q And of those hours, what if any hours were  
9 rejected?

10 A About 12,596.

11 Q And so what was the resulting total of hours that  
12 were recommended for approval?

13 A 134,039.

14 MS. NAST: Thank you. I have no further  
15 questions. Your Honor, did you have anything, because  
16 this is --

17 THE COURT: I don't have any questions for  
18 Mr. Winikur. I thank him.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 THE COURT: We'll record all of his exhibits.  
22 They are admitted.

23 MS. NAST: Oh, yes, can we move them into  
24 evidence.

25 (Plaintiffs' Exhibit Avandia 19 is admitted



1 in evidence.)

2 MS. NAST: And I guess while I'm here we  
3 should talk about the volume of exhibits --  
4 declaration.

5 Your Honor, with our fee petition we  
6 submitted a volume of exhibits, and I don't think  
7 actually most of them need to be admitted. One has  
8 already been admitted. Two has --

9 THE COURT: Been admitted.

10 MS. NAST: -- essentially been admitted. It  
11 actually hasn't in this form, and perhaps we should  
12 mark it as Avandia 20 and admit it.

13 THE COURT: All right.

14 (Plaintiffs' Exhibit Avandia 20 is admitted  
15 in evidence.)

16 MS. NAST: Number three has been admitted as  
17 Joe's long chart. Number four has been admitted.  
18 Number five has disappeared -- oh, that's under seal.

19 Okay. Number six, Your Honor, these were the  
20 biographies that were submitted when people applied to  
21 be appointed.

22 Would you prefer that we mark them, they are  
23 in the record?

24 THE COURT: I know that they are in the  
25 initial record and there's no reason why we shouldn't

1 have a complete record here, stand alone, so we'll  
2 admit them.

3 MS. NAST: We've marked them -- now we're at  
4 21, I believe.

5 (Plaintiffs' Exhibit Avandia 21 is admitted  
6 in evidence.)

7 THE COURT: Yes.

8 MS. NAST: And the next group of things down  
9 to number 12 are all reported decisions. We attach  
10 them here for ease of reference for the Court, and we  
11 can mark them --

12 THE COURT: No, they don't need to be marked,  
13 but we'll take notice of them.

14 MS. NAST: Very good. Number 13 had been  
15 admitted, I mean it's already been marked and admitted.

16 THE COURT: Yes.

17 MS. NAST: Number 14 has been marked and  
18 admitted. Number 15 has not, and we would request that  
19 that be admitted, and that would be --

20 THE COURT: 22.

21 MS. NAST: Avandia 22.

22 (Plaintiffs' Exhibit Avandia 22 is admitted  
23 in evidence.)

24 THE COURT: Now, please go back to the index  
25 number four. I don't know that that's admitted. Is

1 that different than number one?

2 MS. NAST: No, I don't think it has been  
3 admitted. Maybe I'm -- it is different, yes. Yes, so  
4 we should admit it, and so I guess that would make it  
5 23.

6 THE COURT: Okay.

7 (Plaintiffs' Exhibit Avandia 23 is admitted  
8 in evidence.)

9 MS. NAST: Okay.

10 THE COURT: Thank you.

11 MS. NAST: Okay. So that takes care of our  
12 volume of exhibits, and then with Your Honor's  
13 permission we will conclude by asking Vance to make a  
14 few remarks and we thank you very much.

15 THE COURT: Thank you. Mr. Andrus.

16 MR. ANDRUS: May it please the Court, I am  
17 Vance Andrus. I had the privilege of speaking first at  
18 the very first of Your Honor's Avandia MDL hearings  
19 before there was even a PSC appointed by this Court.  
20 And thus is it fitting and my associates say inevitable  
21 that I speak last.

22 Judge Bryan Aylstock and I had the honor to  
23 lead into legal battle the finest most professional  
24 dedicated and well organized MDL plaintiffs' team ever  
25 assembled, people such as Diane Nast, Steve Corr, Joe

1 Zonies, Tom Cartmell, Bill Robins, Paul Kiesel, Tom  
2 Mellon, Mike Miller, Sam Lanham, Fred Thompson, and the  
3 partners and associates and paralegals of 52 separate  
4 law firms.

