

IN THE SUPERIOR COURT FOR THE COUNTY OF FULTON
STATE OF GEORGIA

LINDA EICHMILLER AND)
 BETTY HORN,)
)
 PLAINTIFFS,)
)
 VS.)
)
 AMERICAN HOME PRODUCTS)
 CORPORATION, NOW KNOWN AS)
 WYETH CORPORATION; WYETH)
 PHARMACEUTICALS, F/K/A)
 WYETH-AYERST PHARMACEUTICALS,)
 INC., A DIVISION OF AMERICAN)
 HOME PRODUCTS CORPORATION, F/K/A)
 WYETH LABORATORIES, INC.; EON LABS)
 MANUFACTURING, INC.; RUGBY)
 LABORATORIES, INC.; ROBERT L.)
 SCOTT, A CITIZEN OF THE STATE OF)
 GEORGIA; JOHN A MOLNAR, A CITIZEN)
 OF THE STATE OF GEORGIA; ANTHONY)
 D. ADAMS, A CITIZEN OF THE STATE)
 OF GEORGIA, ROBIN W. JONES, A)
 CITIZEN OF THE STATE OF GEORGIA;)
 AVERY T. LANIUS, A CITIZEN OF THE)
 STATE OF GEORGIA; AND JOHN DOE)
 NOS. 1-5,)
)
 DEFENDANTS.)

CIVIL ACTION FILE
NO. 2002-CV-52077

VOLUME III-A
(MORNING SESSION)

* * *

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE
COPNSTANCE C. RUSSELL,
ATLANTA JUDICIAL CIRCUIT,
COMMENCING ON NOVEMBER 4, 2003.

JULIE A. BRANDAU
OFFICIAL COURT REPORTER
SUPERIOR COURT OF FULTON COUNTY
136 PRYOR STREET, S.W.
SUITE C-848
ATLANTA, GEORGIA 30303

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF: ANDRES C. PERERIA, ESQ.
3 GEORGE FLEMING, ESQ.
4 MIKE O'BRIEN, ESQ.
FLEMING & ASSOCIATES

5 FOR THE DEFENDANTS: PETER T. GROSSI, ESQ.
6 PETER BLEAKLEY, ESQ.
ARNOLD & PORTER

7 RICHARD SINKFIELD, ESQ.
8 ROGERS & HARDIN

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1 NOVEMBER 6, 2003

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3 THE COURT: ALL RIGHT. ARE WE READY TO GET
4 STARTED?

5 MR. O'BRIEN: YES, YOUR HONOR.

6 MR. FLEMING: YES, WE ARE, YOUR HONOR. WE JUST
7 GOT A COUPLE OF THINGS TO BRING TO THE COURT'S
8 ATTENTION. FIRST OF ALL, MR. O'BRIEN AND I ARE GOING
9 TO SPLIT THE TIME. I'M GOING TO TAKE THE LIABILITY,
10 AND HE'S GOING TO TAKE THE DAMAGES. WE WILL STICK WITH
11 AN HOUR AND THIRTY MINUTES.

12 WE HAVE A BOARD THAT WE WOULD LIKE TO SET UP. AND
13 WE'VE ALREADY TALKED TO THE BAILIFFS ABOUT DOING THIS.
14 A TIME LINE BOARD.

15 THE COURT: THAT'S ALL RIGHT. HAVE YOU-ALL SEEN
16 THIS BOARD? IS THERE ANY OBJECTION TO IT, WHAT'S ON
17 IT?

18 MR. BLEAKLEY: I DON'T KNOW.

19 MR. FLEMING: IT'S THE EXHIBIT WE GAVE YOU ON THE
20 TIME LINE.

21 MR. BLEAKLEY: IF I CAN JUST TAKE A QUICK LOOK. I
22 SUSPECT I DON'T HAVE ANY PROBLEMS WITH IT.

23 MR. O'BRIEN: HERE'S A COPY OF OUR RESPONSE THAT
24 WE FILED WITH JUDGE BARTLE FOR COURTESY OF THIS COURT.

25 MR. BLEAKLEY: THIS IS THE MOTION, YOUR HONOR.

533

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1 THE COURT: IS THERE ANY OBJECTION TO THE TIME
2 LINE BEING USED IN OPENING?

3 MR. BLEAKLEY: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE WE
5 NEED TO TAKE UP?

6 MR. O'BRIEN: I HAVE ONE OTHER MATTER. GO AHEAD,
7 RICHARD.

8 MR. SINKFIELD: I WAS JUST GOING TO ASK AS A
9 MATTER OF LOGISTICS, YOUR HONOR, SOMETIMES EXHIBITS
10 BLOCK VIEW. WOULD THE COURT PERMIT SOME MOVING AROUND
11 TO SEE IF DESIRED?

12 THE COURT: I DON'T CARE. THAT'S FINE.

13 MR. O'BRIEN: ONE OTHER MATTER. WE HAVE WHAT IS
14 CALLED AN OFFER OF PROOF WITH REGARDS TO CERTAIN
15 EVIDENCE THAT WE HAVE BEEN UNABLE TO PRESENT TO THIS
16 JURY AS A RESULT OF THE RULINGS BY JUDGE BARTLE,
17 VARIOUS PTO'S. I DON'T KNOW HOW THE COURT PREFERS TO
18 HANDLE IT INDIVIDUALLY WITH WITNESSES. OBVIOUSLY IT'S
19 SOMETHING OUTSIDE THE PRESENCE OF THE JURY.

20 THE COURT: IS IT SOMETHING YOU CAN STATE IN YOUR
21 PLACE EXACTLY WHAT THE OFFER OF PROOF WOULD BE?

22 MR. O'BRIEN: YES. WE ACTUALLY HAVE A WRITTEN
23 PROFFER. WE CAN DO IT, OBVIOUSLY, OUTSIDE THE PRESENCE
24 OF THE JURY. IT'S ONLY FOR PURPOSES OF THE RECORD.
25 THERE'S NO INTENT HERE TO TRY TO INTERFERE WITH THE

534

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1 FEDERAL COURT ORDER. FOR THE RECORD. THAT WAS
2 MR. O'BRIEN, BY THE WAY. THANK YOU, JUDGE.

3 THE COURT: ALL RIGHT.

4 THE DEPUTY SHERIFF: ONE LITTLE THING. THAT NEEDS
5 TO SHIFT ONE WAY BECAUSE ME AND ALL MY EQUIPMENT IS NOT
6 GOING TO SQUEEZE THROUGH THAT HOLE RIGHT THERE.

7 THE COURT: DOES THAT WORK?

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THE DEPUTY SHERIFF: THAT WORKS.

MR. BLEAKLEY: I ASSUME IT'S ALL RIGHT FOR ME ALSO
TO MOVE AROUND SO I CAN SEE THIS EXHIBIT?

THE COURT: SURE.

MR. BLEAKLEY: IF I CAN WALK AROUND THERE.

THE COURT: YOU CAN WALK AROUND THERE.

MR. BLEAKLEY: THAT'S WHAT I MEANT.

THE COURT: OKAY.

MR. BLEAKLEY: I'M SORRY, YOUR HONOR, THERE IS ONE
MORE. OBVIOUSLY I DON'T KNOW -- I GUESS WE PROBABLY
OUGHT TO PUT THIS ON THE RECORD, IF WE CAN.

THE COURT: ALL RIGHT.

MR. BLEAKLEY: OBVIOUSLY I DON'T KNOW PRECISELY
WHAT MR. FLEMING AND MR. O'BRIEN ARE GOING TO DO DURING
THEIR OPENING. I DON'T KNOW WHETHER THEY ARE GOING TO
DO ANYTHING THAT WE THINK VIOLATES THE VARIOUS ORDERS.

THE COURT: YOU STAND UP IF YOU HAVE ANY ISSUE,
AND I'LL RULE ON IT.

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MR. BLEAKLEY: I'M NOT GOING TO DO THAT, YOUR
HONOR, BECAUSE I DON'T WANT TO OBJECT OVER AND OVER
DURING OPENING. I DON'T WANT THE FIRST THING THE JURY
SEES IS ME INTERFERING.

THE COURT: ALL RIGHT.

MR. BLEAKLEY: WHAT I'M GOING TO DO IS AT THE END
IF WE THINK HE HAS VIOLATED ANY OF THE ORDERS, WE WILL
CATEGORIZE THEM. IF WE THINK IT RISES TO THE OCCASION
THAT IT REQUIRES ANYTHING MORE THAN THAT, WE WILL DO
IT. I'M NOT GOING TO OBJECT DURING HIS OPENING.

11 THE COURT: LET ME JUST EXPLAIN TO YOU. IN
12 GEORGIA IF YOU DON'T STAND UP AND OBJECT, THEN THAT
13 MEANS THAT'S NOT A BASIS FOR APPEAL. DO YOU UNDERSTAND
14 THAT?

15 MR. BLEAKLEY: I UNDERSTAND THAT.

16 THE COURT: OKAY. GREAT. THEN WHATEVER ELSE YOU
17 DO IS ALL RIGHT WITH ME.

18 MR. BLEAKLEY: I WILL DO WHAT I CAN TO RESERVE MY
19 RIGHTS, BUT I'M NOT GOING TO STAND OVER AND OVER AGAIN
20 DURING HIS OPENING.

21 THE COURT: LIKE I SAID, I'M JUST TELLING YOU. AS
22 LONG AS YOU KNOW, THAT'S OKAY WITH ME.

23 MR. O'BRIEN: ONE OTHER MATTER JUST AS A MATTER OF
24 PROFESSIONAL COURTESY. WE HAVE YET TO HEAR WHEN THIS
25 ALLEGED HEARING IS IN FEDERAL COURT. AS YOU SEE FROM

536

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1 OUR RESPONSE, WE HAVE RAISED BOTH CONSTITUTIONAL NOTICE
2 ISSUES AS WELL AS THE FACT THAT WE BELIEVE WE HAVEN'T
3 VIOLATED ANYTHING. BUT WE WOULD APPRECIATE, AND I'M
4 SURE THE COURT WOULD, BEING ADVISED AS SOON AS POSSIBLE
5 IN THE EVENT YOU GET A HEARING SO WE MIGHT HAVE AN
6 OPPORTUNITY TO HAVE A WORD OR TWO TO SAY ABOUT THAT.

7 MR. GROSSI: YOUR HONOR, ABSOLUTELY. WE DON'T
8 KNOW WHEN THE HEARING WILL BE EITHER.

9 MR. O'BRIEN: OKAY. THANK YOU.

10 THE COURT: SEE FOR MY PURPOSES, I DON'T CARE WHEN
11 THE HEARING ENDS. I DO CARE ABOUT KNOWING SO THAT I
12 DON'T TELL THEM SOMETHING THAT IS NOT GOING TO HAPPEN.

13 ALL RIGHT? SO WHEN YOU KNOW -- WHAT YOU DO BETWEEN THE
14 TWO OF YOU IS NOT MY BUSINESS -- BUT PLEASE TELL ME SO
15 THAT I CAN TELL THEM.

