IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WENDY B. DOLIN, Individually and as Independent Executor of the Estate of STEWART DOLIN, deceased,	)	
Plaintiffs,	)	
vs.	)	No. 12 CV 6403
SMITHKLINE BEECHAM CORPORATION, d/b/a GLAXOSMITHKLINE, a Pennsylvania Corporation,	)	Chicago, Illinois
Defendant.	)	March 21, 2017 1:20 p.m.

VOLUME 5-B

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WILLIAM T. HART, and a Jury

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(Proceedings heard in open court. Jury out.)

[redacted]

[redacted]

(Proceedings heard in open court. Jury in.)

THE COURT: All right. Thank you, ladies and gentlemen. Please be seated. We'll resume.

Doctor, please.

You may proceed.

MR. WISNER: Thank you, your Honor.

DAVID ROSS, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION (Resumed)

BY MR. WISNER:

Q. All right. Dr. Ross, do you have an opinion about whether or not the labeling for GSK's Paxil was adequate as it relates to adult suicide?

A. Can -- the Paxil label from when it was approved?

Q. Yes.

A. Okay. I do.
Q. And do you have opinion about how that label existed starting in 1992?
A. I do.
Q. What is your opinion about that label, Doctor?
A. It was falsely misleading at the time, and it remains so to the current day.
Q. Why do you believe that the label as it first entered the market in 1992 was both false and misleading?
A. So the statute says that misbranding as if the label is false or misleading in any particular, the particular here is that for adults is that the label doesn't tell prescribers or patients that starting from the time of approval, the data showed and the company knew that the chances of an adult getting Paxil resulting in suicidal behavior, that is, an attempt to kill oneself or actually killing oneself, was significantly greater in people exposed to Paxil versus those who weren't.

MR. BAYMAN: Objection, your Honor. He said prescriber or patients. The label goes to the prescriber. It's been the subject of a motion in limine about the duty to warn.

THE COURT: You can cover that on cross-examination.

BY MR. WISNER:
Q. Have you reviewed suicide data submitted by GSK in 1991

prior to Paxil approval?
A. I have.
Q. And generally, what percentage of patients taking Paxil versus patients not taking Paxil experienced suicidal behavior or even committed suicide?
A. Talking about just to clarify, the numbers given to the FDA or what really happened?
Q. What really happened.
A. What really happened was the proportion of patients who attempted suicide or actually succeeded in killing themselves was about roughly 1.4 percent in people exposed to Paxil compared to something less than 0.2 percent.
Q. And in the suicide report, did you look at the numbers that they put forward there?
A. Yes.
Q. And would you recognize that suicide report if you saw it today?
A. I would.
Q. Can you turn in your binder quickly to Page -- I'm sorry, Plaintiff's Exhibit 82. Are you there?
A. I am.
Q. All right. What is Plaintiff's Exhibit 82?
A. This is a letter from the director of regulatory affairs at GlaxoSmithKline's predecessor company to the division -- the director of the division that was reviewing the Paxil NDA.

Q. And if you look on the back of that letter, is there a 1991 suicide report?
A. I'm sorry. The back of the letter?
Q. If you turn the page a couple of pages attached to the letter.
A. Yes, there is.
MR. WISNER: Okay. Great. Your Honor, permission to publish. This has already been shown to the jury.
THE COURT: I have -- we're on Exhibit 82; is that right?
MR. WISNER: Yes. Plaintiff's Exhibit 82.
THE COURT: And I have some material on the back page, but I don't see any data.
MR. WISNER: Okay. If you look at Exhibit 82, your Honor --
THE COURT: Look at 82. Yes.
MR. WISNER: Okay. And you have a letter right there. Do you see that?
THE COURT: I have the letter.
MR. WISNER: And it's dated May 10th, 1991.
THE COURT: Correct.
MR. WISNER: Okay. Now, if you turn a couple of pages past the weird obscured page --
THE COURT: This takes me to 85. It doesn't take me anywhere else.

MR. WISNER: Oh, you only have one page?
THE COURT: That's right.
MR. WISNER: Oh, I'm sorry, your Honor. Let me get you a full copy of that. May I approach, your Honor?
THE COURT: Yes.
MR. WISNER: I apologize, your Honor. Permission to publish the document to the jury.
THE COURT: Yes.
MR. WISNER: Thank you.
BY MR. WISNER:
Q. So Doctor, we're looking at the 1991 report here. Do you see that?
A. I do.
Q. Okay. And if you turn through it, there's a page Table 1 that lists out suicides. Do you see that?
A. Yes.
Q. Okay. Is there also a table in here that lists out suicide attempts?
A. Yes.
Q. Okay. If you turn to the next page, we're going to look at the suicide attempts right here.
A. Yes.
Q. Do you see that? Now, this has that 6 number right there of placebo suicide attempts. Do you see that?
A. Yes.

Q. Again, did six suicide attempts occur in the placebo arm?
A. No.
Q. And anywhere in the suicide report, does it disclose that certain number of those actually occurred in the washout period?
A. No, it does not talk about that at all.
Q. Okay. All right. Now, putting aside the placebo thing for one second, let's focus on the actual attempted suicides here. We have 40 suicides. Do you see that?
A. Yes.
Q. What does that 1.3 right there mean?
A. So that is --
MR. BAYMAN: Excuse me. You said suicides. It's 40 suicide attempts. Objection.
BY MR. WISNER:
Q. I apologize. 40 suicide attempts.
A. So that's the percentage you get when you divide 40 by the denominator of 2,963.
Q. And what does that 1.3 mean?
A. So that means that of those 2,963 patients who got Paxil, 1.3 percent of them attempted to kill themselves.
Q. Now, under FDA regulations as they existed in 1992, with a 1.3 percent incident rate of suicide attempts, was there a requirement that GSK list suicide attempts as a frequent adverse event on the label?

A. Yes.
Q. Have you looked at the label for '92?
A. Yes, I have.
Q. Turn to Exhibit 48, Plaintiff's Exhibit 48.
A. Okay.
MR. BAYMAN: Objection, your Honor. This is not in his expert report, so note my objection.
MR. WISNER: He's discussed the adequacy of the label throughout his expert report. That's not true.
MR. BAYMAN: Not in this section, your Honor, he did not.
THE COURT: Proceed.
BY MR. WISNER:
Q. All right. Doctor, what is the exhibit that we're looking at here, 48?
A. Yes.
Q. What is it?
A. So -- I'm sorry. I just want to make sure I'm looking -- so this is the label that was approved when the drug was initially approved for sale in the U.S.
Q. And is this a document that you relied upon?
A. Yes, it is.
Q. And talking about it would aid your -- aid you in your testimony today?
A. Yes, it would.

MR. WISNER: Your Honor, permission to publish.

THE COURT: You may proceed.

BY MR. WISNER:

Q. All right. So what we have here, Doctor, it's really small print, but thankfully due to technology, we can magnify and read some portions. There is a -- let me just ask you, before I get into it, anywhere in this label, does it warn about Paxil-induced suicidal behavior over the age of 30?

A. No, absolutely not.

Q. All right. Let's go into the label. And there's a section here that's titled "Suicide." Do you see that, Doctor? I have it blown up here so you can actually read it.

A. Yes.

Q. Could you just read to the jury what it says?

A. "The possibility of a suicide attempt is inherent in depression and may persist until significant remission occurs. Close supervision of high-risk patients should accompany initial drug therapy. Prescriptions for Paxil should be written for the smallest quantity of tablets consistent with good patient management in order to reduce the risk of overdose."

Q. Anywhere in that paragraph that you just read for the jury, does it warn that Paxil can induce a suicide attempt?

A. No.

Q. What does that paragraph state, in your expert opinion?

A. This is the same kind of paragraph that you would see in any antidepressant. Paxil happens to be filled in. It's almost like there's a template and they've written in "Paxil." You would see similar language, I think, for any antidepressant that was on the market at that point.
Q. It says, "suicide attempt is inherent in depression." Do you see that?
A. Yes.
Q. Is that what the data that GSK had at the time showed?
A. Not -- I --
Q. What did it show?
A. It showed that the suicides, and I'm talking about completed suicides, people who successfully killed themselves, there were five in Paxil-exposed patients. There were none in placebo-controlled, people without placebo.
Q. And what about suicide attempts here? It says "suicide attempts" here. How many were in the Paxil group?
A. So in terms of -- it's an interesting question. So initially, what the company told the FDA was there were 42 suicide attempts. In '91, that decreased down to 40 without any explanation but it was -- they just told the FDA it was 42 in 1989, and then they removed two of them in 1991.
Q. And when you combine both the suicide and the suicide attempts, you got a risk ratio of what compared to placebo?
A. So again, we're talking about what actually happened here,

not the numbers that the company gave the FDA. And the increase in risk, what we call the odds ratio, was about almost nine-fold for suicides plus suicide attempts.

Q. Now, you're a general practitioner.

A. Well, general internist.

Q. Sorry, general internist. Apologies. Based on that -- the experience as that kind of physician, when you read this statement about suicide, does it in any way suggest to you that this drug can induce a suicidal behavior?

MR. BAYMAN: Objection, your Honor, no foundation. And the witness has testified he's never prescribed an SSRI, so I think this is -- it's improper, and there's no foundation.

THE COURT: Overruled.

BY THE WITNESS:

A. So just to clarify, I take care of patients who have depression, and I do prescribe antidepressants. So one thing I have to consider in my prescribing decisions is what drug do I want to use. If I saw a nine-fold increase in the risk for suicide, I would stay away from that drug.