5 We did so against defense counsel every bit  
6 as talented and tough, led by Nina Gussack and George  
7 Lehner and their attorneys they represented JSK with  
8 skill and tenacity. They engaged us on every front  
9 always attacking, always providing their client the  
10 best of legal services.

11 And when the time was right they engaged in  
12 an effective resolution process. It was under the  
13 leadership of this Court that five years later we have  
14 come to this day.

15 Without the capable leadership of this Court  
16 and its team including Jerry Shestack, Bruce  
17 Merenstein, Pat Juneau, Marybeth Putnam and your entire  
18 staff, the results may have been different.

19 But, you see, you know that. You were here.  
20 You saw it and you lived it, and that's the road.  
21 Everything I just said is history, and everything that  
22 was testified to today is history.

23 You see the problem with history is its sense  
24 of inevitability. The sense that, of course it turned  
25 out that way, it's history. But history is deceptive,

1 Your Honor.

2 It did not have to turn out that way. It  
3 could have turned out very differently than the way it  
4 did. So let's return to that first day, let's go back  
5 to that very first day in this courtroom.

6 Can't you see it, the crowd, the  
7 anticipation, the tension, the worry. If an observer  
8 were looking at that first day, the observer would  
9 wonder, what's going to happen, how is it going to  
10 happen, why is it going to happen?

11 Well, now we know, but it's time for the  
12 record to reflect what happened here and why it  
13 happened, and how it happened. Therefore, let the  
14 record reflect that what happened here was the perfect  
15 legal storm, composed of three equal components, the  
16 Common Benefit lawyers representing the plaintiffs, the  
17 capable defense team fighting for their client, and  
18 this Court who through their struggle, their effort and  
19 their hard work within four years did, did what? Did  
20 what?

21 Resolved the claims over 60,000 people,  
22 that's what we did. Our clients are injured people.  
23 We tend to get caught up in the business of the law and  
24 the struggle, and we forget about the injured people.

25 Our clients and every client of every lawyer

1 in America who had an Avandia case, everyone had in  
2 common three things. First, they had diabetes, a life  
3 threatening disease. Dr. David Graham, an  
4 epidemiologist, the head of the FDA Department of Drug  
5 Safety testified under oath that diabetes is heart  
6 disease. Two-thirds of our clients were going to die  
7 of heart disease because they were diabetics.

8 The second thing that they had was a severe  
9 injury, they had a heart attack, a stroke or congestive  
10 heart failure in addition to their diabetes.

11 And what was the third thing? They had all  
12 used Avandia. Now, GSK denied then, and so does today  
13 that their drug had anything to do with those injuries.  
14 And at the outset what did we have? We had one study  
15 with no mechanism of action for one of the three types  
16 of injuries.

17 But today, today we stand before you and we  
18 say the system worked. It worked because we, all of  
19 us, you, they, us believed in this system and set about  
20 making things right. So we the Common Benefit  
21 attorneys come before you today and request that our  
22 work, our risk be justly rewarded out of the fruits of  
23 our labor.

24 The Common Benefit doctrine provides that a  
25 percentage of the pot is fair and equitable, and it's a

1 measure in a method for doing so.

2           You, Your Honor, have heard the testimony.  
3 Indeed you are intimately familiar with the facts so we  
4 won't recite them, nor will we recite the law which is  
5 cited in our papers which are presently unopposed.

6           But the record should reflect that we, the  
7 Common Benefit lawyers, undertook with great risk work  
8 for the common good and produced a substantial benefit  
9 for all of the plaintiffs and did so while exercising  
10 the utmost skill of attorneys practicing in this  
11 profession.

12           The PTO70 assessment is within the range of  
13 similar cases, and the size of the fee requested is  
14 well within the range of those awarded in other similar  
15 superfund cases.

16           You've heard this number mentioned many  
17 times, 134,000 hours, 134,000. At 220 work days a  
18 year, that would take one lawyer over 75 years to do.  
19 But it wasn't one lawyer, it was a team of lawyers. It  
20 was the Common Benefit counsel of the MDL 1871. Given  
21 this and on behalf of the Common Benefit counsel, and  
22 the over then 60,000 clients who have settled their  
23 claims, the fee committee request a Common Benefit  
24 award and a reserve in the amounts and percentages  
25 referred to in our proposed findings of fact,

1 conclusions of law and order.