16 MR. O'BRIEN: RIGHT. THAT'S MY POINT. THERE
17 MIGHT BE AN ISSUE WHERE TESTIMONY IS NEEDED FOR
18 PURPOSES OF OUR DEFENSE IN PHILADELPHIA. AND I WANT TO
19 BE ALERTED SO WE DON'T INTERFERE WITH THE PROCESS HERE
20 AS MUCH AS POSSIBLE.

21 MR. BLEAKLEY: ALL WE WILL KNOW IS HE'LL FIT US IN
22 SOMETIME. THAT'S ALL WE KNOW.

23 THE COURT: IF YOU WOULD JUST LET ME KNOW WHEN YOU
24 KNOW, I WOULD APPRECIATE IT.

25 NOW, YOU CAN'T STAND THERE.

537

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1 MR. SINKFIELD: I'M JUST TESTING VANTAGE.

2 THE COURT: OKAY. YOU CAN'T STAND THERE BECAUSE
3 THE JURORS ARE GOING TO BE COMING THAT WAY.

4 MR. SINKFIELD: THANK YOU.

5 THE COURT: SO ANYWHERE OVER THERE IS FINE, THAT
6 SIDE. EXCUSE ME, IF YOU'RE ON THIS SIDE, CAN YOU SEE
7 OVER THIS SIDE OF THE JURY BOX?

8 MR. SINKFIELD: YES, MA'AM.

9 THE COURT: OKAY.

10 MR. BLEAKLEY: I CAN SEE HALF OF IT.

11 THE COURT: THEN YOU NEED TO MOVE.

12 MR. BLEAKLEY: I'LL WALK AROUND.

13 MR. SINKFIELD: IF WHAT YOU'RE ASKING IF WE'RE
14 OVER HERE, WE CAN SEE, IF WE COME OVER IN THE CORNER,
15 THE ANSWER IS YES.

16 THE COURT: OKAY. NOW, ARE WE READY?
17 MR. SINKFIELD: ONE LITTLE THING.
18 THE COURT: YES, SIR.
19 MR. SINKFIELD: IF THE TIME LINE IS NOT NEEDED FOR
20 THE ENTIRE ARGUMENT AND IF IT DOESN'T OTHERWISE DESTROY
21 THE WORLD, IT WOULD BE GREAT IF IT COULD BE REMOVED.
22 THE COURT: OKAY. HE WANTS YOU TO MOVE IT IF YOU
23 DON'T NEED IT FOR YOUR ENTIRE ARGUMENT.
24 MR. FLEMING: I'M GOING TO NEED IT FOR THE WHOLE
25 ARGUMENT.

538

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1 THE COURT: ONCE HIS ARGUMENT IS DONE, IT WILL BE
2 REMOVED.
3 ALL RIGHT. ANYTHING ELSE?
4 MR. FLEMING: APPARENTLY WE'RE HAVING A LITTLE
5 PROJECTOR PROBLEM. IF YOU WILL JUST GIVE US A MINUTE
6 TO SEE IF WE CAN WORK IT OUT.
7 THE COURT: PROJECTOR AND SETUP PEOPLE NEED TO BE
8 HERE AT 8:45 FROM NOW ON.
9 MR. FLEMING: THEY WERE. ACTUALLY THEY WERE
10 AHEAD. THEY WERE HERE AT 8:30. I'M NOT SURE WHAT'S
11 HAPPENED. WE HAVE TWO OF THEM WORKING ON IT RIGHT NOW,
12 YOUR HONOR.
13 THE COURT: IT'S A RULE, WHATEVER CAN GO WRONG
14 WILL.
15 MR. FLEMING: ABSOLUTELY. IT NEVER FAILS. THANKS
16 FOR YOUR PATIENCE.
17 THE COURT: OKAY. WHILE THEY'RE WORKING ON

18 TECHNICAL DIFFICULTIES, I HAVE A QUESTION FOR Y'ALL.

19 MR. FLEMING: YES, MA'AM.

20 THE COURT: WITH RESPECT TO DETERMINING WHETHER
21 YOU HAVE MET THE CRITERIA FOR OPTING OUT, DOES THE
22 SETTLEMENT ORDER REQUIRE THAT YOU SIMPLY ESTABLISH A
23 THRESHOLD SHOWING FOR WHATEVER YOU PUT ON THE BLUE FORM
24 OR FOR EVERYTHING YOU'RE CLAIMING IN THIS CASE? WHICH
25 IS IT?

539

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1 MR. O'BRIEN: WELL, I THINK IT'S WHAT YOU CLAIM AS
2 A BACK-END OPT-OUT.

3 THE COURT: WELL, LET ME ARTICULATE WHAT MY
4 CONCERN IS AND WHAT I NEED FOR YOU TO EXPLAIN TO ME.
5 ASSUMING YOU OPT OUT BASED ON CONDITION A BUT YOU ALSO
6 HAVE CONDITIONS A, B, AND C, DOES THE SETTLEMENT ORDER
7 REQUIRE YOU TO THEN FILE A LAWSUIT AND RECOVER FOR A,
8 B, AND C OR DO YOU HAVE TO BE ABLE TO ESTABLISH THE
9 THRESHOLD TO OPT OUT FOR ALL OF THE CONDITIONS? MY
10 QUESTION IS CAN YOU BE IN AND OUT OR IS IT ONCE YOU'RE
11 OUT, THE JURY GETS TO DECIDE WHATEVER IT IS? DO YOU
12 SEE MY QUESTION?

13 MR. GROSSI: I BELIEVE I UNDERSTAND THE QUESTION.
14 FIRST OF ALL, WE WOULD SAY THAT WHAT YOU CLAIM ON THE
15 FORM LIMITS YOUR LAWSUIT; AND, SECONDLY, WE WOULD SAY
16 THAT IN YOUR LAWSUIT, YOU MUST ESTABLISH DAMAGES FOR
17 WHICHEVER OF THE VALVES YOU ARE CLAIMING.

18 THE COURT: OKAY. BUT MY QUESTION IS TO GET OUT,
19 YOU HAVE TO SAY YOU HAVE SEVERE AORTIC INJURIES?

20 MR. GROSSI: IN THIS CASE, THAT IS CORRECT, YOUR
Page 9

21 HONOR.

22 THE COURT: ALL RIGHT. SO YOU NOW HAVE THE
23 LAWSUIT. AND IF THE JURY DETERMINES YOU HAVE AN AORTIC
24 INJURY AND THEY AWARD WHATEVER THEY AWARD, DO THEY HAVE
25 TO DETERMINE THAT IT IS SEVERE OR DO THEY MERELY HAVE

540

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1 TO DETERMINE THAT YOU HAVE AN INJURY ONCE YOU HAVE
2 ESTABLISHED THAT YOU GET TO OPT OUT? THAT'S MY
3 QUESTION.

4 MR. GROSSI: OH, I THINK I UNDERSTAND YOU. NO, AT
5 THE TRIAL IT MUST BE CONFIRMED THAT YOU HAVE A DEGREE
6 OF INJURY THAT WOULD HAVE PERMITTED YOU TO OPT OUT.

7 MR. O'BRIEN: IT GOES AS A THRESHOLD INQUIRY. AND
8 UNDER THESE PREVIOUS RULINGS BY THE FEDERAL COURT AND
9 POSITIONS TAKEN BY THE PARTIES IS NOT SUBMITTED TO THE
10 JURY. IN OTHER WORDS, IT'S LIKE A PRIMA FACIE CASE AS
11 OPPOSED TO A BURDEN OF PROOF.

12 THE COURT: NO. I UNDERSTAND THAT. IT IS A PRIMA
13 FACIE CASE AS TO WHETHER YOU MEET THE THRESHOLD TO OPT
14 OUT.

15 MR. O'BRIEN: RIGHT. AFTER THAT, IT'S YOUR
16 STANDARD LAWSUIT.

17 THE COURT: THAT I GET TO DECIDE. AFTER THAT,
18 DOES THE JURY HAVE TO DETERMINE THE SAME THING IN ORDER
19 FOR YOU TO RECOVER FROM A LAWSUIT? SO LET'S SAY THEY
20 DISAGREE WITH ME. I THINK YOU'VE MET THE THRESHOLD.
21 SO YOU ARE ENTITLED TO OPT OUT. THEY THINK BASED ON
22 THE EVIDENCE YOU ONLY HAVE MODERATE INJURY. DO YOU

23 RECOVER OR NOT? THAT'S MY QUESTION.

24 MR. O'BRIEN: THEN IT'S YOUR STANDARD LAWSUIT, WIN
25 OR LOSE WITH THE JURY FOR PURPOSES OF ESTABLISHING YOUR

541

1 DAMAGES.

2 MR. GROSSI: WE WOULD DISAGREE, YOUR HONOR. WE
3 THINK THE JURY HAS TO CONFIRM IT IF IT HASN'T BEEN
4 RULED CONCLUSIVELY BY THE COURT.

5 THE COURT: STOP. STOP. JUST POINT TO ME WHAT IN
6 THE SETTLEMENT ORDER EACH OF YOU CONTENDS IS THE
7 POSITION THAT SUPPORTS WHAT YOU'RE TELLING ME. AND
8 THEN I'LL DECIDE WHETHER OR NOT I FIND IT TO BE
9 CORRECT. YOU DON'T HAVE TO DO IT RIGHT THIS SECOND.
10 BEFORE WE GET TO THE POINT THAT SOMEBODY HAS TO DECIDE
11 SOMETHING, I'M GOING TO NEED TO KNOW THAT OBVIOUSLY.

12 MR. BLEAKLEY: YOUR HONOR, WE HAVE JUST LEARNED, I
13 BELIEVE, THAT JUDGE BARTLE HAS SET THE HEARING FOR OUR
14 MOTION AT 1:00 P.M. TODAY.

15 THE COURT: OKAY. DID THE OPT-OUT IN THIS CASE
16 INCLUDE BOTH THE AORTIC AND MITRAL VALVE OR JUST THE
17 AORTIC? DO YOU KNOW OFFHAND?

18 MR. FLEMING: I DON'T OFFHAND, BUT WE'LL GET THAT
19 INFORMATION.

20 THE COURT: OKAY. HOW ARE WE DOING GUYS? YOU'RE
21 SWEATING. IT'S NOT GOOD.

22 (PAUSE IN THE PROCEEDINGS.)