BY MR. WISNER:

Q. Fair enough. But we look at this paragraph, does it say anything about Paxil inducing suicide at all?

A. No.

Q. Does it -- does it suggest that actually that if there's any suicidality, it's the underlying depression and not the

drug?
A. That's how I read it.
Q. So if you see this warning, and let's say you have a patient who starts experiencing suicidality, would you increase the dose to hopefully reduce the depression?
A. I very well might.
Q. Now, if you had known that the drug has a nine-time chance -- nine times percent -- nine times increase in the chance of inducing suicidal behavior, would you increase the dose then?
A. Absolutely not.
Q. All right. Let's go to the second page of the label, Doctor. And I want to focus in on a section of the label down here. I'll pop it out for everybody. It says, "Other events observed during the pre-marketing evaluation of Paxil."
What does that mean, Doctor? Sorry. It's not -- it's cut off.
A. Sure. Okay. So other events -- I'm sorry. I want to just make sure -- so "other" refers to other sections of the label that have been -- or other adverse events that have been described elsewhere in the label. So these are things that are included in the warnings or are frequent adverse events.
Q. Okay. So let's break this out. Pre-marketing evaluation of Paxil, what's that referring to?
A. That's the studies on the drug.

Q. And that's before it got approved?
A. Correct.
Q. Okay. It goes on to say:

"During its pre-marketing assessment, multiple doses of Paxil were administered to 4,126 patients in Phase 2 and Phase 3 studies. The conditions and duration of exposure to Paxil varied greatly and included, in overlapping categories, open and double-blind studies, uncontrolled and controlled studies, inpatient and outpatient studies, and fixed-dose and titration studies."

Do you see that?

A. Yes.
Q. So what sort of data is being used to generate this section of the label?
A. So during the clinical trials, data is collected on depression and on various adverse events. And so at the end of the trial, they un-blind the trial if it's a blinded trial and say, which patient was taking which drug, and they count up how many adverse events occurred in how many patients, like how many patients had nausea, how many patients had an upset -- or headache, that sort of thing.
Q. And this says uncontrolled, double-blind. Does this exclude any type of data that's collected?
A. Not from what I read here.

Q. So when we looked earlier at that chart that had 40 suicide attempts, do you remember that?
A. Yes.
Q. That's data collected from all the same studies that's listed here, right?
A. Yes.
Q. And in that chart that they submitted, there was an increased risk -- what was the incident rate again? It was 1 point what? I forgot.
A. 1.4 percent.
Q. Okay. So it goes on to say here:

"Untoward events associated with this exposure were recorded by clinical investigators using terminology of their own choosing. Consequently, it is not possible to provide a meaningful estimate of the proportion of individuals experiencing adverse events without first grouping similar types of untoward events into a smaller number of standardized event categories."

What does that mean in simple terms?

A. So the way they ran the trials, different side effects were called -- or could have been called by different things at different clinical trial sites. So one investigator could say, well, this patient has an upset stomach. Another could say they have nausea.

And if you were to just use those terms, you wouldn't

get the right number of events. You --instead of you saying, "We've got two patients with nausea," you'd say, "We've got one with upset stomach and one with nausea."

Q. And so what is it doing here by grouping them together?

A. So it is giving you a meaningful, I think -- and this is standard practice for both the FDA and the industry to say, let's count like with like.

Q. So, for example, in the suicide attempt, if someone were to jump out of a window or someone were to do an overdose, although they're two different acts, they both fall into the same category of a suicide attempt --

A. Exactly.

Q. -- is that right?

A. Exactly.

Q. Okay. And in fact, based on the table that we looked at that had that over 1 percent number, that's what had happened with those groupings; is that right?

A. Yes.

Q. Okay. All right. It goes on to read:

> "The tabulations that follow reported adverse events -- in the tabulations that follow, reported adverse events were classified using a standard" -- and I'll blow up the next part -- "COSTART-based dictionary terminology. The frequencies presented, therefore, represent the proportion of the 4,126 patients exposed to

multiple doses of Paxil who experienced an event of the type cited on at least one occasion while receiving Paxil."

Do you see that, Doctor?

A. Yes.

Q. Okay. And then let's go to the next paragraph -- what does that mean? Before I move on, what does that mean?

A. Just bring that up again so I can --

Q. Oh, sure.

A. Sorry.

Q. No problem. All right. There we go.

A. So COSTART was -- it still exists, but it's essentially a list of standard terms. So if an investigator says the patient has nausea, the COSTART term that you use is nausea. If it's upset stomach, you use nausea. If it's dyspepsia, you use nausea. So it maps different terms to the same concept.

So the frequencies, that is, the number of patients who have that, had a particular adverse event, are used to calculate the percentage of all the patients who are exposed to multiple doses of Paxil, more than one dose of Paxil who got -- had a side effect under that heading.

Q. And isn't it true that "suicide attempt" is a COSTART term?

A. That is true.

Q. Okay. So if someone were to have had a suicide attempt, there's no reason because of the dictionary that it wouldn't

have been coded as a suicide attempt, right?

MR. BAYMAN: Object to the leading, your Honor.

THE COURT: Yes, you're leading.

MR. WISNER: Fair enough, your Honor. I'll rephrase.

BY MR. WISNER:

Q. Do you have any opinion about how a coding of a suicide attempt would be accomplished using the COSTART dictionary?

A. Yes. So these represent in general, to the extent possible, mutually exclusive concepts. If you say that somebody has nausea, you -- it can't be while they have nausea because they are having a heart attack, okay, but sometimes that's a symptom of a heart attack. If it was just nausea, you put it under nausea. If it was nausea because their heart wasn't getting enough blood, you would say myocardial infarction.

Q. For the rest of us, a myocardial infarction is --

A. A heart attack.

Q. Okay. All right. So have you ever heard of the term "emotional lability"?

A. I have.

Q. Is that also in the COSTART dictionary?

MR. WISNER: Your Honor, objection. I know where this is going. Dr. Healy's covered it. It was not in his report. It was not in his testimony. This is now beyond the scope. And in this label, he has opinions about the 2010

label. He's rendered no opinions in his report about the '92 label which wasn't even the label in effect when Mr. Dolin committed suicide.

THE COURT: You may answer.

THE WITNESS: I'm sorry. Could you repeat your question?

BY MR. WISNER:

Q. Sure. Are you familiar with the term "emotional lability"?

A. I am.

Q. Is that a term that's in the COSTART dictionary?

A. Not to the best of my knowledge.

Q. And is the emotional lability term the same thing, in your understanding, as a suicide attempt?

A. No, it is not.

Q. Okay. So the next paragraph goes:

"Events are further categorized by body system and listed in order of decreasing frequency according to the following definitions." And it says: "Frequent adverse events are those occurring on one or more occasions in at least 1 in 100 patients."

I'll stop right there. So what does that mean, Doctor?

A. So for any given heading like nausea, you're going to classify how often that happens according to these definitions. Frequent is more often than 1 in 100.

Infrequent is 1 in 100 -- less than 1 in 100 but more than 1 in 1,0000, and rare is if you only see it in 1 in 1,000 patients.

Q. Based on the suicide report we looked at just a second ago, how would you categorize suicide attempts?

A. Well, I would categorize it as a frequent serious adverse event.

Q. Okay. Great. And it says there, "categorized by body system." What does that mean?

A. So you can -- once you've mapped or combined terms that mean the same thing, you can then -- you collect them together. You can then group terms that refer to the same body system under that body system. So nausea would go under the gastrointestinal system. Vomiting, which is a separate term, would go under gastrointestinal. If it is suicide, it would not go under gastrointestinal.

Q. Would it go under the nervous system?

A. Yes, it would.

Q. All right. Let's look at the nervous system listings.

MR. BAYMAN: Your Honor, he's now going to give opinions about a label that wasn't even the label at issue in this case, not at the time Mr. Dolin committed suicide. This is beyond the scope of his expert report and his deposition, and I object.

THE COURT: Do you object to any questions about the

nervous system?

MR. BAYMAN: I object to him giving opinions about the '92 label and what it says about --

THE COURT: I don't know about that, sir, but I'm not going to sustain your last objection. It's overruled.

You may proceed.

MR. WISNER: Thank you, your Honor.

BY MR. WISNER:

Q. Holding the call-out -- okay. Great. So Doctor, I'm looking at the nervous system section here, right? We talked about suicide attempt. And under "frequent," I see a bunch of different frequent adverse events. Do you see "suicide attempt"?

A. No, I do not.

Q. Do you see "emotional lability"?

A. I do.

Q. Why does it say emotional lability there and not suicide attempt, Doctor?

MR. BAYMAN: Objection. That calls for speculation.

THE COURT: Sustained as to why.

BY MR. WISNER:

Q. Doctor, do you have an opinion as to why it says emotional lability there as opposed to suicide --

MR. BAYMAN: Same objection.

MR. WISNER: -- attempt?

MR. BAYMAN: Same objection, your Honor.
THE WITNESS: I --
THE COURT: You may answer as to the use of that phrase there or its appropriate use.
BY THE WITNESS:
A. I do.
BY MR. WISNER:
Q. What is it?
A. It conceals what's really going on.
Q. How?
A. Well, emotional lability, if I saw that, and I happen to know what it means because this is what led to banning of Paxil in the --
MR. BAYMAN: Objection, your Honor. He's going to get into pediatrics, and I'm objecting. Move to strike.
THE COURT: No, no, no. Just answer the question, Doctor --
THE WITNESS: Yes, your Honor.
THE COURT: -- without --
THE WITNESS: My apologies.
As a practicing internist, I have patients who come in sometimes, and they're upset about something. Sometimes they cry. Sometimes they yell. And that's what I think of as emotional lability. It would certainly not occur to me that it means they tried to kill themselves.

BY MR. WISNER:
Q. Do you consider defenestration, or jumping out of a window, to be emotional lability?
A. No.
Q. Do you consider cutting your wrists to be emotional lability?
A. No.
Q. Do you consider trying to hang yourself from a door frame to be emotional lability?
A. Absolutely not.
Q. Now, in looking through the rest of this nervous system thing -- and I'll blow up the whole thing so we can see the whole thing -- do you see any reference whatsoever to suicidal attempts, suicide attempts?
A. So I just want to make sure I'm getting this right. I see hysteria, libido increased --
THE COURT: Talk to yourself, please.
BY THE WITNESS:
A. No, I do not.
BY MR. WISNER:
Q. Under the federal regulations as they existed in 1992 and based on your expert opinion in this area, does this label properly disclose the risk of suicidal behavior in adults over the age of 30?
MR. BAYMAN: Objection, your Honor. This is beyond

the scope of his opinions in this case which have been solely to the 2010 label. He's now offering opinions about the '92 label which was not the label that was in effect at the time that Mr. Dolin was prescribed the medicine.