2 We thank the Court for its patience, its  
3 guidance and its hard work and we rest our case.

4 THE COURT: Thank you, Mr. Andrus. I think  
5 your summary has ably and passionately identified the  
6 true history of this case that I found myself flying  
7 back to that first day before you mentioned it.

8 And while we know the work isn't completely  
9 over, it is substantially completed for the individual  
10 claimants, and it is because of that we can entertain  
11 this motion now, and it's because of that we think it's  
12 high time to grant the motion.

13 I have reviewed your papers. I have been a  
14 part of not your meetings but every observation of your  
15 work product along with your opponents. And I've  
16 worked with the masters, and there is no doubt in my  
17 mind that there is justification glamour in this  
18 record.

19 It is up to the Court to make a final review.  
20 I know today I was handed a printout of a proposed  
21 pretrial order with proposed findings of fact. I don't  
22 know why I have all these little boxes instead of --  
23 okay, techno-geeks, what do little boxes mean when they  
24 are printed like this because some of the actual  
25 figures are missing.



1 MS. NAST: Your Honor, may I approach?

2 THE COURT: Yes.

3 MS. NAST: I'm not sure, it was transmittal  
4 electronically.

5 THE COURT: Well, we don't know -- you know,  
6 our federal system is now undergoing a type of change  
7 from Word to WordPerfect.

8 MS. NAST: They are attractive little boxes.

9 THE COURT: Aren't they lovely.

10 UNIDENTIFIED COUNSEL: Other way around.

11 UNIDENTIFIED COUNSEL: I believe it's from  
12 WordPerfect to Word.

13 THE COURT: Well, I don't know. I don't care  
14 and I'm not attending the training.

15 MS. NAST: We will resend it without the  
16 boxes.

17 THE COURT: Thank you. Thank you very much.  
18 I'll read what I can, but I want to thank all of you  
19 for giving me such a complete picture of such thorough  
20 work.

21 I think you have a right to be a little  
22 emotional because I am. Is there anything else we can  
23 address, Mr. Lehner?

24 MR. LEHNER: If you don't mind, Your Honor.  
25 Just briefly, not to stand up and oppose the granting

1 one, a certainly appreciate many of the comments that  
2 have been made here today, and I would only add that I  
3 think in a day and age where lawyers often hear about  
4 and people often hear about the bitterness and the  
5 nastiness that lawyers engage in in litigation, I can  
6 say it was just the opposite here.

7 I think it was nothing but a professional  
8 engagement of the highest standard with attorneys on  
9 both sides doing a zealous job for their clients, and  
10 it's really, I think, speaking for Ms. Gussack and all  
11 our team, it's been a real privilege to litigate with  
12 our colleagues on this side during the last five years.

13 But I do have a couple of questions and just  
14 a couple of comments that I want to raise with the  
15 Court while we're talking about the Common Benefit  
16 fund.

17 THE COURT: Let me just say before you do  
18 that, it takes all sides to engage in civil and  
19 professional responsible types of legal activity, it  
20 didn't happen alone, so thank you.

21 MR. LEHNER: While we're talking about the  
22 Common Benefit fund, there is still a considerable  
23 amount of money to flow into the Common Benefit fund  
24 and certainly thank the work that Mr. Chirls has been  
25 doing, and I know working most closely with Ken Zucker

1 doing, and I know working most closely with Ken Zucker  
2 and monitoring that, and we certainly appreciate what  
3 he's been doing on that.

4 And we are very mindful as we are constantly  
5 reminded by our colleagues of our Common Benefit  
6 obligations, and you become aware of some of the issues  
7 that have arisen. I am sure those will unfortunately  
8 keep coming to your attention.

9 There is one issue that I think we're going  
10 to need some guidance from you, and that is, as you  
11 know there are a number of state cases in which we are  
12 now litigating, individual state cases in state court  
13 that are represented by attorneys who participated in  
14 the MDL here.

15 And I think we're going to need some guidance  
16 from you as to, one, whether or not those states have  
17 been informed about whether or not they have a Common  
18 Benefit obligation since they clearly are using MDL  
19 related material to advance their cases.