23 THE COURT: MR. FLEMING AND MR. BLEAKLEY, WE'LL
24 TAKE A LUNCH BREAK AT 1:00 O'CLOCK. THAT WAY IF
25 YOU-ALL WANT TO PARTICIPATE, YOU CAN MAKE SOME

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1 ARRANGEMENTS. ALL RIGHT?
2 NOW, MR. FLEMING DOES THAT CAUSE YOU A PROBLEM IN
3 TERMS OF WITNESSES OR NOT?
4 MR. FLEMING: PARDON?
5 THE COURT: DOES THAT CAUSE YOU A PROBLEM IN TERMS
6 OF WITNESSES OR NOT?
7 MR. FLEMING: WE HAVE OUR FIRST WITNESS HERE. IT
8 JUST GOT ALL MIXED UP. SO HE'S HERE. SO WE'LL JUST GO
9 WITH IT.
10 THE COURT: ALL RIGHT.
11 MR. FLEMING: THAT'S FINE.
12 THE COURT: ARE WE READY?
13 MR. FLEMING: MR. THOMAS, ARE YOU READY? ARE YOU
14 SURE?
15 THE COURT: DO YOU NEED ME TO LOWER THE LIGHTING
16 AT ALL?
17 MR. FLEMING: LET ME SEE WHAT IT LOOKS LIKE IN A
18 LITTLE BIT.
19 THE COURT: OKAY. BRING THE JURY OUT.
20 AND IN THIS COURTROOM, WE STAND UP FOR JURORS.
21 (THE JURY RETURNED TO THE
22 COURTROOM AT 9:20 A.M.)
23 THE COURT: YOU MAY BE SEATED.
24 ALL RIGHT. I'M GOING TO TALK TO YOU BRIEFLY, AND
25 THEN WE'LL BE READY TO GET STARTED.

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1 FIRST OF ALL, LET ME THANK YOU-ALL FOR MAKING IT
2 BACK. I APPRECIATE IT.

3 SECOND OF ALL, LET ME THANK YOU FOR MAKING IT ON
4 TIME. THAT'S THE FIRST THING I'M GOING TO TALK ABOUT.
5 I TRY TO BE CONSCIOUS OF YOUR TIME, AS I TOLD YOU. I
6 TRY TO START WHEN I TELL YOU TO START; BUT REAL TRIALS
7 ARE JUST LIKE ANYTHING ELSE THAT HAPPENS, WHICH MEANS
8 SOMETIMES STUFF HAPPENS.

9 SO YOU WERE HERE AT 9:00 O'CLOCK, JUST LIKE I
10 ASKED YOU TO BE. IT'S NOW 9:15; RIGHT? WELL, WHEN
11 STUFF HAPPENS, PLEASE UNDERSTAND THAT THIS IS THE REAL
12 WORLD. AND SO I AM A LOGISTICS PERSON. SO INSOFAR AS
13 THINGS DON'T GO ACCORDING TO CLOCKWORK, YOU ARE TO HOLD
14 THAT AGAINST THIS COURT AND NOT THE PARTIES. LIKE I
15 SAID, SOMETIMES THINGS JUST DON'T GO QUITE ACCORDING TO
16 PLAN.

17 WHAT'S GOING TO HAPPEN INITIALLY IN THIS CASE IS
18 SOMETHING CALLED AN OPENING STATEMENT. AN OPENING
19 STATEMENT IS THE ATTORNEYS' OPPORTUNITY TO EXPLAIN TO
20 YOU EXACTLY WHAT THEY ANTICIPATE THE EVIDENCE IN THE
21 CASE IS GOING TO BE. I NEED TO CAUTION YOU, HOWEVER,
22 THAT WHAT THEY SAY TO YOU IS NOT EVIDENCE. EVIDENCE IS
23 WHAT YOU HEAR FROM THE WITNESS STAND. IT IS WHAT YOU
24 HEAR FROM A PERSON WHO MAY APPEAR BY DEPOSITION.

25 A DEPOSITION IS A SWORN STATEMENT WHICH IS TAKEN

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2 AS YOU WOULD TESTIMONY THAT YOU HEAR FROM SOMEONE WHO
3 IS SWORN AND APPEARS HERE LIVE.

4 EVIDENCE IS ALSO ANY DOCUMENTS, PHOTOGRAPHS,
5 PHYSICAL OBJECTS WHICH ARE ADMITTED FOR YOUR
6 CONSIDERATION.

7 DURING THE COURSE OF A TRIAL, YOU WILL HEAR A FAIR
8 AMOUNT OF INFORMATION. SOME OF IT IS EVIDENCE, AND
9 SOME OF IT IS NOT. BECAUSE YOUR OBLIGATION IS TO
10 DECIDE THIS CASE BASED UPON THE EVIDENCE THAT YOU HEAR,
11 ONE OF THE THINGS YOU ARE GOING TO BE REQUIRED TO DO
12 DURING THE COURSE OF THIS PROCESS IS TO DISTINGUISH
13 INFORMATION FROM EVIDENCE. AND THAT MEANS BEING AWARE
14 NOT ONLY OF WHAT YOU HAVE HEARD BUT ALSO WHERE YOU
15 HEARD IT FROM SO THAT YOU CAN IDENTIFY WHAT'S EVIDENCE,
16 WHAT'S INFORMATION. OPENING STATEMENTS ARE
17 INFORMATION, NOT EVIDENCE.

18 AFTER THE OPENING STATEMENT, THE NEXT THING THAT
19 IS GOING TO OCCUR IS THE PRESENTATION OF EVIDENCE.
20 THIS IS A CIVIL CASE. AND IN A CIVIL CASE, THE BURDEN
21 OF PROOF IS PREPONDERANCE OF THE EVIDENCE. AND WHAT
22 THAT MEANS IS THAT THE PARTY WHO HAS THE BURDEN OF
23 PROVING A PARTICULAR ISSUE HAS TO PROVE IT BY A
24 PREPONDERANCE OF THE EVIDENCE.

25 IN A CIVIL CASE, THE PLAINTIFF, WHO IS THE PERSON

545

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1 WHO IS BRINGING THE LAWSUIT, HAS THE BURDEN OF PROVING
2 THEIR CLAIMS BY A PREPONDERANCE OF THE EVIDENCE. AND
3 SO TYPICALLY YOU WILL SEE THE PERSON WHO IS THE

4 PLAINTIFF GOING FIRST THROUGHOUT THIS PROCESS.

5 MR. FLEMING, WHO IS THE FELLOW SEATED RIGHT THERE
6 (INDICATING), HE IS ONE OF THE ATTORNEYS REPRESENTING
7 THE PLAINTIFF IN THIS MATTER. AND SO YOU WILL HEAR HIS
8 OPENING STATEMENT FIRST.

9 ON YESTERDAY WHEN YOU WERE BEING QUESTIONED BY THE
10 LAWYERS, MR. MAYER, THE FELLOW WITH THE GRAY HAIR WHO
11 IS ALSO ONE OF THE ATTORNEYS REPRESENTING THE
12 PLAINTIFF, GOT TO ASK YOU QUESTIONS FIRST DURING VOIR
13 DIRE.

14 AFTER THE OPENING STATEMENT, MR. FLEMING WILL
15 SPEAK FIRST; AND THEN MR. BLEAKLEY, WHO REPRESENTS THE
16 DEFENDANT IN THIS MATTER, WILL GIVE HIS OPENING
17 STATEMENT. AFTER THAT OCCURS, THE NEXT THING THAT WILL
18 HAPPEN IS THE PRESENTATION OF EVIDENCE.

19 NOW, AT THAT POINT, THAT'S WHERE YOU REALLY HAVE
20 TO PAY ATTENTION TO DISTINGUISHING INFORMATION FROM THE
21 EVIDENCE BECAUSE THE OPENING STATEMENTS ARE NOT
22 EVIDENCE, QUESTIONS ARE NOT EVIDENCE, OBJECTIONS ARE
23 NOT EVIDENCE, WHAT I SAY IS NOT EVIDENCE.

24 AFTER THE PRESENTATION OF ALL OF THE EVIDENCE --
25 AND ONCE AGAIN BECAUSE THE PLAINTIFF HAS THE BURDEN OF

546

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1 PROVING THE CASE BY A PREPONDERANCE OF THE EVIDENCE,
2 THE PLAINTIFF WILL GO FIRST IN PRESENTING EVIDENCE.
3 THEN YOU WILL HEAR FROM THE DEFENSE IN THE PRESENTATION
4 OF EVIDENCE. ONCE THAT IS COMPLETED, THE NEXT THING
5 THAT WILL HAPPEN IS SOMETHING THAT'S GOING TO TAKE
6 PLACE OUTSIDE YOUR PRESENCE. IT'S CALLED A CHARGE

7 CONFERENCE. IT IS WHERE I MEET WITH THE ATTORNEYS AND
8 THE PARTIES AND WE DISCUSS THOSE PRINCIPLES OF LAW THAT
9 I'M GOING TO READ TO YOU AND THAT YOU WILL THEN APPLY
10 IN DECIDING THIS CASE.

11 AS YOU KNOW, THIS TRIAL IS EXPECTED TO TAKE A FAIR
12 AMOUNT OF TIME. AND SO WHEN WE GET TO THE CHARGE
13 CONFERENCE, WHAT WILL HAPPEN IS ON THAT DAY, I'LL
14 EITHER TELL YOU TO COME IN LATE, LEAVE EARLY, TAKE A
15 LONGER BREAK, TAKE A RECESS SO THAT WE CAN ADDRESS THAT
16 AND YOU DON'T HAVE TO SIT IN THE JURY ROOM WHILE WE DO
17 IT.

18 AFTER THE CHARGE CONFERENCE, YOU WILL HEAR FROM
19 THE ATTORNEYS AGAIN IN CLOSING ARGUMENT. NOW, THE
20 DIFFERENCE BETWEEN A CLOSING ARGUMENT AND AN OPENING
21 STATEMENT IS THAT IN CLOSING ARGUMENTS, THE ATTORNEYS
22 WILL TALK TO YOU ABOUT WHAT THEY BELIEVE THE EVIDENCE
23 TO HAVE BEEN AND ALSO WHAT CONCLUSIONS OR INFERENCES
24 THEY THINK IT'S APPROPRIATE FOR YOU TO DRAW FROM THAT
25 EVIDENCE. YOU, HOWEVER, ARE THE FOLKS WHO DECIDE WHAT

547

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1 THE FACTS ARE, WHAT THEY ARE NOT, WHAT YOU BELIEVE,
2 WHAT YOU DON'T BELIEVE, WHAT'S AN APPROPRIATE INFERENCE
3 TO DRAW, WHAT IS A REASONABLE CONCLUSION, WHAT IS NOT A
4 REASONABLE CONCLUSION. AND IF YOUR RECOLLECTION OF THE
5 EVIDENCE DIFFERS FROM WHAT YOU HEAR FROM THE ATTORNEYS
6 IN THE CLOSING ARGUMENTS OR SOMETHING YOU HAVE HEARD IN
7 THE OPENING STATEMENTS, YOU ARE TO RELY UPON YOUR BEST
8 RECOLLECTION OF WHAT THE EVIDENCE WAS AND TO MAKE

12 ARE ASKED AND THE WITNESS SAYS, "YES," OR "YEAH, THAT'S
13 RIGHT," THEN THE EVIDENCE IS IT WAS TUESDAY, THE LIGHT
14 WAS GREEN ON PEACHTREE STREET.