THE COURT: Overruled.

BY THE WITNESS:

A. No, it does not.

BY MR. WISNER:

Q. And as a practicing physician, based on the evidence you've seen as existed in 1989, does this label properly instruct you on how to use this drug in adults over the age of 30?

MR. BAYMAN: Same objection.

THE COURT: Same ruling.

BY THE WITNESS:

A. No.

BY MR. WISNER:

Q. All right, Doctor. Following the 1992 label and the approval of Paxil in the United States, were there additional interactions with the FDA about Paxil and suicide?

A. Yes.

Q. When, if at all, did -- strike that.

Starting in 1992 and moving onward, have you seen any evidence about what GSK did with the washout data as it related to suicide?

A. Yes.
Q. What did you see?
A. I saw that for a period of some years, they not only did not revise the label to reflect what was already going on but they presented that data that erased the true risk in publications, in scientific meetings, in materials for their marketing staff, and so on.
Q. And what did -- those marketing and materials, what did they say?
MR. BAYMAN: Objection. This is not within his report, your Honor. It's outside the scope of his report as well as Dr. Healy has testified about this at length, and now this is entirely cumulative, and Dr. Healy is a psychiatrist --
THE COURT: Well, you're going to have to prove up what they said, sir, not simply ask for him to reiterate.
MR. WISNER: I was actually trying to avoid showing the document, but if they want me to, I'll gladly do it, your Honor.
THE COURT: Proceed.
BY MR. WISNER:
Q. Doctor, if you could turn to Page -- I'm sorry, in Plaintiff's Exhibit 98.
A. Yes.
Q. What is that document, Doctor?

A. This is a paper in a journal called the European -- I'm sorry, *European Neuropsychopharmacology* published by three researchers, one of whom was with GSK and the other two of whom, I believe, were either consultants or contractors to GSK.

MR. WISNER: Your Honor, briefly, before we go into this document, I move Exhibit 48, which is the '92 label, into evidence.

THE COURT: It may be received.

(Plaintiff's Exhibit 48 received in evidence.)

BY MR. WISNER:

Q. All right. So back to Plaintiff's Exhibit 98, Doctor. Who are the authors on this article? Are they related in any way to GlaxoSmithKline?

A. They work for them.

Q. And is this a document that you reviewed in preparing your testimony and opinions in this case?

A. Yes.

Q. And is this document, to the extent that it purports what it purports, reliable?

A. No.

Q. Let me ask that another way. Did you rely upon it --

A. I misunderstood.

Q. -- for what it says?

A. I'm sorry. In that sense, did I rely on it in forming my

opinions, yes.

MR. WISNER: Okay. Permission to publish, your Honor.

THE COURT: Yes, you may proceed.

BY MR. WISNER:

Q. This document was not previously shown during Dr. Healy's -- so let's talk about the title here. What is the title here, Doctor?

A. "Reduction of suicidal thoughts with paroxetine in comparison with reference antidepressants and placebo."

Q. And if you look down here, it has these people's association. Do you see that?

A. Yes.

Q. What is their association?

A. So Dr. Montgomery is associated with SmithKline Beecham. Dr. Dunbar, I believe, at the time was an employee of GlaxoSmithKline. And I believe that Dr. Dunner was either receiving financial support from Glaxo or grants or other forms of support.

Q. And in this article, does it discuss the Paxil suicide data we saw in the '91 report?

A. It does.

Q. Let's go to the conclusion of the study so we can -- all right. So let's go down to the conclusion here. It reads:

"The risk of suicide increases with length of exposure to a drug, and differences in the number of

suicides and suicide attempts should take differences in length of exposure into account. The absolute number of suicides or suicide attempts when length of exposure was not taken into account did not differ significantly between the groups."

Is that true?

A. Just to clarify, is it true that's what it says, or is that statement true?

Q. Is that true what it says?

A. That is true, it says that.

Q. Is that true scientifically?

A. No.

Q. Based on the data we've seen, what did we see with regards to the absolute number of suicide or suicide attempts between the placebo groups and the Paxil groups?

A. There was almost nine-fold increase in risk. And just to clarify, when I -- you asked me if this was reliable. What I meant was, I believe this paper should be retracted.

Q. Has it been?

A. Not to the best of my knowledge.

Q. Are you aware of whether or not any of these authors tried to take this paper back?

MR. BAYMAN: Your Honor, they've heard Dr. Dunbar's testimony about this, and this is now -- this is now cumulative.

THE COURT: All right. I think it's covered.

MR. BAYMAN: He doesn't know what --

MR. WISNER: Okay.

BY MR. WISNER:

Q. Now, you mentioned that this article was used with physicians. Have you seen any documents that confirm that?

A. Yes.

Q. Okay. If you could turn your attention to Exhibit 100, Plaintiff's Exhibit 100, have you got it?

A. Yes.

Q. What is Exhibit 100?

A. So this is a memo from a marketing executive at GSK.

Q. What is the name of that marketing executive?

A. Barry Brand.

Q. Okay. And is this a document that you looked at and examined in your studies -- in your research?

A. Yes.

Q. And is it something that you relied upon?

A. Yes.

MR. WISNER: Permission to publish, your Honor.

THE COURT: You may.

MR. BAYMAN: Your Honor, I object. He has no marketing opinions in the case. He's the FDA regulatory witness, and now he's getting into the area of marketing. It's outside the scope of his expert opinions.

THE COURT: Let's see. This is 100?

MR. WISNER: Yes, Plaintiff's Exhibit 100 -- sorry. Yes, Plaintiff's Exhibit 100. That's what I have here, your Honor.

THE COURT: Are you going into this for marketing?

MR. WISNER: No, your Honor. Marketing is dictated by what's in the label, so this is just an extension of the label. So it's part of his opinion that GSK was not upfront about the suicide risk. That was one of the opinions he expressed earlier.

MR. BAYMAN: And your Honor, it says very clearly, "marketing department." It's a marketing department.

THE COURT: The objection is overruled. You may proceed.

BY MR. WISNER:

Q. Dr. Ross, let's start off on the top here. This is dated -- I'll blow it up for you. When is this dated?

A. July 5th, 1995.

Q. And the subject reads what?

A. "Meta-analysis examining suicidal ideation, approved for use."

Q. All right. If you look at the first paragraph, it says:

> "A meta-analysis, recently published in the peer-reviewed journal *European Psychopharmacology*, examined whether Paxil was associated with any increase in suicidal thoughts or acts. Paxil showed a

statistically significant advantage in reducing suicidal thoughts in all analyses compared with placebo."

What does that mean in layman's terms, Doctor?

A. This claims that Paxil reduces suicidal thoughts consistently according to this paragraph.

Q. All right. Let's go to the next paragraph. This is what I want to get at. It says, "This paper has been approved for use with physicians to alleviate any concerns that they may have regarding suicidal ideation."

Now, I want to -- when the company has its sales representatives visiting with physicians, are they allowed to discuss things that are not on the label?

MR. BAYMAN: Your Honor, now we really are getting into marketing behavior and marketing opinions. It's beyond the scope.

THE COURT: He may testify if he knows.

THE WITNESS: Yes -- I'm sorry. You said that are not on label?

BY MR. WISNER:

Q. Let me ask the question. Are they allowed to discuss things that are not on the label?

THE COURT: If you know.

BY THE WITNESS:

A. In general, they certainly can't initiate -- I'm talking about at the current time. Back then, they were not allowed

to.
BY MR. WISNER:
Q. There was FDA regulation --
A. There's FDA regulations, and there are, about what's called off-label promotion.
Q. Okay. And if the label had said that there was an increased risk of adult suicidal behavior, would GSK have been able to contradict that statement with this article?
A. Not only would they not have legally been able to do it, doing so would have constituted misbranding.
Q. Why is it misbranding? I thought misbranding only applied to the label.
A. No. The label, the advertising promotion, anything that is -- that they're all tied to the label. They have to be consistent with the label, so you can't -- you know, you couldn't say, well, this drug is, on label, it's only per -- sorry, approved for heart attacks, you can't then go on and advertise it for, it's also good for baldness or whatever. It's got to be something that's in the label. And you also can't say stuff about safety that's not in the label.
MR. WISNER: At this time, your Honor, we move Plaintiff's Exhibit 100 into evidence.
MR. BAYMAN: The same objection, your Honor.
THE COURT: It may be received.
(Plaintiff's Exhibit 100 received in evidence.)

BY MR. WISNER:
Q. All right. Let's look at this one paragraph here as pointed out by my colleague. It said:

> "In the analysis of the data from controlled trials -- studies and open extension studies of Paxil calculated by patient year of exposure, there were 2.8 fewer suicides in the Paxil treated group compared with the active control and 5.6 times fewer compared with placebo."

When it says "5.6 times fewer than placebo," what is that saying?
A. That means, they're claiming here that patients on placebo are 5.6 times more likely to kill -- or I'm sorry, yes, 5.6 times more likely to kill themselves than people on Paxil when, in fact, it's the reverse.
Q. Thank you. All right. Following the submission of the Paxil suicide report in 1991, and Paxil was approved; is that right?
A. Yes.
Q. And the approval came in what type of -- was there an analysis of the safety data done by the FDA?
A. Technically, yes.
Q. And what is that document generally called?
A. That is part of what's called a clinical review. And there's typically a safety review that's done by the medical

reviewer.
Q. Have you heard of something called a summary basis of approval?
A. Yes.
Q. What is that?
A. That contains the reasons that the FDA concluded that it could approve the drug, you know, that it thinks the drug works based on the data presented by the manufacturer on why they think it's safe.
Q. And have you reviewed the summary basis of approval in this case?
A. I have.
Q. Did it disclose that those suicides in the placebo arm, that some of them happened in the washouts?
A. No, it did not.
Q. One of the things I was curious, Doctor, considering your expertise, who writes the summary basis of approval?
A. Well, technically, the manufacturer can write it and just submit it to the FDA.
Q. Have you seen any evidence about whether or not GSK drafted the summary basis of approval and submitted the draft to the FDA?
A. Yes, I have.
Q. Now, do you know if the final one that was put out by the FDA was written by GSK or not?