20 It will obviously impact our conversation  
21 should we ever have them with states as to what kind of  
22 resolution there may be. It's a big issue and I hope  
23 those states have been informed by, I think it's Mr.  
24 Robins principally who is representing those states,  
25 and now there may be a Common Benefit obligation,

1 that's something you may have to address down the road  
2 as you've done with respect to some other people who  
3 have been litigating outside the MDL, but certainly  
4 have ties to the MDL and will need to raise that soon.

5 THE COURT: All right. I've been made aware  
6 of specific instances before, but not in particular  
7 what's ongoing as anyone who has completed their work  
8 with the MDL still representing in the state. I don't  
9 think that's what you meant.

10 MR. LEHNER: No, what I meant -- very clearly  
11 what I think is in play here is, are the states who are  
12 litigating against us on the very same issues  
13 essentially that we've been litigating here, and using  
14 the very same material that was generated in the MDL --

15 THE COURT: All right.

16 MR. LEHNER: -- what kind of Common Benefit  
17 obligation may they have, because that will obviously  
18 impact our responsibility to perhaps provide more money  
19 to the Common Benefit fund, and we've heard all today  
20 about, you know, issues people have when money isn't  
21 disbursed and that makes people unhappy, obviously.

22 THE COURT: Yes, we have an ongoing problem  
23 there.

24 MR. LEHNER: So with the particular --

25 THE COURT: Do you have a suggestion as to

1 address that without their being an actual mechanism  
2 for the Court to rule upon? I don't know what is  
3 happening out there in the states.

4 Some of you know better, and some don't know  
5 at all. But I would suggest that putting all attorneys  
6 who are representing such state entities on notice is  
7 the first way, and perhaps establishing a deadline to  
8 notify the Court whether or not there is going to be an  
9 issue.

10 I know Mr. Robins is here. I welcome him to  
11 come up and talk about this.

12 MR. LEHNER: And this may be an issue with  
13 respect to the fee committee itself who obviously has  
14 an interest in making sure that ultimately the Common  
15 Benefit pot is whatever it is supposed to be. It's not  
16 really a -- we're sort of again a neutral party in  
17 this.

18 THE COURT: Right.

19 MR. LEHNER: We just want to make sure that  
20 should we have any obligations imposed upon us, we know  
21 what they are and we are able to comply with them.

22 THE COURT: Do you see any reason that the  
23 present requested, the instant requested relief should  
24 be held up because of this, or are you talking more  
25 about future contributions?

1 MR. LEHNER: Well, that's a question I'm not  
2 really sure sort of. I mean I gather that the PSC and  
3 the fee committee has asked for a certain sum of money  
4 to now be set aside to pay the Common Benefit fees that  
5 they had proposed.

6 That sum of money is less than I assume the  
7 total amount of money that is going to ultimately end  
8 up in the -- it's going to be less than seven percent  
9 assessment against all of the money, I assume so.

10 So there's going to be some money going back  
11 to people. But in order to know ultimately what the  
12 full pot is, we ought to know who is going to have to  
13 contribute to that because presumably individual  
14 claimants who now contributed seven percent may not  
15 need to contribute seven percent if there's more than  
16 enough money to contribute to pay out the Common  
17 Benefit fees that are applied for at the end of the  
18 day.

19 THE COURT: Correct.

20 MR. LEHNER: So that's something I think that  
21 Mr. Chirls and the PSC have to work out.

22 THE COURT: Or they may continue to  
23 contribute and then proportionate disbursements --

24 MR. LEHNER: Just back at the end of the day.

25 THE COURT: -- be made.

1 MR. LEHNER: Exactly.

2 THE COURT: All right.

3 MR. LEHNER: But at the end of the day we're  
4 going to have to sort of know how much was sort of the  
5 final amount to the Common Benefit pot.

6 MS. NAST: Your Honor, if I may just  
7 interject --

8 THE COURT: Yes.

9 MS. NAST: The typical thing here would be to  
10 continue along the course that we're going, and if and  
11 when what you said may happen happens, then we will  
12 have a plan to deal with it.