15 SAME QUESTIONS, WITNESS SAYS, "NO, THAT'S NOT
16 CORRECT." THEN THE EVIDENCE IS NO, THE LIGHT WASN'T
17 GREEN TUESDAY ON PEACHTREE STREET.

18 AND THAT'S WHY YOU ARE OBLIGATED TO DISTINGUISH
19 BETWEEN INFORMATION AND EVIDENCE.

20 NOW, YOU HAVE BEEN GIVEN PADS AND PENS. AND I CAN
21 ASSURE YOU THAT IF YOU FILL THOSE UP, WE WILL GIVE YOU
22 MORE. BUT WHAT I NEED FOR YOU TO DO IS IF YOU ELECT TO
23 TAKE NOTES, AND IT'S ENTIRELY UP TO YOU WHETHER YOU
24 CHOOSE TO OR NOT, FIRST, PLEASE DON'T GET SO CAUGHT UP
25 IN YOUR NOTES THAT YOU MISS WHAT IS OCCURRING. IT IS

549

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1 SOMETIMES VERY EASY TO WANT TO TAKE DOWN WHAT SOMEONE
2 SAID IN DETAIL, AND THEN YOU LOOK UP, IT'S FIVE MINUTES
3 LATER, AND YOU MISSED THE REST OF WHAT THEY HAD TO SAY.

4 SECOND, I SPOKE TO YOU YESTERDAY ABOUT NOT
5 DISCUSSING THE CASE WITH ANYONE OUTSIDE THIS COURTROOM.
6 I'M ALSO GOING TO ASK YOU NOT TO ENGAGE IN ANY
7 PRELIMINARY DISCUSSIONS ABOUT THE EVIDENCE. AND SO FOR
8 THAT REASON, I NEED FOR YOU TO PLEASE MARK YOUR PADS
9 AND MAINTAIN THEM PRIVATELY UNTIL WE GET TO THE END.

10 THE REASON I DON'T WANT YOU TO DISCUSS ANYTHING
11 BEFORE YOU GET TO THE END OF THE EVIDENCE IS THIS:
12 WHAT HAPPENS OUTSIDE IN LIFE KIND OF HAPPENS ALL IN A
13 MUSH. PEOPLE SEE WHAT THEY SEE. THINGS OCCUR.

14 SOMETIMES THINGS OVERLAP. IN A COURTROOM OF NECESSITY,
15 THINGS ARE PRESENTED IN A LINEAR FASHION. AND SO THAT
16 MEANS YOU ONLY HEAR ONE WITNESS, YOU ONLY SEE ONE PIECE
17 OF EVIDENCE, YOU ONLY GET ONE PHOTOGRAPH AT A TIME. SO
18 IF YOU START DISCUSSING ABOUT EVIDENCE, WITNESS A'S
19 TESTIMONY, WELL, YOU DON'T REALLY HAVE A CONTEXT FOR IT
20 BECAUSE YOU HAVEN'T HEARD THE REST OF THE STORY BECAUSE
21 ALL OF THE EVIDENCE HASN'T BEEN PRESENTED TO YOU.

22 AND NOW I'M SURE YOU GUYS ARE NOT LIKE THIS, BUT
23 YOU-ALL KNOW THOSE FOLKS, YOU KNOW THE KIND OF PERSON
24 WHERE IF THEY TOLD YOU THAT THE MOON WAS MADE OUT OF
25 CREAM CHEESE AND YOU HANDED THEM A MOON ROCK, THEY

550

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1 WOULD EXPLAIN TO YOU THAT, WELL, NOW, YOU KNOW, THE
2 LIGHT SIDE OF THE MOON MAY BE MADE OUT OF CREAM CHEESE
3 BECAUSE THAT'S THE SIDE THEY'RE FAMILIAR WITH IT; AND
4 THAT MOON ROCK, WELL, IT CAME FROM THE DARK SIDE.
5 OBVIOUSLY WHAT THEY TOLD YOU IN THE FIRST PLACE IS
6 STILL ABSOLUTELY RIGHT IN THE FACE OF ANY AND ALL
7 INFORMATION TO THE CONTRARY.

8 AND SO IF YOU DON'T ENGAGE IN ANY PRELIMINARY
9 DISCUSSIONS AND DON'T TAKE ANY POSITIONS, THEN AT THE
10 END, YOU WON'T FEEL OBLIGATED TO DEFEND ANYTHING THAT
11 YOU MIGHT HAVE DECIDED EARLY ON. AND BASICALLY YOUR
12 FUNCTION IN THIS PROCESS IS TO EVALUATE WHAT IS
13 PRESENTED TO YOU AND TO MAKE A DETERMINATION ABOUT IT,
14 IF YOU CAN, RATHER THAN TO BECOME AN ADVOCATE FOR ANY
15 PARTICULAR POSITION BECAUSE YOU HEARD WITNESS X ON DAY
16 TWO OR YOU HEARD WITNESS Y ON DAY FIVE AND DECIDED,

17 WELL, YOU KNOW, I REALLY LIKE THEM AND I BELIEVE WHAT
18 THEY SAID AND SO I'M THROUGH LISTENING TO ANYTHING
19 ELSE.

20 LAST BUT NOT LEAST. EACH OF YOU HAS A PARTICULAR
21 SKILL THAT DURING THE COURSE OF THIS TRIAL, YOU ARE
22 GOING TO BE REQUIRED TO SET ASIDE. AND IT IS A SKILL
23 THAT YOU HAVE BECAUSE YOU ARE ADULTS. LITTLE KIDS
24 CAN'T DO IT, AND THAT IS BECAUSE THEY'RE LITTLE KIDS.
25 THEY ALWAYS GIVE THEMSELVES AWAY. ADULTS, ON THE OTHER

551

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1 HAND, HAVE THE ABILITY TO SIT IN ONE PLACE, NOT FIDGET,
2 YOU KNOW, NOT KIND OF SHIFT AROUND, HAVE THEIR EYES
3 WIDE OPEN, LOOK LIKE THEY'RE ABSOLUTELY AND COMPLETELY
4 HERE AND BE ABSOLUTELY AND COMPLETELY SOMEWHERE ELSE.
5 IT WILL BE VERY EASY BECAUSE YOU ARE REQUIRED TO SIT
6 HERE AND LISTEN IN AN ENVIRONMENT WHERE PEOPLE ARE
7 SPEAKING TO YOU AND YOU'RE NOT COMMUNICATING BACK TO
8 THEM TO START THINKING ABOUT THE TRAFFIC, THE WEATHER,
9 WHAT'S HAPPENING AT YOUR JOB, HOW LONG ARE YOU GOING TO
10 BE HERE, HOW BLUE IS THIS COURTROOM, YOU STILL CAN'T
11 BELIEVE THEY PICKED YOU, WOULD SHE REALLY SEND SOMEBODY
12 TO COME GET ME IF I JUST DIDN'T SHOW UP, HOW MANY
13 PEOPLE ARE THERE HERE IN THIS COURTROOM, HOW LONG IS
14 THIS REALLY GOING TO TAKE, EVERYTHING BUT WHAT IS
15 HAPPENING IN THIS COURTROOM.

16 NOW, IF YOU DO THAT BECAUSE YOU HAVE THE ABILITY
17 TO SIT AND LOOK LIKE YOU'RE WITH US, NONE OF US WILL
18 KNOW THAT YOU ARE DOING IT. HOWEVER, YOU WILL BE DOING

19 YOURSELVES, AS WELL AS THESE PARTIES, A DISSERVICE IF
20 YOU DO THAT. AND THAT IS BECAUSE AT THE END OF THIS
21 PROCESS, WHETHER YOU'RE REALLY WITH US OR NOT, YOU'RE
22 STILL GOING TO BE ASKED TO MAKE A DECISION BASED UPON
23 WHAT OCCURS IN THIS COURTROOM.

24 NOW, I TRY TO TAKE BREAKS ABOUT EVERY HOUR TO 90
25 MINUTES OR SO; BUT IF YOU NEED A BREAK AND I'M NOT

552

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1 TAKING ONE, PLEASE GET MY ATTENTION OR GET THE
2 BAILIFF'S ATTENTION BECAUSE IT IS PREFERABLE TO ME AND
3 TO EVERYONE HERE THAT WE TAKE A BREAK RATHER THAN THAT
4 YOU MISS SOMETHING WHICH MAY HAVE SOME BEARING ON YOUR
5 DECISION IN THIS CASE. SO ANY TIME YOU NEED A BREAK,
6 YOU JUST GIVE ME THE HIGH SIGN, AND WE WILL TAKE A
7 BREAK.

8 LAST BUT NOT LEAST. IF YOU'RE STILL NOT HAPPY
9 ABOUT THE FACT THAT YOU ARE HERE; YOU'RE STILL REALLY,
10 REALLY, REALLY UPSET; YOU STILL WANT A RECOUNT;
11 WHATEVER IT IS, JUST REMEMBER, ME, NOT THEM. OKAY?
12 AND WHATEVER ISSUES AND ATTITUDES YOU HAVE, DON'T TAKE
13 IT OUT ON THEM BECAUSE THIS IS WHERE THEY HAVE TO BE.

14 OKAY. I'M NOW DONE. WOULD YOU PLEASE RAISE YOUR
15 RIGHT HAND FOR ME ONE MORE TIME. YOU SHALL WELL AND
16 TRULY TRY THE ISSUES FORMED IN THIS MATTER AND A TRUE
17 VERDICT GIVE ACCORDING TO THE EVIDENCE AS YOU FIND IT
18 TO BE AND THE LAW AS GIVEN TO YOU IN CHARGE, YOU SHALL
19 DO SO WITHOUT FAVOR OR AFFECTION TO ANY PARTY? IF SO,
20 PLEASE SAY I WILL.