A. I believe it was.
Q. Okay. And also in the summary basis of approval that we were just discussing, did the F -- did the FDA mention that some of the suicide attempts had occurred in the placebo run-in?
A. I believe it may have noted it, but it's actually -- I'm sorry. You said in the summary basis of approval?
Q. That's right.
A. No. I'm sorry. I misunderstood. No, it did not. I apologize.
Q. Okay. Sounds good. All right. Let's move on -- okay. Let's confirm that, Doctor. Let's take a look at the summary basis of approval.
A. Please.
Q. All right. If you can turn your attention to Plaintiff's Exhibit 28.
A. Okay.
Q. What is Exhibit 28?
A. So this is the summary basis of approval for Paxil back from '92.
Q. And is this the document that we were just discussing?
A. Yes.
Q. Is this a fair and accurate copy of that document?
A. Yes.
MR. WISNER: Your Honor, at this time, permission to

publish portions of this document to the jury. They've already seen it.

THE COURT: You may proceed.

MR. WISNER: Thank you, your Honor.

All right. Let's go to Table 55. Give me a second to find it. All right. That's 45. Okay.

THE COURT: Page?

MR. WISNER: Table 45, your Honor. This is on -- it's not numbered, but it's Page 46, so it's three pages from the end. Got it, Doctor -- your Honor?

THE COURT: Yes.

BY MR. WISNER:

Q. Okay. You got it, Doctor?

A. I do.

Q. Okay. Great. So what is Table 55 reflecting in the summary basis of approval?

A. Well, it purports to be two things really. First off, for -- if you collect the patients into three groups -- those who got Paxil, those who got placebo, and in those trials where there was an antidepressant other than Paxil that was used for comparison, what's called an active-control trial, those three groups -- and then for each of those categories, it shows the number of patients who experienced a particular type of adverse event, the percentage when divided by the denominator, and then something corrected for what the company

called patient exposure years.
Q. So at a look here, how many Paxil suicides occurred?
A. Five.
Q. Okay. And how many placebo suicides occurred as is reflected here?
A. Two.
Q. And those two, did they occur in the placebo arm?
A. They actually did not.
Q. Where did they occur?
A. They occurred in the run-in phase before patients actually went into the treatment phase.
Q. Okay. How many Paxil-attempted suicides happened here?
A. Well, again, originally, the company had told the FDA 42. Without really any explanation, it changed to 40 here.
Q. All right. And how many placebo-attempted suicides are listed here?
A. What the table states is six.
Q. And were there actually six attempted suicides?
A. No.
Q. Were five of them actually occurring in the run-in period?
A. Yes.
Q. Okay. And again, I saw on the previous tables there were these asterisks. Do you recall?
A. Yes.
Q. Do you see any asterisks here indicating that these were

from the run-ins?
A. Not unless they're in invisible ink.
Q. Okay. All right. Okay. Great. So Doctor, following the approval of the drug in 1992, and we looked at that label and then we looked at what they were doing with the data after that, at some point, did the FDA again ask for data related to deaths?
A. Yes.
Q. When was that, do you recall?
A. That was roughly in -- I think in perhaps April of 1999.
Q. Okay. And what did the FDA specifically ask for?
A. So the FDA --
MR. BAYMAN: Your Honor, this is -- may we approach at sidebar?
THE COURT: We're going to 99?
MR. BAYMAN: Yes. This is entirely cumulative of what Dr. Healy covered yesterday, I mean --
MR. WISNER: Actually --
MR. BAYMAN: -- step by step.
THE COURT: Well, we'll take it -- proceed. Proceed.
MR. WISNER: Thank you, your Honor.
BY MR. WISNER:
Q. So Paragraph -- sorry, 1999, what did the FDA ask for?
A. It asked -- they were having a general discussion within the FDA about an important policy issue about suicide and

death connected with SSRIs, the general class that Paxil belongs to, and they asked GlaxoSmithKline, among other entities, what -- to submit all of their data including the original data set but also data collected after that on deaths, suicides, and suicide attempts to the FDA.

Q. And when the FDA asked GSK for this data in '99, did it prompt any concerns that you've seen within GSK?

A. Yes.

Q. Please turn to Exhibit 110 in your binder, Doctor, Plaintiff's Exhibit 110.

A. Yes.

Q. Is this one of those documents that you saw that reflected those concerns?

A. Yes.

MR. BAYMAN: Your Honor, this is the same exact line of questioning that Dr. Healy was giving on redirect examination at the end of the day. This is entirely cumulative, and he's speculating now about concerns. He wasn't involved in any of this.

THE COURT: Well, a cumulative objection is one that is left to the discretion of the Court. In this case, I realize you're right, that it is somewhat cumulative, but I think it's educational for the Court and the jury, so I'm going to permit him to proceed.

MR. WISNER: Thank you, your Honor.

BY MR. WISNER:
Q. Is this the document you're referring to here?
A. Yes, it is.
Q. Is this a fair and accurate copy of that document?
A. It is.
Q. And you reviewed this document before your testimony today?
A. Yes.
MR. WISNER: Permission to publish, your Honor.
THE COURT: Yes. You may proceed.
BY MR. WISNER:
Q. Okay. We have this -- all right. We have an email here at the top. Do you see that, Doctor?
A. Yes.
Q. And the subject reads what?
A. "Re. FDA conversation, Paxil request for data on deaths."
Q. I'm sorry. I know it's a little hard to read, so we'll read through it closely. Is this -- is this the reference to the request for data that we were talking about a second ago?
A. Yes.
Q. Okay. And then it goes on:
"Tom, please allow some time for legal to review this prior submission to FDA. Per my earlier email on this one, I think Andrea Parry and I will need to be involved in light of the litigation in this area. I want to ensure our positions are not inadvertently compromised as

a result of anything we share with the FDA."

During your time at FDA, did you ever have any conversations with drug sponsors about ongoing litigation as it related to safety?

MR. BAYMAN: Your Honor, we're now going to get into other litigation. I'm objecting to this.

THE COURT: It's pretty general.

MR. WISNER: Fair enough. I don't want to violate any of the Court's rulings on motions in limine, so I don't want to delve too deeply --

THE COURT: You don't have a foundation for a conversation.

MR. WISNER: Let me lay a foundation, your Honor.

BY MR. WISNER:

Q. Have you spoken with drug sponsors during your time with the FDA?

A. Yes.

Q. And those conversations related to safety issues?

A. Yes.

Q. And was that a regular part of your job at the FDA?

A. Yes.

Q. And did you routinely speak with drug sponsors about safety data?

A. Yes.

Q. And in those conversations you did have while you were at

the FDA, did the drug sponsor ever discuss with you or raise issues about ongoing litigation as it related to safety issues?

MR. BAYMAN: Objection, your Honor. It's hearsay. It's about other drug sponsors. It has no relation to any of these issues, and I object to the entire line.

THE COURT: I'll sustain it. It's too general, sir.

MR. WISNER: Yes, your Honor.

BY MR. WISNER:

Q. Do you have an opinion about whether or not it is appropriate from a regulatory perspective for GlaxoSmithKline to be mitigating its disclosures to the FDA in response to ongoing litigation?

A. Yes.

Q. What is your opinion on that?

MR. BAYMAN: Objection. This is not in his report. He's giving an opinion now about litigation matters. It's outside the scope of his expertise.

THE COURT: Overruled.

BY THE WITNESS:

A. First off, disclosures to the FDA are those mandated by law and regulation. It's -- really from a regulatory point of view, it's not -- litigation is irrelevant. I mean, you know, from a practical point of view, people, the FDA say, well, okay, yes, you have a business issue or you have a legal

issue. The question we have is, what are the data. That's what we want to see. And if it's something that is material to our determinations about safety and efficacy, then we want to see it, and we are authorized to see it.

BY MR. WISNER:

Q. Did you review the FDA -- the GSK submission in response to this request?

A. Yes.

Q. Would you recognize it if you saw it today?

A. I would.

Q. If you please turn to Exhibit 24, Defense Exhibit 24. Are you there, Doctor?

A. I am.

MR. WISNER: Thank you. At this time, your Honor, we would move Plaintiff's Exhibit 110 into evidence.

MR. BAYMAN: I'd object, your Honor. This is not in his -- it also is not in his expert report.

THE COURT: It may be received.

(Plaintiff's Exhibit 110 received in evidence.)

BY MR. WISNER:

Q. All right. Doctor, so you're looking at what exhibit now?

A. This says Defense Exhibit 24.

Q. Okay. Great. And what is Defense Exhibit 24?

A. So this is the response to the FDA's request for information on deaths and suicides in controlled clinical

trials for Paxil.
Q. And what's the date of this document?
A. July 13th, 1999.
Q. So this is after the email we just were looking at a second ago in Plaintiff's Exhibit 110?
A. Yes.
MR. WISNER: Okay. Permission to publish, your Honor.
THE COURT: Yes. You may proceed.
BY MR. WISNER:
Q. All right. So we have here a letter. Do you see that, Doctor?
A. Yes.
Q. It's to Dr. Katz. Do you see that?
A. Yes.
Q. Who is Dr. Katz?
A. So at the time, Dr. Katz was acting director for the division that regulates Paxil.
Q. Okay. And if you go through this submission, Doctor, you see that there's an Attachment I.
A. Yes.
Q. And what is Attachment I supposed to reflect?
A. Attachment I claims to provide an analysis of what the relative numbers -- well, first off -- thank you. I think I need new glasses. So it says, it starts with how many

patients were exposed -- were exposed to Paxil in a double-blind trial, randomized trial up until, entered as of such-and-such date. And they refer here to centrally funded research and development studies which is part but not all of the studies that GlaxoSmithKline ran.