13 THE COURT: I like to be notified of this  
14 potential.

15 Mr. Robins, would you like to say something?  
16 How are you?

17 MR. ROBINS: I'm well, thank you, Your Honor.

18 THE COURT: Good to see you.

19 MR. ROBINS: Nice to see you.

20 THE COURT: Thank you, Mr. Lehner.

21 MR. ROBINS: I just wanted to let the Court  
22 know that I am representing States Attorney General.  
23 You'll recall --

24 THE COURT: I do recall.

25 MR. ROBINS: -- that when we originally

1 settled our agreement, we carved out our ability to do  
2 those with cases that we had already had meaningful  
3 engagement with, and those cases, just so the Court  
4 knows, it's in the discovery phase right now.

5 So we are, from my vantage point, a long way  
6 from settlement on those cases. This is a topic that  
7 I've talked with my colleagues about on the fee  
8 committee. Having been before you in the MDL, having  
9 been on the PSC, there's not any question that we don't  
10 dispute that we will need to pay an assessment at the  
11 end of the day.

12 The question is, how much and how much work  
13 is going to go into having to finish the AG cases.  
14 We've already had ongoing discussions about that within  
15 the committee. I think this is something that we can  
16 address in the committee. That's certainly how it's  
17 handled, as I understand in Vioxx, ultimately an  
18 agreement was made with the plaintiffs' fee committee.

19 So we don't anticipate this being something  
20 that's going to be unable to be resolved. We feel like  
21 it will be on an equitable basis. It has nothing to do  
22 with the request that's being made today and the basis  
23 of the fee committee's request based on the assessments  
24 and the estimation that's within the papers.

25 THE COURT: I appreciate that.



1 MR. ROBINS: So shouldn't stand up anything  
2 that's going on today, and I would anticipate -- and  
3 certainly notwithstanding your order on jurisdiction, I  
4 certainly recognize, you know, my participation here  
5 and I feel like we will be able to resolve that down  
6 the road, so I just wanted to let you know that.

7 THE COURT: Thank you. Thank you. Mr.  
8 Lehner?

9 MR. LEHNER: And the only thing that I have  
10 some concern about is that the states themselves have  
11 some kind of notice, and I assume you've notified your  
12 clients that there may yet be some assessment down the  
13 road that they are going to have to pay because that  
14 clearly impacts GSK and our ability to have  
15 conversations with the states.

16 If they comes at the end of the day as a  
17 surprise to them, that, you can imagine, is a surprise  
18 they don't like to hear about at the end of the day.

19 THE COURT: Well, every representative of  
20 each of those states may not be in same position as Mr.  
21 Robins is who is clearly saying, yes, his clients will.  
22 But I think it's incumbent upon GSK to notify them that  
23 that's a potential, more than a potential reality.

24 I don't want to rule here that they're going  
25 to owe without knowing who is doing what. I have

1 nothing to do with the attorney general case,  
2 obviously. It may also advantageous if you get some  
3 help from lead counsel for the plaintiffs, at present,  
4 Mr. Kiesel, who could assist.

5 I don't necessarily think Mr. Robins has an  
6 obligation to tell all attorneys general except his own  
7 clients.

8 MR. LEHNER: Except his own clients,  
9 absolutely, that's all I'm asking, Your Honor. Thank  
10 you.

11 THE COURT: Yes, and it sounds like he's on  
12 board there.

13 Mr. Kiesel, and then I'd like to hear from  
14 Mr. Chirls.

15 You're the only one that could fit through  
16 there.

17 MR. KIESEL: I left all of my skin on that  
18 edge.

19 THE COURT: I am jealous.

20 MR. KIESEL: The one comment I will make, I  
21 hadn't thought, this is the end of a long day and  
22 another issue I hadn't considered was going to come up  
23 is this, GSK has turned over, there have been  
24 protective orders that have been done directly with  
25 attorneys general, and documents have been given to

1 attorneys general outside of this MDL.

2 And I just want the Court to be award of the  
3 fact that there are documents being exchanged and  
4 discussions occurring outside of everything that has  
5 happened in this courtroom, so I think it may depend  
6 upon the state that's involved and what the request is.  
7 I just want the Court to be aware of that.