21 THE JURORS: I WILL.

22 THE COURT: THANK YOU. YOU MAY LOWER YOUR HANDS.
23 ALL RIGHT. MR. FLEMING, YOU MAY PROCEED.
24 MR. FLEMING: THANK YOU, YOUR HONOR.
25 MAY IT PLEASE THE COURT. GENTLEMEN AND WOMEN FOR

553

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1 THE DEFENSE. LADIES AND GENTLEMEN OF THE JURY.
2 GOOD MORNING. MY NAME IS GEORGE FLEMING, AND I
3 REPRESENT LINDA EICHMILLER.
4 LINDA, WOULD YOU PLEASE STAND UP.
5 THIS IS LINDA, LINDA EICHMILLER. LINDA IS A NURSE
6 FROM THIS AREA, BEEN IN ATLANTA FOR A LONG, LONG TIME
7 NOW.
8 YOU CAN SIT DOWN.
9 I THINK YOU MET RANDY MAYER YESTERDAY. AND WITH
10 ME ALSO IS MY GOOD FRIEND AND COLLEAGUE MIKE O'BRIEN.
11 THERE'S A FEW PEOPLE THAT YOU'LL SEE HERE THAT ARE KIND
12 OF WORKING WITH ME AND HELPING ME OUT. MS. PAM PAZONE,
13 PAMELA RIGHT THERE, AND JIM THOMAS.
14 JIM, COULD YOU KIND OF RAISE YOUR HAND RIGHT
15 THERE.
16 WE'VE GOT SOME OTHER FOLKS THAT ARE WORKING WITH
17 US.
18 NOW, THIS CASE IS ABOUT THE HEART. AND, YOU KNOW,
19 IT'S ONE OF GOD'S GREAT CREATIONS. IT'S ABOUT THE SIZE
20 OF YOUR HAND. IT PUMPS ABOUT 1.3 GALLONS PER MINUTE,
21 ABOUT 78 GALLONS PER HOUR, OVER 1800 GALLONS PER DAY.
22 AND THIS CASE IS ABOUT THIS LADY'S HEART. IT IS ABOUT
23 A HEART THAT HAS HAD A PROBLEM AS A RESULT OF THE DIET

24 DRUG FENFLURAMINE. THE FIRST HALF OF THE FEN, IN
25 FEN-PHEN.

554

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1 THIS CASE, LADIES AND GENTLEMEN, IS ABOUT A
2 COMPANY WYETH, ALSO CALLED AMERICAN HOME PRODUCTS IN
3 THIS LITIGATION, WHO PUT A DRUG ON THE MARKET AND KEPT
4 A DRUG ON THE MARKET CALLED PONDIMIN OR FENFLURAMINE.
5 YOU'LL HEAR IT REFERRED TO BOTH WAYS HERE. YOU'LL ALSO
6 HEAR WYETH REFERRED TO BOTH WAYS AS WYETH AND AMERICAN
7 HOME PRODUCTS.

8 AND THEY KEPT THIS DRUG ON THE MARKET WHEN THERE
9 WAS LITTLE OR NO BENEFIT TO THE DRUG AND WHEN THERE
10 WERE SERIOUS RISKS WITH REGARD TO TAKING THAT DRUG THAT
11 THEY KNEW ABOUT BUT THAT PHYSICIANS WHO WERE
12 PRESCRIBING THE DRUG DID NOT GET THE INFORMATION FROM
13 THEM, NOR DID PATIENTS GET THAT INFORMATION.

14 THOSE SERIOUS RISKS INCLUDED VALVULAR HEART
15 DISEASE. AND IT ALSO INCLUDED PULMONARY HYPERTENSION
16 SECONDARY TO VALVULAR HEART DISEASE. AND YOU'LL HEAR A
17 LOT DURING THE TRIAL OF THIS CASE ABOUT BENEFIT OF THE
18 DRUG VERSUS RISKS AND HOW PHYSICIANS AND PATIENTS
19 EVALUATE THE BENEFITS VERSUS THE RISKS OF A DRUG IN
20 TERMS OF PRESCRIPTION. AND I BELIEVE THE EVIDENCE AT
21 THE END OF THE DAY WILL SHOW THAT THERE IS VERY LITTLE
22 BENEFIT TO THE DRUG PONDIMIN AND THAT THE RISKS, ON THE
23 OTHER HAND, ARE GREAT WITH REGARD TO VALVULAR HEART
24 DISEASE AND WITH REGARD TO PULMONARY HYPERTENSION.

25 AND TO UNDERSTAND THE SERIOUSNESS OF THOSE RISKS,

1 YOU NEED TO UNDERSTAND A LITTLE BIT ABOUT THE HEART.
2 AND WHAT WE'VE GOT HERE IS A SCHEMATIC THAT SHOWS A
3 BREAK-AWAY OF THE HEART AND THE LUNGS. AND ON THIS
4 SIDE, WHICH IS THE LEFT SIDE OF THE HEART, YOU CAN SEE
5 THE MITRAL VALVE AND THE AORTIC VALVE. AND YOU CAN SEE
6 HOW THIS PULMONIC VALVE LEADS INTO THE LUNGS.

7 ALL RIGHT. MR. THOMAS.

8 IF I COULD GET THE LIGHTS DOWN JUST A LITTLE BIT,
9 YOUR HONOR.

10 THIS SHOWS A NORMAL HEART -- AND A LITTLE BIT MORE
11 MAYBE.

12 THIS SHOWS THE FLOW OF THE BLOOD FROM THE LUNGS,
13 THE RED BLOOD THAT'S COME OUT OF THE LUNGS INTO THE
14 LEFT ATRIUM THROUGH THE MITRAL VALVE, INTO THE LEFT
15 VENTRICLE AND THEN OUT THIS WAY THROUGH THE AORTIC
16 VALVE. THAT'S THE NORMAL FLOW OF THE BLOOD. AND THESE
17 VALVES ARE JUST THAT. THEY'RE VALVES. THEY HOLD
18 THINGS, AND THEN THEY RELEASE THEM AND LET IT GO AND
19 LET THE LIQUID BLOOD GO. AND THEY'RE TINY LEAFLETS
20 THAT ARE HELD TOGETHER ON THE BACK END HERE BY WHAT'S
21 CALLED A CHORDAE TENDINEAE, LITERALLY THE STRINGS OF
22 YOUR HEART. THESE ARE THE VALVES THAT MAKE THE HEART
23 WORK. AND WHEN THEY DON'T WORK, YOU HAVE PROBLEMS.
24 WE'RE NOT TALKING ABOUT OUTSIDE THE HEART NOW. WE'RE
25 TALKING ABOUT INSIDE THE HEART. WE'RE TALKING ABOUT

1 INSIDE THE HEART OF THIS LADY AND OTHERS.

2 ALL RIGHT. AND HERE YOU SEE A NORMAL LEFT SIDE OF
3 THE HEART. HERE YOU SEE A MITRAL VALVE CLOSING AND THE
4 AORTIC VALVE OPENING UP AS THE PUMPING MECHANISM AND
5 THE VENTRICLE GOES OUT. HERE YOU SEE THE MITRAL VALVE
6 OPEN AND WHERE THE BLOOD COMES INTO THE LEFT VENTRICLE
7 AND THEN THE AORTIC VALVE CLOSE. THEY WORK IN UNISON
8 SO THAT THE BLOOD COMES OUT OF THE LUNG, GOES INTO THE
9 LEFT ATRIUM, DOWN IN FROM THE MITRAL VALVE INTO THE
10 LEFT VENTRICLE AND THEN UP THROUGH THE AORTIC VALVE.
11 OKAY.

12 THIS IS AN ILLUSTRATION OF THE HEART PUMPING
13 NORMALLY. AND IN THIS ILLUSTRATION, YOU CAN SEE -- OR
14 I HOPE WE CAN SEE -- A HEART THAT IS -- YES. WE'RE
15 GOING TO SEE THE BLOOD FLOWING.

16 MR. THOMAS. I HOPE.

17 WE'RE GOING TO SEE THE BLOOD FLOWING OUT OF THE
18 LUNGS AND INTO THE HEART AND THEN OUT.

19 ALL RIGHT. THE NEXT ONE.

20 AND WITH AORTIC REGURGITATION, WE'RE GOING TO SEE
21 A BLACK BACKFLOW. AND WE'LL DESCRIBE THIS TO YOU LATER
22 ON IN THE EVIDENCE. WE'RE LITERALLY TALKING ABOUT AN
23 AORTIC REGURGITATION. THIS VALVE, THE AORTIC VALVE,
24 DOESN'T WORK PROPERLY. AND SO WHAT WE'RE LOOKING AT IS
25 A VALVE THAT LITERALLY BACKFLOWS IN THE HEART. AND IN

557

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1 THIS LADY, WE'RE TALKING ABOUT HUNDREDS OF GALLONS OF
2 BLOOD EVERY DAY THAT GOES BACKWARDS IN THE HEART, THAT

3 FORCES ITSELF BACKWARDS IN THE HEART. IT GOES THE
4 WRONG DIRECTION, EVERY BEAT OF HER HEART.

5 AND WE'RE SEEING HERE ON THIS SIDE A NORMAL HEART
6 AND THEN ONE WITH AORTIC REGURGITATION. AND WHAT
7 YOU'RE SEEING HERE -- IF I COULD GET THE LIGHTS DOWN
8 JUST A LITTLE BIT MORE.

9 WHAT YOU'RE SEEING HERE IS A REGURGITANT JET THAT
10 IS ACTUALLY INSTEAD OF GOING UP THIS WAY TO THE
11 HEART --

12 THE COURT: EXCUSE ME, MR. FLEMING, THESE LIGHTS
13 ARE GOING TO GO OFF AT THIS POINT.

14 MR. FLEMING: THEN I WILL TAKE IT THIS WAY.
15 WELL -- OKAY.

16 WHAT YOU WOULD SEE HERE IS ACTUALLY INSTEAD OF THE
17 BLOOD GOING UP THIS WAY, THE BLOOD FLOWING BACK THIS
18 WAY (INDICATING). AND SO THE VALVE IS NOT WORKING
19 RIGHT. IT'S NOT WORKING RIGHT BECAUSE OF THE FACT THAT
20 YOU HAVE GOT VALVULAR HEART DAMAGE OR HEART DISEASE AS
21 A RESULT OF FEN-PHEN BECAUSE WHAT FEN-PHEN DOES IS IT
22 PUTS A LESION ON THOSE LITTLE VALVE LEAFLETS, THE VALVE
23 LEAFLETS THAT ARE SUPPOSED TO WORK IN UNISON AND THEY
24 ARE SUPPOSED TO COME TOGETHER SORT OF LIKE YOU PUT A
25 JIGSAW PUZZLE TOGETHER WHERE THEY FIT TOGETHER

558

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1 PROPERLY. AND THOSE LESIONS PREVENT THAT UNION FROM
2 COMING TOGETHER, THAT JIGSAW PUZZLE FROM FITTING
3 TOGETHER PROPERLY. AND SO YOU GET LEAKAGE. YOU GET
4 BACKFLOW INSIDE THE HEART. ALL RIGHT.

5 AND SO WHAT YOU HAVE GOT IS INSTEAD OF THE BLOOD
6 GOING UP THE AORTIC VALVE, YOU'VE GOT IT COMING
7 BACKWARDS IN THE VALVE. AND THAT PROMOTES A PRESSURE
8 INSIDE THE HEART WHICH BEGINS TO BACK UP INSIDE THE
9 LUNGS. AND THIS IS WHAT I'M TALKING ABOUT WHEN I TALK
10 ABOUT PULMONARY HYPERTENSION. WE'RE TALKING ABOUT A
11 BACKUP OF PRESSURE INSIDE THE LEFT ATRIUM INTO THE
12 LUNGS AND BACK INTO THE HEART THAT GIVES A TREMENDOUS
13 AMOUNT OF PRESSURE INSIDE THIS PULMONIC ARTERY.