Q. All right. So let's break that down. It says, the total number of patients exposed to double-blind treatment in a randomized controlled paroxetine trials, do you see that, in depression?

A. Yes.

Q. So is this talking about open-label trials?

A. No.

Q. Is it talking about uncontrolled trials?

A. No.

Q. It's talking about the placebo control, the randomized control trials; is that right?

A. Correct.

Q. And this just relates to what condition, Doctor?

A. So this is only in depression. They had been approved since then for other indications besides depression.

Q. Okay. Now, if we look down here at this table, what does this table reflect?

A. Well, what it says is that there are a total of 48 deaths in that group of trials that they looked at. And it shows for those deaths something like 90 percent occurred in patients

who got Paxil, and there were four in placebo. And then it breaks those down into whether these represented suicides or deaths attributed to something else besides suicide.

Q. How many suicides happened in the Paxil group?

A. According to this document, 12.

Q. Now, I want to be clear, Doctor. I'm confused here because it says up here that this is what happened in randomized controlled paroxetine trials. Do you see that?

A. Yes.

Q. So what is this document saying about the number of suicides that happened in randomized controlled trials?

A. The -- I'm sorry. Can you repeat the question again?

Q. Sure. What does this document tell us about the number of suicides that happened on Paxil in randomized controlled trials?

A. What is it purporting to say --

Q. Yes.

A. -- or what does it really say?

Q. What's the document say?

A. The document says there were 12 suicides.

Q. Okay. You see below that, there's a footnote that says, "The grand total does not include 10 cases undergoing further investigation." Do you see that?

A. Yes.

Q. So what does that mean?

A. It's not all the deaths.
Q. Okay. This report, did it prompt any concerns or issues within GSK about its conduct in reporting suicides previously?
MR. BAYMAN: Your Honor, he's now asking him to speculate about concerns. It's again motive, intent.
THE COURT: If he has some specific item as distinguished from concerns --
MR. WISNER: Sure.
THE COURT: Sustained.
BY MR. WISNER:
Q. Did a man by the name of Dan Burnham raise -- raise -- send an email concerning this submission?
A. Yes.
Q. Okay. Would you recognize that email if you saw it today?
A. Yes.
Q. All right. Please turn to Exhibit -- actually, we're going to use the defendant's exhibit here, Defendant's Exhibit 136. Do you have it?
A. Yes.
Q. Is this the email we were just discussing?
A. Yes.
MR. WISNER: Your Honor, permission to publish this email. We've previously published it as Plaintiff's Exhibit 17. This is a more complete version of the exhibit which we'd like to show to the jury.

THE COURT: 136?
MR. WISNER: Yes, your Honor. Defendant's Exhibit 136.
THE COURT: It's signed, "Dan"?
MR. WISNER: That's right.
THE COURT: Okay. You may proceed.
BY MR. WISNER:
Q. All right. Doctor, what is this document?
A. So this is an email that was sent by Mr. Burnham to a number of other GSK employees.
Q. And I'll pull up the top here so we have the full picture.
What's the date of this?
A. November 18th, 1999.
Q. Okay. And I just want to ask you a couple questions. Earlier, remember that memorandum we were looking at regarding the use of the Dunham article?
A. Is that the one by Mr. Brand?
Q. That's right. Is he on this email?
A. Yes. He's the last person on the cc. line.
Q. Okay. And then we also talked about people who interacted with the FDA. Are you familiar with who Thomas Kline is?
A. Yes.
Q. Who was he?
A. He was a, I believe, regulatory affairs official at GSK who would regularly interact with FDA on this.
Q. So this email from Mr. Burnham is going both to a

regulatory affairs person and a marketing guy?
A. Yes.
Q. Okay. What concern does Mr. Burnham raise in this email?
A. So basically, he says, what we've been telling people --
MR. BAYMAN: Your Honor, he's speculating and now trying to --
THE COURT: Go to the document itself.
MR. WISNER: All right.
THE WITNESS: Okay.
MR. BAYMAN: He doesn't use the word "concern."
THE COURT: If you have any questions, you can ask about the document but not a summary of it.
BY MR. WISNER:
Q. All right. Let's go through it then. I was trying to make it go quicker, but we'll do it. We'll do it. Sorry. All right. So it says:

> "Raj and Chip, attached is a draft of the cover letter and Excel spreadsheet that now includes the additional deaths that occurred during the placebo run-in phase of randomized controlled paroxetine depression trials. The two suicides among the 544 placebo patients in Montgomery and Dunbar's 1995 publication actually occurred during single-blind placebo run-in, not double-blind placebo."

I'll stop right there. That 1995 Montgomery and

Dunbar, what is that?
A. That is the paper in *European Psychopharmacology* -- or *European Neuropsychopharmacology* that used those two suicides, attributed them to placebo even though they weren't really placebo to conclude that Paxil actually reduced suicidal ideation.
Q. Is that the document we looked at a minute ago?
A. Yes.
Q. Okay. All right. It goes on to say, "Because patients undergo usually one week of single-blind run-in before randomization, these two suicides on placebo are not comparable to deaths occurring after randomization for three reasons." Do you see that, Doctor?
A. Yes.
Q. Okay. What is he saying? What does that mean in layman's terms?
A. Those two suicides should never have been counted as placebo suicides. They fell outside both the placebo and Paxil.
Q. He goes on and gives three different reasons. Do you see that?
A. Yes.
Q. It says, "First, the pre- and post-randomization populations are different because patients who respond to single-blind placebo are excluded from randomization." What

does that mean?
A. So people would come into the study on medicine, maybe not. And when I say "come to the study," I mean just kind of -- they seemed initially eligible for it. They stopped their medications and wash out what they were getting with the placebo. Some people on that off-medicine --
THE COURT: I think we've heard this.
BY MR. WISNER:
Q. Okay. All right. In your opinion --
A. Yes.
Q. -- is Mr. Burnham critical of using those run-ins to calculate the placebo rate?
A. I'd say he's saying it shouldn't be done.
MR. BAYMAN: Objection. Calls for speculation.
THE COURT: Yes. I think the document --
MR. BAYMAN: Move to strike that.
THE COURT: -- speaks for itself.
MR. WISNER: Okay. Your Honor, at this time, we'd move Defendant's Exhibit 136 into evidence.
THE COURT: What about plaintiff's one, 17?
MR. WISNER: It's duplicative, so we'd rather not -- keep the record clean.
THE COURT: That's what I was trying to avoid. I've been trying to avoid that throughout this case.
MR. WISNER: I know, your Honor. Unfortunately,

there's quite a bit of duplication, but this is a more complete document, so we'd like to move it into evidence.

THE COURT: All right. It may be received.

(Defendant's Exhibit 136 received in evidence.)

BY MR. WISNER:

Q. All right. Have you seen any response to Mr. Burnham's email?

A. Yes.

Q. Okay. Can you please turn to Exhibit 1 -- Plaintiff's Exhibit 114? Are you there, Doctor?

A. Yes.

Q. This appears to be a duplicate, unfortunately. Let me see if I can pull it out of the -- all right. What is 114 in front of you, Doctor?

MR. BAYMAN: Objection, your Honor. I object to this exhibit as it's not in his expert report. His expert report gives no opinions about it.

THE COURT: Well, he can testify to what it is.

MR. WISNER: I'm sorry, your Honor. This is a document -- I can ask him some questions to lay the foundation.

BY MR. WISNER:

Q. Is this a document that you reviewed, Doctor?

A. Yes.

Q. Is this a document that you relied upon?

A. Yes.

Q. And would discussing its content aid the jury in understanding your opinions?
A. I really, really do.
MR. WISNER: Okay. Your Honor, permission to publish.
THE COURT: All right. You may proceed.
MR. BAYMAN: Same objection, your Honor.
THE COURT: Same ruling.
BY MR. WISNER:
Q. I don't have it on my iPad, so we're going to have to use the old-fashioned -- or it's actually a pretty high-tech version, the Elmo. Okay, Doctor.
It says down here, it's to Rajinder Kumar. Do you see that?
A. Yes.
Q. And it's from who?
A. This is from Mr. Brand.
Q. Okay. And Barry Brand is who again?
A. This is the marketing executive who was mentioned earlier.
Q. Okay. Great. And he goes:
"This response to FDA seems to be setting us up for potential problems suggesting that Paxil is associated with a higher rate of suicide versus placebo. A very comprehensive meta-analysis" --
I'll stop right there. What does that first sentence mean?

A. Well --

MR. BAYMAN: Your Honor, he's trying to interpret what someone else is saying.

THE COURT: That's right. I don't think we need to have his interpretation.

MR. WISNER: Okay.

THE COURT: Proceed. Sustained.

BY MR. WISNER:

Q. "Perceives a very comprehensive meta-analysis published by S. Montgomery clearly showed a higher incidence placebo-related suicides, and a 1998 study published in *American Journal of Psychiatry* in non-depressed patients suggested that Paxil offered a protective effect in patients with less than three previous suicide attempts. Can we use the Montgomery meta-analysis as the baseline for our analysis and reference the *American Journal of Psychiatry* study in our response back to the FDA? I have provided copies of the studies to Dan Burnham. Let me know your thoughts. Regards, Barry."

In -- regarding the request made from the FDA for these documents for these deaths, would it have been appropriate to send in a journal article instead?

A. Well, no, but having said that, this is the paper I said earlier should be retracted so -- which basically, I read this

as saying, let's keep counting those placebo --

MR. BAYMAN: Objection, your Honor. Speculation as to --

THE COURT: Sustained as to how he reads it. That's sustained.