8 THE COURT: I already see that issue, I do.

9 MR. KIESEL: And I'll walk around this way.

10 THE COURT: Okay.

11 MR. ROBINS: Could I just add one other point  
12 on that, Your Honor, just very briefly.

13 THE COURT: Yes.

14 MR. ROBINS: There certainly is a distinction  
15 between what the state might have to pay, if anything,  
16 as an assessment in its capacity as a state versus what  
17 the lawyers who are receiving a fee might pay, and  
18 that's important because it implicates governmental  
19 issues, it implicates legislative issues and these  
20 types of things and that's been addressed in other  
21 cases.

22 So how the assessment ultimately would get  
23 allocated against who, or how it would actually  
24 function in a particular case, I think it's way too  
25 early to tell that.

1 But what I'm saying to you, to the Court is,  
2 that I feel that we are going to be able to work out  
3 how that will be dealt with in a way that is reasonable  
4 and has been dealt with in other cases.

5 THE COURT: Well, everyone is certainly on  
6 notice, aren't they? They will be on notice.

7 MR. ROBINS Yeah, certainly the --

8 THE COURT: And the comparison to other cases  
9 and to what has already happened in this MDL will be  
10 made. But I think it's good to have this discussion.

11 MR. ROBINS: Sure. And I just want you to  
12 understand that, you know, that as -- I think it's --  
13 this is not something I was ready to stand up and speak  
14 about today, but I just wanted you to be aware that  
15 it's nothing that we're ignoring either as if it's  
16 something that won't have to be dealt with on down the  
17 road.

18 THE COURT: Very good.

19 MR. ROBINS: Mr. Kiesel was certainly right,  
20 there's a lot of work product and things that have  
21 happened outside of the MDL which will go into that  
22 assessment and discussion, but that's for another day  
23 when we get there.

24 THE COURT: Thank you, Mr. Robins.

25 MR. ROBINS: Thank you.

1 THE COURT: Mr. Chirls?

2 MR. CHIRLS: Yes, Your Honor. Andrew Chirls,  
3 and I'm the administrator of the Common Benefit fund.  
4 I'll try to be informative even if I cannot be as  
5 eloquent as those who have come before me.

6 I anticipate I'll be receiving monies over  
7 time as I have now been receiving monies. Ms. Nast and  
8 I have discussed the point that I'm not to hold all the  
9 money till the end. There will be many interim  
10 distributions. And I don't believe anything that has  
11 been presented here governs how frequently, how often  
12 those interim distributions will be made.

13 So it's my expectation that that will be  
14 covered in further orders and that I'll be working with  
15 Ms. Nast. I don't intend to contribute seven percent  
16 of my fees to the Common Benefit fund, but I will  
17 contribute my work and my experience. Thank you.

18 THE COURT: Well, that is more than enough.  
19 Thank you.

20 Is there anything else to add to this record  
21 today, and for my information? I certainly appreciate  
22 all the work that has gone into today.

23 The clarity that is reflected in this record  
24 not only makes my job easier, and that's all you  
25 attorneys and wise counsel and masters have done

1 throughout the tenure of this MDL is to help me out,  
2 but I think it's important for posterity.

3 Mr. Andrus talked about history. History is  
4 what is recorded, and recorded not just verbally  
5 transcribed, it is recorded in the minds and experience  
6 of those who live it, and it has to be transmitted, and  
7 now we have a full record.

8 So anyone who wishes to know what happened  
9 here today can now find out and we'll move on to the  
10 next step.

11 I still have to review everything, look at  
12 the new proposed order and see if it needs any  
13 tweaking, but essentially I will tell you that there's  
14 no reason presented here that I have already reviewed  
15 that I would not grant your request in full. But let  
16 me take it under advisement and read all the fine  
17 lines. And I always do that anyway. All right.

18 And with that, I think we stand adjourned.  
19 Thank you, very much.

20 (Proceedings concluded at 4:20 p.m.)

21 \* \* \*

I N D E XPLAINTIFFS' WITNESSES      DIRECT    CROSS    REDIRECT    RECROSS

Joseph Zonies

By Mr. Cartmell                      8

Stephen Corr

By Mr. Aylstock                      70

Alan Winikur

By Ms. Nast                          102

\* \* \*

PLAINTIFFS' EXHIBITSADMITTED INTO EVIDENCE

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\* \* \*

CERTIFICATION

I, Jeff Nathanson, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

10-11-12  
Date

  
Jeff Nathanson