14 WE'RE NOT TALKING ABOUT THE BLOOD PRESSURE THAT WE
15 TALK ABOUT WHEN WE TAKE A PULSE. WE'RE TALKING ABOUT
16 ACTUALLY INSIDE THE HEART MUSCLE. WE'RE TALKING ABOUT
17 PULMONARY ARTERY PRESSURE INSIDE THE HEART WHICH CAUSES
18 THE HEART TO HAVE TO WORK HARDER AND HARDER AND HARDER
19 AND HARDER UNLESS A VALVE IS REPLACED OR UNTIL THE
20 HEART FAILS. THAT'S HOW SERIOUS VALVULAR HEART DISEASE
21 AND PULMONARY HYPERTENSION SECONDARY TO VALVULAR HEART
22 DISEASE IS.

23 THIS CASE IS ABOUT THIS COMPANY WYETH-AYERST,
24 AMERICAN HOME PRODUCTS. THE BENEFIT TO THIS DRUG THE
25 EVIDENCE WILL SHOW IS MINOR. THEY KNEW THAT. THE

559

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1 RISKS AND THE DANGERS OF THIS DRUG ARE MAJOR. VALVULAR
2 HEART DISEASE, PULMONARY HYPERTENSION SECONDARY TO
3 VALVULAR HEART DISEASE ARE EXTREMELY SERIOUS.

4 THAT LEADS US TO MS. EICHMILLER. AND MS.
5 EICHMILLER FIRST STARTED TAKING THIS DRUG -- MS.
6 EICHMILLER WENT TO A DOCTOR HERE IN ATLANTA ON
7 OCTOBER 20TH, 1995. SHE WENT TO A DOCTOR BECAUSE SHE

8 WANTED TO LOSE A LITTLE BIT OF WEIGHT. AND SHE WENT TO
9 THAT DOCTOR IN 1995, AND SHE ASKED HIM IF HE HAD A DIET
10 PILL THAT WOULD HELP HER OUT. AND IT'S IMPORTANT TO
11 NOTE WHEN SHE WENT TO HIM AND WHAT HE KNEW OR COULD
12 HAVE KNOWN AND WHAT SHE KNEW OR COULD HAVE KNOWN AND
13 WHAT THIS DRUG COMPANY KNEW AT THE TIME THAT SHE TOOK
14 THE FIRST PILL.

15 AND SHE CONTINUED TAKING PONDIMIN UP INTO 1996,
16 MAY 6TH, 1996. THOSE ARE THE TWO DATES. AND SHE TOOK
17 IT OFF AND ON, BUT ROUGHLY SHE TOOK IT FOR ABOUT SIX
18 MONTHS. AND BEFORE THIS TIME, WYETH, WYETH TOOK THIS
19 DRUG OVER IN 1990 FOR THE FIRST TIME. AND WE'RE GOING
20 TO SHOW YOU AS WE GO THROUGH THIS THAT WE'RE GOING TO
21 PROVE THIS CASE OUT OF WYETH'S OWN INTERNAL DOCUMENTS.
22 WE'RE GOING TO SHOW YOU WHAT THEY KNEW WHEN THEY KNEW
23 IT WHEN YOU WEREN'T WATCHING THEM. WE'RE GOING TO TAKE
24 THE INTERNAL DOCUMENTS THAT WE'VE GOT IN THIS CASE, AND
25 WE'RE GOING TO SHOW THOSE DOCUMENTS TO YOU TO SHOW YOU

560

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1 EXACTLY WHAT THEY KNEW BEFORE AND DURING THE TIME LINDA
2 EICHMILLER WAS TAKING THIS DRUG.

3 IN 1990, THERE'S NO VALVULAR HEART DISEASE WARNING
4 BY WYETH AT ALL. THERE IS AN INADEQUATE PULMONARY
5 HYPERTENSION WARNING BY WYETH. AND BY INADEQUATE, WHAT
6 I MEAN IS THERE IS NO WARNING OF PULMONARY
7 HYPERTENSION. WHEN THEY FIRST TAKE OVER THE DRUG, WHEN
8 THEY FIRST TAKE OVER THE DRUG, THERE'S NO WARNING OF
9 VHD OR PH. THEY RECEIVE THE FIRST VALVULAR HEART

110603eichmiller.txt
DISEASE REPORT IN 1991, 1991.

10
11 THE COURT: EXCUSE ME, MR. FLEMING. SIR, YOU
12 CAN'T SIT THERE. GO OVER THERE.

13 MR. FLEMING: AND THIS WAS RECEIVED BY A LADY AT
14 WYETH NAMED ROBERTA MICHAELIS. YOU'LL HEAR THE VIDEO
15 DEPOSITION TESTIMONY OF MS. MICHAELIS DURING THE
16 COURSE OF THESE PROCEEDINGS. BUT SHE RECEIVED WYETH'S
17 FIRST DOCUMENTED VALVULAR HEART DISEASE REPORT IN THE
18 FORM OF WHAT'S CALLED AN ADE, AN ADVERSE DRUG EVENT
19 REPORT, IN 1991.

20 AND IN 1991, WYETH'S INTERNAL DOCUMENTS, THE STUFF
21 THAT THE FDA DOESN'T SEE, THE STUFF THAT MS. EICHMILLER
22 DOESN'T SEE OR HER DOCTOR DOESN'T SEE, SAYS "SUMMARY OF
23 INCREASED INCIDENTS OF PULMONARY HYPERTENSION WITH
24 FENFLURAMINE USE." AND SO THEY'RE GETTING THEIR FIRST
25 REPORTS FOUR TO FIVE YEARS BEFORE MS. EICHMILLER EVER

561

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1 TAKES THE DRUG. BUT THERE'S NO VHD WARNING BY WYETH IN
2 THE PDR'S TO DOCTORS OR TO USERS OF THE DRUG. AND
3 THERE'S NO PH WARNING BY WYETH IN THE DRUG. THEY DON'T
4 MAKE ANY CHANGES IN THE WARNING SECTIONS OF THEIR
5 DRUGS. THEY DON'T WARN PATIENTS IN 1991 OF EITHER
6 VALVULAR HEART DISEASE OR PULMONARY HYPERTENSION
7 SECONDARY TO VALVULAR HEART DISEASE.

8 THEN IN 1992, MARCH 12, 1992, ANOTHER WYETH
9 INTERNAL REPORT THAT SAYS OF ADDITIONAL CONCERN IS AN
10 ASSOCIATION -- AND THIS IS THE D ISOMER AND THE L
11 ISOMER OF WHAT'S CALLED FENFLURAMINE AND
12 DEXFENFLURAMINE. THE TRANSLATION TO THAT IS MS.

13 EICHMILLER TOOK FENFLURAMINE. SHE TOOK WHAT IS CALLED
14 PONDIMIN. THERE IS ANOTHER DRUG THAT IS BASICALLY THE
15 SAME THING AS PONDIMIN THAT WAS PUT OUT LATER BY
16 WYETH-AYERST CALLED REDUX. IT'S CALLED
17 DEXFENFLURAMINE.

18 OF ADDITIONAL CONCERN IS THE ASSOCIATION OF
19 FENFLURAMINE AND DEXFENFLURAMINE WITH PULMONARY
20 HYPERTENSION. WYETH INTERNAL. AND THEN IN 1992, THERE
21 IS A PUBLICATION BY DR. WEINTRAUB. AND THAT
22 PUBLICATION TALLIED THE EFFECTS OF FEN-PHEN, THE
23 COMBINATION OF USING FENFLURAMINE, WYETH'S PONDIMIN
24 DRUG, AND ANOTHER DRUG CALLED PHENTERMINE, WHICH IS THE
25 LAST PART OF THE PHEN, THE P-H-E-N. F-E-N, PONDIMIN;

562

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1 FENFLURAMINE; AND PHENTERMINE, P-H-E-N.

2 BUT IN 1992 DESPITE THIS AND DESPITE THIS, THERE'S
3 NO VALVULAR HEART DISEASE WARNING BY WYETH IN THE PDR,
4 WHICH THEY'RE RESPONSIBLE FOR DOING. THERE'S NO PH
5 WARNING. WHEN I SAY INADEQUATE, I MEAN ZERO, NONE IN
6 THE PDR.

7 AND THEN IN '93, WE START SEEING AN INCREASE IN
8 VALVULAR HEART DISEASE REPORTS TO WYETH. THEY START
9 COMING IN IN THE FORM OF THESE ADVERSE DRUG EVENT
10 REPORTS. AND THE NORMAL CUSTOM AND PRACTICE IN THE
11 INDUSTRY, YOU'LL HEAR, IS THAT IF YOU GET ONE ADE, ONE
12 ADVERSE DRUG EVENT REPORT, A PHARMACEUTICAL COMPANY
13 UNDERSTANDS THAT THERE'S A TREMENDOUS UNDER-REPORTING
14 OF THESE ADVERSE DRUG EVENT REPORTS. THERE'S NO EXTRA

15 BROWNIE POINTS FOR PHYSICIANS, FOR HOSPITAL
16 ADMINISTRATORS TO FILL OUT THE FORMS TO SEND TO PEOPLE
17 LIKE WYETH. AND SO THEY DON'T. AND SO THE GENERAL
18 RULE OF THUMB IS IF YOU GET ONE REPORT, ONE ADE, AS A
19 PHARMACEUTICAL COMPANY, YOU CAN MULTIPLY IT BY A
20 HUNDRED BECAUSE THAT'S THE NUMBER THAT IS ACTUALLY
21 GOING TO BE OUT IN THE COMMUNITY. WYETH STARTED
22 GETTING AN INCREASE OF THESE REPORTS.

23 AND THEN IN '93, DR. EWALENKO REPORTS VALVULAR
24 HEART DISEASE WAS CONNECTED TO FENFLURAMINE AND TO
25 DEXFENFLURAMINE USE. STILL NO VALVULAR HEART DISEASE

563

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1 WARNING. STILL NO PH WARNING BY WYETH IN THEIR
2 ADVISORIES TO PHYSICIANS THAT ARE PRESCRIBING THIS
3 DRUG, TO PATIENTS THAT ARE GETTING THIS DRUG ACROSS THE
4 UNITED STATES. NOTHING IN THE PDR THAT WYETH PUTS OUT.

5 WYETH INTERNAL IN 1994 PUTS TOGETHER A WORKING
6 LIST OF PULMONARY HYPERTENSION CASES WITH
7 DEXFENFLURAMINE. AND BASICALLY WHAT WE'RE TALKING
8 ABOUT IS THE SAME DRUG, DEXFENFLURAMINE, AS THE
9 FENFLURAMINE/PONDIMIN THAT MS. EICHMILLER TOOK. SO NOW
10 THEY'VE GOT A WORKING LIST GOING INSIDE. AND WYETH NOW
11 BY THE END OF THE YEAR HAS A NUMBER OF PULMONARY
12 HYPERTENSION REPORTS SECONDARY TO VALVULAR HEART
13 DISEASE.