MR. WISNER: Would it be appropriate to submit a -- I'm sorry.

THE COURT: Go on to something else.

MR. WISNER: Yes, your Honor.

Your Honor, at this time, we move Plaintiff's Exhibit 114 into evidence.

MR. BAYMAN: I'm going to object again. It's not been disclosed, not in his expert report, your Honor.

MR. WISNER: I don't believe that's an admissibility issue. I think that's a testimony issue so I, again, your Honor, would move it into evidence.

THE COURT: It may be received.

(Plaintiff's Exhibit 114 received in evidence.)

BY MR. WISNER:

Q. All right. Doctor, following Mr. Brand's email which was dated -- do you recall the date, Doctor? Do you have it in front of you?

A. I believe it was sometime in November of '99.

Q. Okay. I want to show it to you so we're not guessing.

A. Okay. My apologies.

Q. No worries.
A. A lot of emails.
THE COURT: The document is in evidence. It speaks for itself, whatever the date is.
BY MR. WISNER:
Q. I'm just trying to establish the date. It's December 7th. Do you see that, Doctor?
A. Oh, I'm sorry. I misunderstood. I thought you meant the email from Mr. Burnham.
Q. Okay.
A. I apologize.
Q. So Barry Brand's email was December 7th, right?
A. Yes.
Q. Okay. Did GSK have a conversation with the FDA about run-ins the next day?
A. Yes.
Q. And have you seen a document that documents that conversation?
A. Yes.
Q. Can you please turn in your folder -- in your binder to Exhibit, Plaintiff's Exhibit 115? Do you have it, Doctor?
A. I do.
Q. What is Exhibit --
MR. BAYMAN: Your Honor, I object again to the cumulative nature. This was the exact document that was

covered in detail by Dr. Wheadon at the end of the day yesterday -- Dr. Healy, excuse me. And it's entirely cumulative. We're re-covering the same ground.

THE COURT: Well, isn't this a basis for his opinions here?

MR. WISNER: Yes, your Honor. I'm just showing the chronology of GSK's interaction with the FDA about the suicide issue. He's an FDA guy. He's here to talk about their interactions. This is a summary of a conversation with the FDA.

THE COURT: All you want is chronology?

MR. WISNER: I'm building a chronology to lead to the -- these are all admissions by GSK in their own documents.

THE COURT: All right. You may proceed.

MR. BAYMAN: Objection. Object to that characterization.

MR. WISNER: Your Honor -- okay.

BY MR. WISNER:

Q. So Dr. Ross, Plaintiff's Exhibit 115, what is this document?

A. So this is a memorandum prepared by GSK employee Thomas Kline reporting a conversation with an FDA reviewer in the division that regulates Paxil.

Q. Mr. Kline was on that Burnham email?

A. Yes.

Q. Okay. And who is he having a conversation with?

A. With a reviewer by the name of Michael Seika.

MR. WISNER: Okay. Permission to publish, your Honor.

THE COURT: All right. Proceed.

BY MR. WISNER:

Q. Now, we showed this to the jury yesterday with Dr. Healy. I want to show it again now with all the other stuff we've talked about. It reads:

"In addition, I raised a hypothetical example for his consideration. I inquired about his interpretation of classifying placebo-run deaths. Specifically, I asked if a patient were to die during placebo run-in, i.e., prior to randomization, should that patient be included in the calculation for placebo deaths."

Doctor, was there a hypothetical issue regarding run-in suicides at this time?

A. No. There was an actual issue.

Q. And was that the issue that was raised by Mr. Burnham in his email?

A. The actual issue, not -- it was not hypothetical.

Q. In response, it says:

"He clearly stated that such a patient should not be counted in our analyses since such a patient would not compromise" -- sorry, this is the last time -- "would not comprise the 'controlled' portion of a trial."

Do you see that, Doctor?
A. Yes.
Q. What -- does that -- what is your opinion about whether or not it's appropriate to include those patients in the run-in period?
A. Well, let me just speak as a regulator. And, first off, if somebody said to me this is hypothetical, I'm going to put myself in Dr. Seika's position, if they say it's hypothetical, like I said earlier --
MR. BAYMAN: Your Honor, we're speculating what Dr. Seika now was thinking.
THE COURT: This has been covered by Dr. Healy.
MR. WISNER: Yes, but we haven't had someone from the FDA. Dr. Healy is a physician and academic --
MR. BAYMAN: Your Honor, he's not -- for the record, he's not currently with the FDA.
THE COURT: Well, he has experience in that area. All right. For that purpose, you may --
BY MR. WISNER:
Q. Just to be clear, Doctor, this is in 1999?
A. Yes.
Q. Were you at the FDA in 1999?
A. I was.
Q. Okay. So you were telling us about a sponsor raising a hypothetical to you.

A. I'd take them at their word. I wouldn't say, well -- I would ask them, I would assume they're telling me the truth. So having said that, what Dr. Seika says is the same answer that I would give because this is what the FDA's guidance, written guidance from 1986 was. And secondly, scientifically, it's not appropriate to count those patients before they've been put into the treatment phase.

So Dr. Seika gave the right answer to what I would think if this came to me was just a hypothetical.

Q. Based on that response from an FDA reviewer or medical officer, did GSK have an obligation to immediately disclose what had occurred in its prior analysis?

A. They had -- their obligation actually predated this because they knew about it before that, but certainly when they explicitly raised the issue, if I -- if they said, well, listen, it's not just sole hypothetical, it's actual, and there have been situations that I've encountered at FDA like that, I would be a little teched, to put it mildly.

Q. All right. Let's move on. Did GSK ever conduct a reanalysis of that original '89 data and submit it to the FDA?

A. Yes.

Q. When was that analysis submitted to the FDA?

A. 2002.

Q. So for two years, did GSK submit anything to the FDA specifically related to that blind or washout analysis?

A. No.
Q. All right. Yesterday with Dr. Healy, we talked a bit about Dr. Laughren. Do you know who he is?
A. Yes.
Q. In 2002, do you know what position he was holding at the FDA?
A. I believe at that point, he was actually the division director for neuropharm products, the division that reviewed Paxil.
Q. And in 2002, did GSK have a conversation with Dr. Laughren that addressed some of these placebo run-in issues?
A. Yes.
Q. Would you recognize a record of that conversation if you saw it today?
A. Yes.
Q. Please turn to Plaintiff's Exhibit 124 in your binder. Do you have it, Doctor?
A. I do.
Q. What is this document?
A. This is a record of a conversation between a GSK employee by the name of David Wheadon with Dr. Laughren.
Q. And what year is this dated?
A. 2002.
Q. And what's the date actually?
A. I'm sorry. April 10th, 2002.

Q. Okay. And is this a document that you've reviewed?
A. Yes.
Q. And is it helpful to discuss it with the jury?
A. I believe so.
MR. WISNER: Your Honor, permission to publish. This document has not been shown to the jury yet.
THE COURT: All right. You may proceed.
BY MR. WISNER:
Q. Okay. Doctor, again, this is a document that was prepared by who?
A. Let's see. I believe this was Dr. -- Mr. Wheadon.
Q. No, I mean --
A. GSK. Sorry.
Q. All right. And let's read what it says. Under the heading, "Description of conversation," it reads:

> "I spoke with Dr. Laughren of the FDA neuropsychopharmacology division last Wednesday, April 10th, concerning the updated Paxil analyses on suicide attempts. I explained to Dr. Laughren that, subsequent to ongoing defense of Paxil cases, the issue of attempts in patients on placebo during placebo run-in had been debated and a decision had been made to reanalyze the original NDA data on suicide attempts, doing the apples to applies comparisons specifically."

Do you see that, Doctor?

A. Yes.
Q. What -- do you have an opinion about what this is saying regarding why GSK decided to do this comparison in 2002?
MR. BAYMAN: Objection, your Honor. The document speaks for itself. He's now -- he's now trying to speculate about it.
THE COURT: It's sustained.
BY MR. WISNER:
Q. Doctor, during your time at the FDA when you were reviewing submissions from drug sponsors, had you ever reviewed a submission that was prepared subsequent to ongoing defense --
MR. BAYMAN: Same objection, your Honor.
MR. WISNER: -- of Paxil -- of a drug case?
THE COURT: Don't object until I hear the whole question.
MR. WISNER: Sorry. Do you want me to re-say it?
THE COURT: Well, I'll just look.
You may answer. It calls for a yes or no.
THE WITNESS: Yes -- I'm sorry. I apologize. I'm -- can you repeat the question? I'm sorry.
THE COURT: Read it back.
THE WITNESS: I apologize.
(Record read.)
BY THE WITNESS:

A. No.
BY MR. WISNER:
Q. Would that make a difference to you in reviewing safety data?
A. I would think it was a weird thing to say --
MR. BAYMAN: Objection to that --
THE COURT: Calls for a yes or no, Doctor.
THE WITNESS: I'm sorry. Could you repeat the question?
BY MR. WISNER:
Q. Would it have made a difference to you whether or not it was prepared in defense of litigation or not?
A. Not -- no, not directly, but I would -- you know, a -- say, is this -- I'm sorry. My apologies, your Honor. I'm trying to answer yes or no.
It would in the sense that the data that's submitted needs to be driven by the regulatory requirements and the scientific issues. If they said, "Well, this is the same thing we've submitted, there weren't any cases," then no, that wouldn't make a difference. If it's like, "Well, this is what we did for our defense," like, "Is this everything that's going to address our regulatory and scientific questions," then yes, that would make a difference.
Q. Now, Doc -- now, Doctor, have you ever worked on a drug while at the FDA where safety issues were discovered by virtue

of litigation?

MR. BAYMAN: Objection. This is getting far afield now again, your Honor.

THE COURT: Yes. Sustained.

MR. BAYMAN: Thank you.

BY MR. WISNER:

Q. Again, what year is this conversation, Doctor?

A. 2002.

Q. So how many years is that from today?

A. Approximately -- almost 15.

Q. Okay. Did you review the submission referenced in this article that was submitted to the FDA?

A. Submitted in, I'm sorry, in this record of this phone conversation?

Q. Sir, let me ask the question again.

A. I'm sorry.

Q. The submission referenced in the paragraph we just read, did you read that submission that was submitted to the FDA?

A. Yes.

Q. And who was that prepared by?

A. That was prepared, I believe, by an individual by the name of John Davies.

Q. And did he prepare one or two reports?

A. He prepared, for this, two reports.

Q. And what were those reports about?

A. So one was a review of data about suicides in the original NDA, and the other was about suicide attempts in the original NDA. Excuse me.

MR. WISNER: All right. Please turn to Plaintiff's Exhibit 122 and 129. Just have them both in front of you.

At this time, your Honor, we'd move Plaintiff's Exhibit 124 into evidence.

THE COURT: It may be received.

(Plaintiff's Exhibit 124 received in evidence.)

BY MR. WISNER:

Q. Do you have those two documents, Doctor?

A. I do.

Q. All right. What are those two documents?

A. So Plaintiff's Exhibit 122 is an analysis titled "Results for review of data about, quote, suicide attempts in 1991," and then 129 is about suicides as opposed to suicide attempts.

Q. Okay. All right. Let's start off with the suicides document. That's Plaintiff's Exhibit 129. Get that in front of you, Doctor.

A. Yes.

Q. Is this a report that you reviewed in preparing your report in this case?

A. Yes.

Q. And are you prepared to testify about its contents?

A. Yes.

MR. BAYMAN: Your Honor, objection. He specifically testified in his deposition the first time he'd ever seen this was at the deposition --

MR. WISNER: Objection, your Honor. If he's going to make this objection about what was testified in his deposition, he should do so at sidebar. That's hearsay.

MR. BAYMAN: That's fine.

THE COURT: Proceed.

BY MR. WISNER:

Q. Did you review this document, Doctor?

A. Yes.

Q. Previously when you were deposed and they showed you this document, did you recognize it?

A. You know, it was at the end of a -- or near the end of a long day. Frankly, I got confused, so I said no, but I actually, when I went back and I looked and I said, "Wait a minute, David, you've seen this before."

Q. And did your opinions change at all -- well, had you looked at this document in preparing your opinions?

A. Yes.

Q. And did reviewing it again in any way affect your opinions?

A. No.

Q. So did you feel a need to update your report about your opinions?

MR. BAYMAN: Your Honor, may we have a sidebar?

THE COURT: Later when we take a break. Let's go on.
BY MR. WISNER:
Q. Did you feel the need to update your opinions, Doctor?
A. No.
MR. WISNER: Okay. So Exhibit 129 -- permission to publish, your Honor.
THE COURT: All right. You may proceed.
BY MR. WISNER:
Q. All right. This is the document you said that relates to suicides. Do you see that, Doctor?
A. Yes.
Q. Now, it's dated May 2002, but it refers to the 1991 report. What does that mean?
A. So this refers to the data in the 19- -- the original application. And again, to clarify because originally, there was an '89 submission, this was the '91 version of what GSK submitted to the FDA.
Q. And have you seen any reanalysis of the '91 data any time during this ten-year period, between 1991 and 2002?
A. Not one that corrects the omissions --
Q. Okay.
A. -- and the mistakes in the earlier -- the original analysis.
Q. All right. So let's look at the first part of this. It says here, "Identify all placebo-controlled trials in the

original NDA including paroxetine and placebo data from three-arm trials." What does that mean, Doctor?

A. So they were going to -- this started with -- I'm sorry. So you start with all the studies that are in there. There's randomized trials, those that have a placebo control, and those that have an active -- another antidepressants control. Those that are just Paxil by itself, those that are -- started out as a double-blind trial and then where there was an extension of Paxil after the double-blind trial ended. And they took all those, and they threw out anything except the trials that were placebo-controlled.

Q. And when they changed -- when they excluded all those data, how many suicides were in the Paxil group after they excluded all that data?

A. So -- you mean after they got rid of all that? Originally, in the total database, there were five suicides. When they excluded all of those -- all that other data, there were no suicides left.

Q. So by excluding all of that data, they went from five to zero?

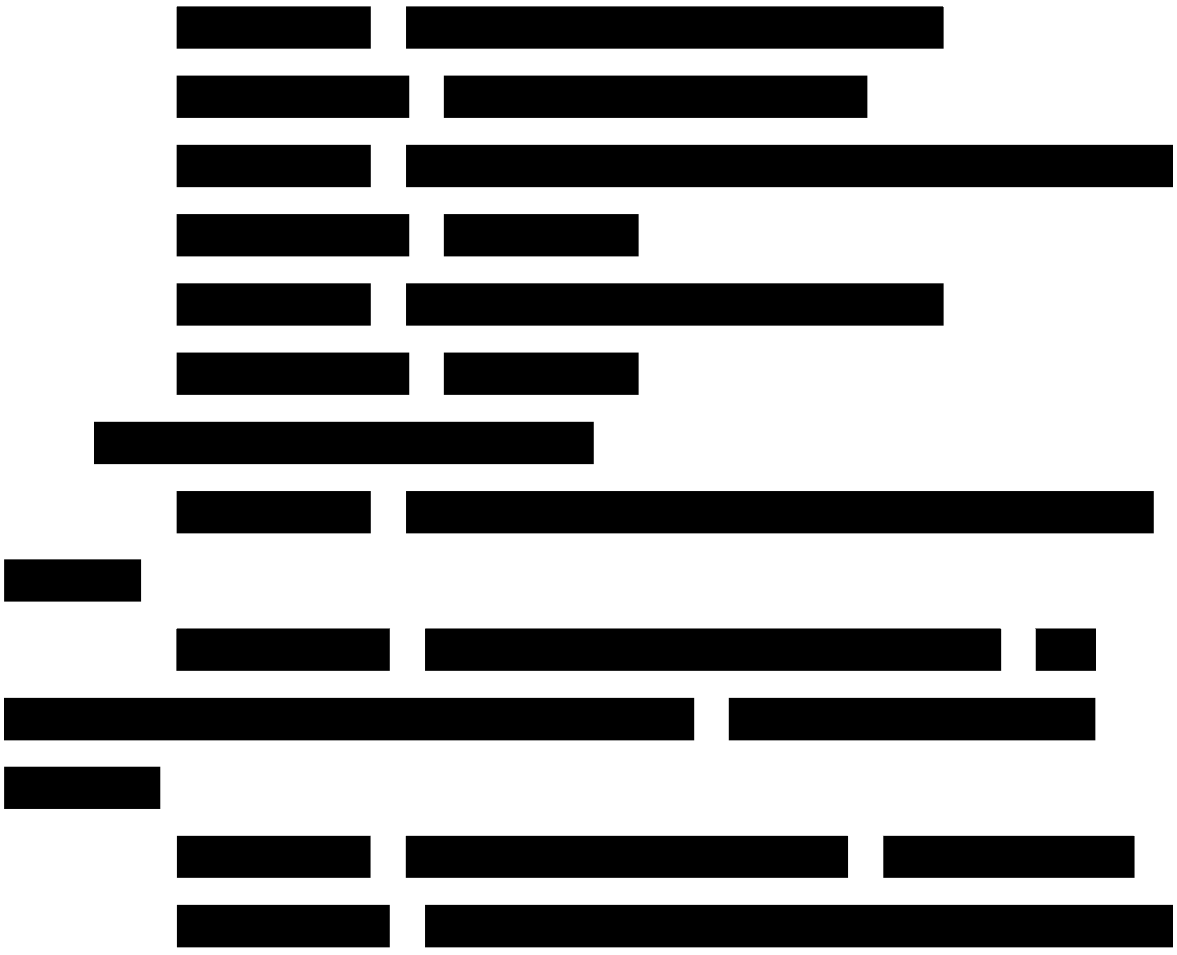
A. That is correct.

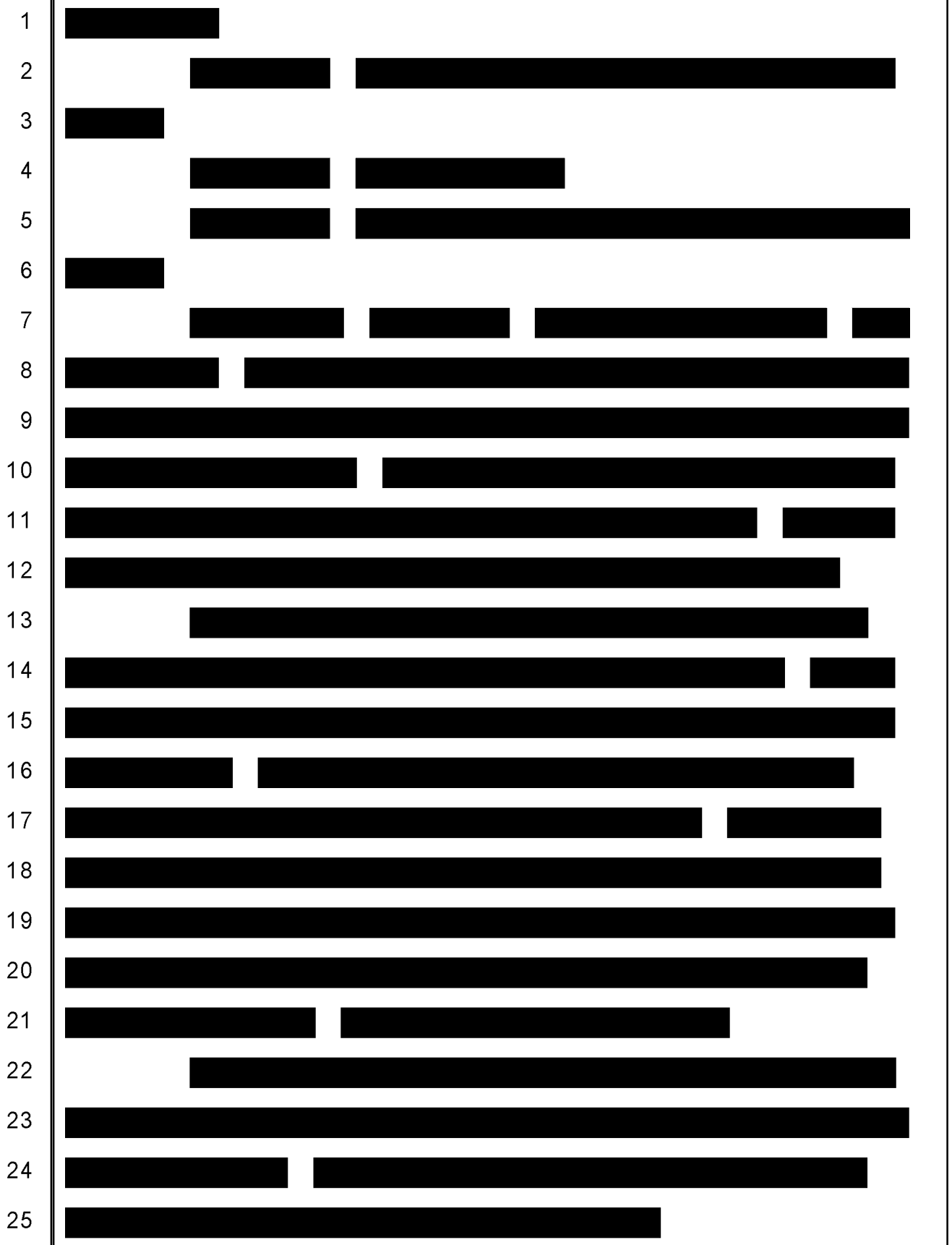
Q. Okay. Now, it says here, studies PAR-04 and PAR-14 will be excluded by virtue of their design. Do you see that?