14 IN 1994, A WYETH INTERNAL SHOWS THAT PONDIMIN
15 PROMOTES ONLY A 4 TO 6 POUND INCREASE -- OR DECREASE IN
16 WEIGHT LOSS WHEN USED OVER SIX WEEKS. AND THERE'S A
17 REBOUND EFFECT. TRANSLATION: IF YOU CHANGE YOUR

18 LIFESTYLE, IF YOU START RUNNING, IF YOU START DIETING,
19 AND YOU TAKE PONDIMIN, PONDIMIN ONLY ACCOUNTS FOR 4 TO
20 6 POUNDS OF YOUR WEIGHT LOSS, 4 TO 6 POUNDS. IT'S THE
21 LIFESTYLE CHANGES THAT COUNT. THAT'S WHAT THEY'RE
22 SAYING INTERNALLY. THEY'RE NOT SAYING THAT TO
23 PHYSICIANS, AND THEY'RE CERTAINLY NOT SAYING THAT TO
24 PATIENTS.

25 AND STILL IN 1994, WE'RE LEADING UP TO THIS, NO

564

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1 VALVULAR HEART WARNING, NO PH WARNING BY WYETH TO
2 DOCTORS, TO PATIENTS, TO THE PDR.

3 1995, WYETH INTERNAL. THERE WAS VERY LITTLE DATA
4 AVAILABLE TO SUPPORT THE EFFICACY OF THIS CLASS OF
5 COMPOUND. TRANSLATION: THERE'S VERY LITTLE TO SUPPORT
6 ANY BENEFIT FOR THIS DRUG AT ALL IN OUR DATA, BUT WE'RE
7 GOING TO KEEP SELLING IT.

8 1995, THE FDA INFORMS THEM PLEASE DISCOURAGE
9 COMBINED USE. COMBINED USE MEANS THE COMBINED USE OF
10 FENFLURAMINE AND PHENTERMINE, THE FEN-PHEN COMBINATION.

11 BEFORE LINDA EICHMILLER TOOK THE FIRST PONDIMIN
12 PILL, WYETH ALREADY HAD MANY REPORTS OF VALVULAR HEART
13 DISEASE, MANY REPORTS OF PULMONARY HYPERTENSION
14 SECONDARY TO VALVULAR HEART DISEASE IN THE UNITED
15 STATES. WYETH ALSO HAD MANY REPORTS FROM ABROAD, MANY
16 FOREIGN ADVERSE DRUG EVENT REPORTS BEFORE LINDA
17 EICHMILLER TOOK THE VERY FIRST PONDIMIN PILL, THE VERY
18 FIRST PONDIMIN PILL. THAT'S HOW SHE WENT TO THIS
19 DOCTOR HERE IN ATLANTA.

20 AND YOU KNOW WHAT, THE DOCTOR DIDN'T TELL HER
21 ANYTHING ABOUT THIS BECAUSE HE DIDN'T KNOW BECAUSE THE
22 DRUG COMPANY DIDN'T TELL HIM, BECAUSE THEY DIDN'T TELL
23 THE FDA, AND BECAUSE THEY DIDN'T TELL THE PATIENTS. IT
24 WAS NEVER IN THE PHYSICIANS' DESK REFERENCE BECAUSE
25 THERE WAS NO VALVULAR HEART DISEASE WARNING. THERE WAS

565

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1 NO PULMONARY HYPERTENSION WARNING IN THE PHYSICIANS'
2 DESK REFERENCE. AND SO SHE TOOK THIS DRUG THINKING
3 THAT THERE WAS BASICALLY NO RISK, THINKING THAT THERE
4 WOULD BE A BENEFIT, SOME BENEFIT, TO HER, BUT THAT
5 THERE WOULD BE NO RISK. SHE NEVER HEARD THE WORDS
6 VALVULAR HEART DISEASE OR PULMONARY HYPERTENSION. SHE
7 DIDN'T KNOW OF THAT RISK.

8 SO SHE'S TAKEN THE DRUG. AND WYETH INTERNAL SAYS
9 THE EFFICACY OF REDUX IS NON-IMPRESSIVE AND IT'S
10 INSUFFICIENT FOR THE NEEDS OF THE PATIENTS DOCTORS
11 WOULD LIKE TO PRESCRIBE IT FOR. REDUX IS THE SAME
12 THING BASICALLY AS PONDIMIN, JUST A LATER VERSION OF IT
13 THAT CAME OUT. BUT IT'S GOT THE SAME -- YOU'LL HEAR
14 THE EVIDENCE ON THIS -- THE SAME BASIC CHEMICAL
15 STRUCTURE THAT CAUSES THE SAME BASIC PROBLEM OF
16 VALVULAR HEART DISEASE AND PULMONARY HYPERTENSION
17 ASSOCIATED WITH VALVULAR HEART DISEASE.

18 SO WHILE SHE'S TAKING THE DRUG, THEY'RE SAYING
19 IT'S NOT VERY EFFECTIVE --

20 THE COURT REPORTER: WAIT JUST A MINUTE. I'M
21 SORRY.

22 (PAUSE IN THE PROCEEDINGS.)

23 MR. FLEMING: SO WHILE SHE'S TAKING THE DRUG,
24 THEY'RE SAYING IT'S NOT VERY EFFECTIVE. AND WHILE
25 SHE'S TAKING THE DRUG, WYETH IS SAYING I'M SURE THERE

566

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1 ARE ELEMENTS WITHIN THE FDA WHO WOULD LIKE TO MAKE A
2 VARIETY OF RESTRICTIONS ON OUR NEW DRUG, REDUX, THAT'S
3 COMING OUT THAT HAS THE SAME EFFECT AS PONDIMIN. WE
4 WILL MAKE EVERY EFFORT TO NEUTRALIZE THESE ISSUES. SO
5 YOU CAN SEE THE RELATIONSHIP THAT THIS COMPANY HAS WITH
6 THE FOOD AND DRUG ADMINISTRATION.

7 1995, NO VALVULAR HEART DISEASE WARNING BY WYETH,
8 INADEQUATE, NO PH WARNING IN THE PHYSICIAN'S DESK
9 REFERENCE BY WYETH. BUT IN 1996, WHILE SHE'S STILL
10 TAKING THE DRUG, DR. THOMPSON OF THE HARVARD MEDICAL
11 SCHOOL REPORTS ADDITIONAL CASES OF VALVULAR HEART
12 DISEASE. AND SHE'S TAKING THE DRUG. NO WARNING.

13 1996, AFTER ALL OF THIS, THEY GET THE NEW DRUG,
14 THEIR NEW MAGIC PILL, REDUX APPROVED. AND RIGHT AFTER
15 SHE TAKES THE DRUG -- STOPS TAKING THE DRUG, WYETH
16 INTERNAL SAYS THERE'S A NUMBER -- ALREADY THERE'S A
17 NUMBER OF REQUESTS FOR REDUX REFUNDS BECAUSE MOST ARE
18 DUE TO LACK OF DRUG EFFECT. PATIENTS ARE REPORTING THE
19 DRUG DOESN'T HAVE ANY IMPACT ON ME; AND, THEREFORE, I
20 WANT MY MONEY BACK.

21 1996, NO VALVULAR HEART DISEASE WARNING. NO
22 PULMONARY HYPERTENSION WARNING, ALL DURING THE TIME
23 SHE'S TAKING THE DRUG.

24 1997, DR. DOLAN REPORTS VALVULAR HEART DISEASE TO

25 WYETH. THERE ARE THEN 15 REPORTS FROM MAYO CLINIC OF

567

1 VALVULAR HEART DISEASE THAT ARE REPORTED DIRECTLY TO
2 WYETH, BUT THERE'S NO VALVULAR HEART DISEASE WARNING BY
3 WYETH IN THE LITERATURE. EVEN AFTER THEY GOT THE
4 REPORT DIRECTLY FROM MAYO CLINIC, THEY DIDN'T PUT -- IT
5 TOOK THEM FIVE MONTHS TO PUT IT IN ANY KIND OF REPORT
6 WARNING ON THE LABEL.

7 FINALLY, AND MERCIFULLY, THE FDA SUMMONS WYETH TO
8 ROCKVILLE, MARYLAND, TO THEIR HEADQUARTERS AND THEY ASK
9 THEM -- THEY DON'T ASK THEM, THEY ASK THEM KIND OF LIKE
10 YOU GET ASKED ARE YOU GOING TO QUIT OR ARE YOU GOING TO
11 GET FIRED -- TO VOLUNTARILY WITHDRAW THIS DRUG. WYETH
12 WITHDREW THE DRUG ON 9/15/1997. THIS IS A DRUG THAT
13 HADN'T BEEN PUT BACK ON THE MARKET SINCE.

14 THERE'S TWO THINGS IN THIS COMBINATION,
15 FENFLURAMINE AND PONDIMIN THAT THIS LADY TOOK AND
16 ANOTHER DRUG CALLED PHENTERMINE, FEN-PHEN, WHICH THIS
17 LADY TOOK. PHENTERMINE IS STILL ON THE MARKET. IT'S
18 STILL APPROVED BY THE FDA. IT'S STILL AVAILABLE TO BE
19 BOUGHT BECAUSE IT'S NOT DANGEROUS. THIS DRUG, ON THE
20 OTHER HAND, WHICH LINDA EICHMILLER TOOK, IS NOT
21 AVAILABLE. IT'S BEEN WITHDRAWN FROM THE MARKET. AND
22 THE HEALTH AND HUMAN SERVICES ADMINISTRATION, THE FOOD
23 AND DRUG ADMINISTRATION, AND THE CDC HAVE ALL FOUND
24 THAT THIS DRUG IS DANGEROUS, THAT IT CAUSES VALVULAR
25 HEART DISEASE, SECONDARY PULMONARY HYPERTENSION. AND

568

1 WE WILL SHOW THAT'S EXACTLY WHAT THIS LADY HAS, AND SHE
2 GOT IT FROM WYETH.

3 WYETH'S CEO SPINNING THIS WHOLE THING SENDS AN
4 E-MAIL TO HIS EMPLOYEES THAT THEY WITHDREW THE DRUG
5 BASED ON NEW INFORMATION ON VALVULAR HEART DISEASE.
6 WELL, IT MAY HAVE BEEN NEW TO THE FDA BECAUSE WYETH
7 JUST REPORTED IT TO THEM, BUT IT SURE WASN'T NEW TO
8 WYETH, AS YOU CAN SEE HERE IN 1991. LINDA EICHMILLER
9 STILL DIDN'T KNOW WHAT WAS GOING ON. SHE HAD STOPPED
10 TAKING PONDIMIN IN 1996. SHE WAS SOON TO FIND OUT.