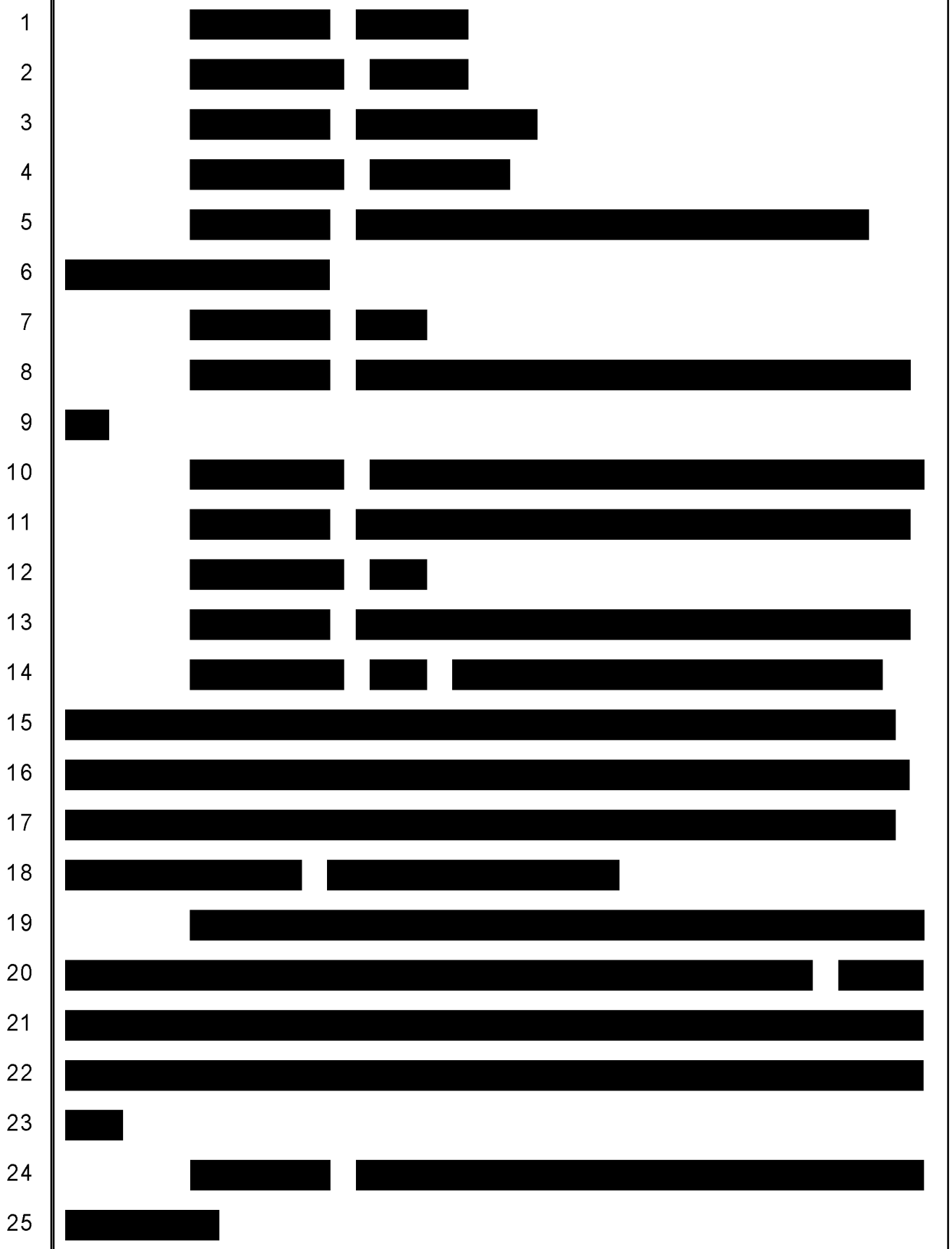
A. Yes.

Q. Have you looked into those studies?

A. I have.
Q. And do you believe in your expert opinion that these studies should have been excluded?
A. No --
MR. BAYMAN: Your Honor, this is a totally new opinion, not in his report, not in his deposition. And we believe he should not be able to testify, and we'd like to get a sidebar.
THE COURT: All right. Let's take a break now, ladies and gentlemen.
(Proceedings heard in open court. Jury out.)







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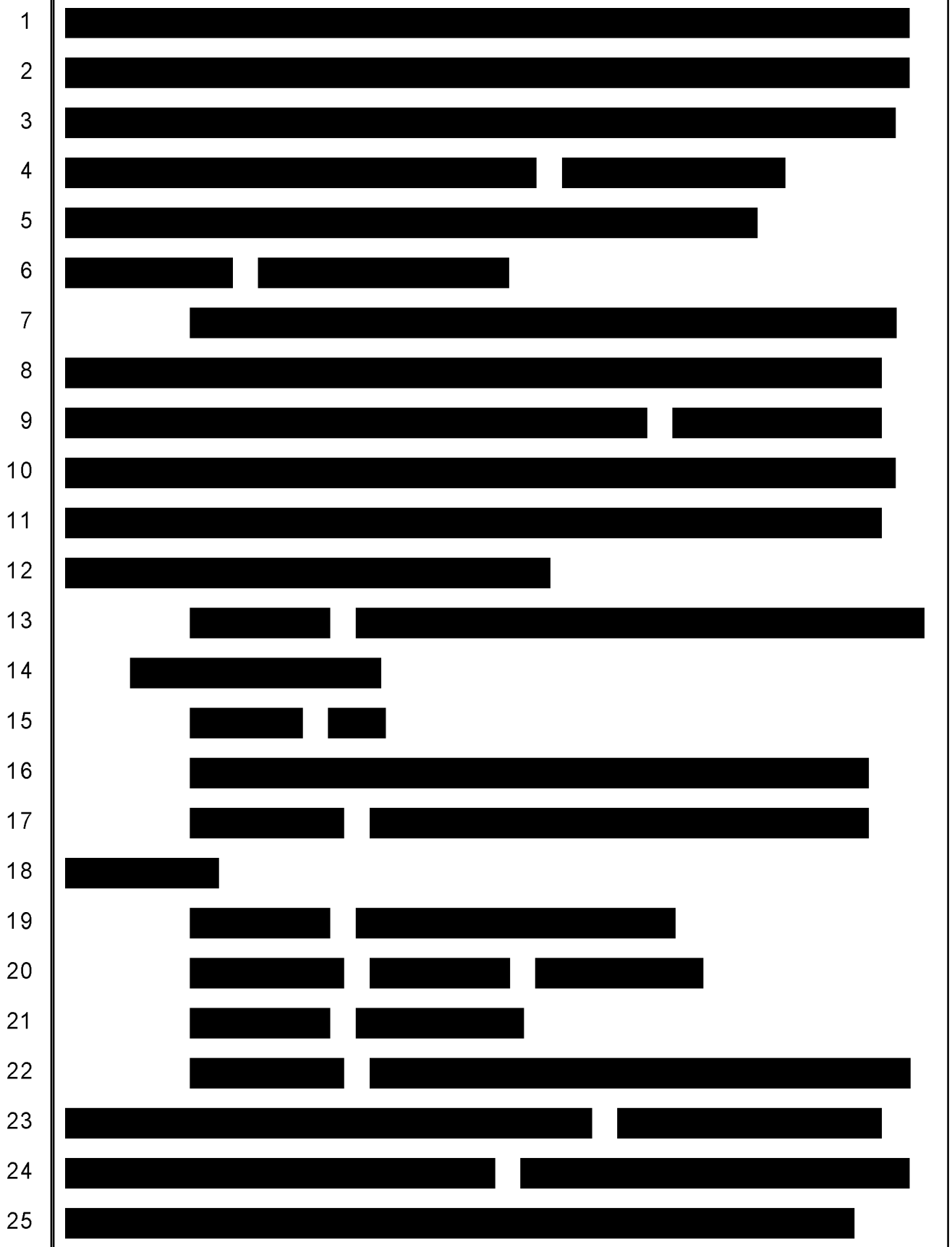

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(Recess from 3:00 p.m. to 3:10 p.m.)