11 YOU SEE, IT'S NOT UNTIL 1998 THAT THEY FINALLY DO
12 WHAT'S CALLED A BLACK BOX WARNING. AND A BLACK BOX
13 WARNING IN THE PDR IS SOMETHING THAT OCCURS RIGHT AFTER
14 THE TITLE OF THE DRUG. AND IF THERE'S SOME REAL DANGER
15 TO THE DRUG THAT THE DRUG COMPANIES WANT THE
16 PRESCRIBING DOCTOR TO KNOW ABOUT, THEY PUT IT IN A
17 BLACK BOX RIGHT AT THE BEGINNING OF THE DRUG LABEL.
18 YOU'VE PROBABLY SEEN SOME OF THOSE BLACK BOX WARNINGS
19 YOURSELF. AND BASICALLY THAT BLACK BOX IS MEANT TO
20 DRAW THE ATTENTION OF THE PHYSICIAN AND TO THE PATIENT
21 OF THE DANGERS ASSOCIATED WITH THAT DRUG. NO BLACK BOX
22 WARNING HERE. NO BLACK BOX WARNING THERE. BLACK BOX
23 WARNING FINALLY COMES TOO LATE IN 1998 AND NOT UNTIL
24 THE DRUG IS PULLED FROM THE MARKET.

25 HERE'S WHAT THE BLACK BOX WARNING SAYS, FOLKS.

1 "PONDIMIN, FENFLURAMINE, HAS BEEN REPORTED TO BE
2 ASSOCIATED WITH THE OCCURRENCE OF SERIOUS REGURGITANT
3 CARDIAC VALVULAR DISEASE, INCLUDING DISEASE OF THE
4 MITRAL --" LINDA EICHMILLER HAS IT -- "AORTIC --" LINDA
5 EICHMILLER HAS IT -- "AND/OR TRICUSPID VALVES. IN ONE
6 LITERATURE REPORT, 24 PATIENTS WHO RECEIVED COMBINATION
7 THERAPY WITH FENFLURAMINE AND PHENTERMINE FOR TREATMENT
8 OF OBESITY WERE FOUND TO HAVE REGURGITANT CARDIAC
9 VALVULAR DISEASE."

10 YOU SAW THAT IN THE DEMONSTRATIVE AID EARLIER.
11 THIS IS THE FIRST TIME, 1998, LADIES AND GENTLEMEN OF
12 THE JURY, THAT WYETH EVER SAW FIT TO PUT A BLACK BOX
13 WARNING LIKE THIS ON THEIR DRUG. AND THAT'S WHAT THEY
14 SAID. TWENTY-FOUR REPORTS. YOU KNOW WHY? IT'S OFF
15 THE MARKET HERE. IT CAN'T BE SOLD IN 1998.

16 LINDA EICHMILLER DIDN'T HAVE THE ADVANTAGE OF
17 KNOWING THIS. AND THEY DID IT BASED UPON 24 REPORTS
18 FROM MAYO CLINIC. THEY HAD MORE REPORTS THAN THAT
19 BEFORE LINDA EICHMILLER TOOK THE DRUG. I SUGGEST TO
20 YOU THAT IF YOU EVER TOLD ANYBODY, LOOK, YOU TAKE THIS
21 DRUG, YOU RUN THE RISK OF GETTING SERIOUS REGURGITANT
22 CARDIAC VALVULAR DISEASE, YOU HAVE THE RISK OF HAVING
23 VALVE REPLACEMENT SURGERY, ABOUT A \$750,000 OPERATION
24 LIKE SHE'S GOING TO HAVE, YOU TAKE THE RISK OF HAVING
25 YOUR CHEST CRACKED OPEN, YOUR HEART CUT OPEN, AND THE

570

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1 VALVE REMOVED, BUT YOU COULD LOSE 4 TO 6 POUNDS, WHAT
2 DOCTOR WOULD EVER PRESCRIBE THAT? WHAT PATIENT WOULD
3 EVER TAKE IT? WHAT PATIENT OR DOCTOR WOULD UTILIZE

4 THIS DRUG IF THEY KNEW WHAT THEY KNEW BEFORE LINDA
5 EICHMILLER TOOK THE DRUG?

6 AUGUST 20, 1998, DR. BASIL MARGOLIS OF THE
7 CARDIOVASCULAR SPECIALISTS, P.C., OF ATLANTA PERFORMS
8 AN ECHO SHOWING LINDA EICHMILLER HAS AORTIC VALVE
9 REGURGITATION. IT TAKES THAT LONG TO DEVELOP ON THE
10 ECHO SHE'S GOT AORTIC VALVE REGURGITATION, JUST LIKE
11 THESE 24 PATIENTS HAVE REGURGITANT CARDIAC VALVULAR
12 DISEASE, JUST LIKE THE FDA FEARED, JUST LIKE THE CDC
13 FOUND, JUST LIKE THE HHS CONFIRMED SERIOUS CARDIAC
14 VALVULAR DISEASE. THAT MEANS, JUST LIKE WE SHOWED YOU
15 BEFORE, THAT HER BLOOD INSIDE HER HEART IS NOW GOING
16 BACKWARDS. THAT MEANS HER HEART IS HAVING TO PUMP
17 HARDER AND HARDER AND HARDER AND HARDER. THAT MEANS
18 SHE HAS THE LESIONS THAT ARE ON HER HEART VALVES.
19 THEY'RE PRESENT. AND THE TESTIMONY IS GOING TO BE
20 THEY'RE NOT GOING TO GO AWAY. IT'S PERSONAL AND THE
21 TESTIMONY WILL BE AND YOU'LL HEAR IT FROM DR. GROVER
22 HUTCHINS OF THE JOHN HOPKINS MEDICAL SCHOOL THAT IT'S
23 NOT GOING TO GO AWAY AND IT'S PROGRESSIVE. IT WILL GET
24 WORSE AND WORSE AND WORSE UNTIL THIS 53-YEAR-OLD LADY
25 HAS TO DO SOMETHING ABOUT IT.

571

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1 FINALLY, SHE GETS A REPORT, GOES BACK IN FOUR
2 MONTHS LATER ON FEBRUARY 27TH, '02. ECHO REPORT COMES
3 BACK SEVERE AR -- AR MEANS AORTIC REGURGITATION --
4 MODERATE MITRAL REGURGITATION, PULMONARY HYPERTENSION.
5 THE PROCESS THAT YOU SAW EARLIER HAS NOW CONTINUED.

6 SHE NOW HAS -- AND THEY CLASSIFY THESE THINGS AS MILD,
7 MODERATE, AND SEVERE. SHE'S GONE FROM MILD TO MODERATE
8 TO SEVERE ON AORTIC REGURGITATION. SHE'S GONE NOW TO
9 MODERATE REGURGITATION.

10 SHE'S DOING OKAY NOW. SHE'S NOT IN BAD SHAPE IN
11 TERMS OF CARRYING OUT HER DUTIES AND RESPONSIBILITIES
12 NOW. SHE'S NOT IN BAD SHAPE AS FAR AS CARRYING OUT HER
13 DAY-TO-DAY LIFE RIGHT NOW. AND I WANT YOU TO KNOW THAT
14 RIGHT NOW. BUT WHAT HER TREATING PHYSICIAN, DR. GEORGE
15 CHANG, IS SAYING, AND WHAT THE EXPERTS ARE SAYING IN
16 THIS CASE, IS THAT LINDA EICHMILLER IS NOT GOING TO BE
17 WELL OVER TIME. SHE'S GOING TO HAVE TO HAVE, HAVE TO
18 HAVE, VALVULAR HEART SURGERY. AND WHAT THAT VALVULAR
19 HEART SURGERY ENTAILS IS A SEPARATION OF THE STERNUM; A
20 PULL BACK TO SHOW THE HEART AND THE LUNGS; PUTTING THE
21 HEART AND THE LUNGS ON A MACHINE SO THE FUNCTION CAN BE
22 DONE BY THE HEART AND THE LUNGS; ACTUALLY CUTTING INTO
23 THE HEART ITSELF AND OPENING THE HEART UP SO THAT THE
24 PHYSICIAN CAN SEE THE VALVES; CUTTING THE VALVE, THE
25 AORTIC VALVE, OUT AND PUTTING IN A MECHANICAL VALVE. A

572

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1 MECHANICAL VALVE, PUTTING IN A MECHANICAL VALVE.

2 AND THIS IS A MECHANICAL VALVE. SOME OF YOU MAY
3 HAVE SEEN THIS BEFORE. AND THIS REPLACES THE NATURAL
4 VALVE IN THE HEART. AND YOU'RE GOING TO HEAR THE
5 TESTIMONY THAT THIS IS THE KIND OF MECHANICAL VALVE
6 THAT LINDA EICHMILLER IS GOING TO HAVE TO HAVE
7 INSTALLED IN HER HEART. AND THEN AFTER THEY GET IT
8 INSTALLED IN HER HEART, THEY'RE GOING TO HAVE TO CLOSE

9 THE HEART BACK UP AND CLOSE HER CHEST BACK UP. AND
10 THEN SHE'S GOING TO HAVE TO REALLY LIVE FOR THE REST OF
11 HER LIFE ON WHAT'S CALLED COUMADIN THERAPY.

12 AND COUMADIN THERAPY IS A BLOOD THINNER. AND SO
13 EVERY TIME SHE GOES -- AND THE PURPOSE OF THE BLOOD
14 THINNER IS TO MAKE SURE SHE DOESN'T STROKE OUT BECAUSE
15 OF THE BLOOD CLOT ON THIS LITTLE MECHANICAL VALVE. AND
16 SO EVERY TIME SHE GOES TO A DENTIST, SHE'S GOING TO
17 HAVE TO GO OFF COUMADIN FOR A WHILE BECAUSE THEY'RE
18 GOING TO CUT ON HER AND BLOOD CONTINUES TO FLOW AFTER
19 THAT.

20 EVERY TIME SHE HAS WHAT YOU OR I WOULD CONSIDER TO
21 BE A MINOR BRUISE, LIKE SHE FALLS ON HER PORCH AND YOU
22 GET BRUISED ON YOUR HIP, THIS LADY MAY GET HOSPITALIZED
23 FOR IT. EVERY TIME SHE GETS CUT, JUST A NICK, THIS
24 LADY HAS GOT A PROBLEM BECAUSE SHE DOESN'T HAVE THE
25 CLOTTING MECHANISM OF THE BLOOD ANYMORE.

573

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1 YOU KNOW WHAT, IF I WERE ABOUT THIS CLOSE TO YOU,
2 YOU COULD HEAR ME. YOU COULD HEAR ME GO TICK, TICK,
3 TICK EVERY TIME THIS VALVE OPENED, EVERY TIME THIS
4 VALVE CLOSED. THAT'S WHAT LINDA EICHMILLER HAS TO LOOK
5 FORWARD TO IN THE FUTURE. SHE'S OKAY RIGHT NOW, BUT
6 SHE'S NOT GOING TO BE OKAY IN THE FUTURE. AND THAT'S
7 WHAT THE TESTIMONY IS GOING TO SHOW.

8 NOW, LADIES AND GENTLEMEN, FINALLY WE TOOK THE
9 DEPOSITIONS OF SOME OF WYETH'S EXPERTS THAT YOU'RE
10 GOING TO HEAR IN THIS CASE. ONE OF THEM IS

11 DR. STODDARD, EXPERT CARDIOLOGIST OF WYETH. HERE'S
12 WHAT HE SAID. JULY 10, 2003, WE TOOK HIS DEPOSITION.
13 DR. STODDARD REFERRED TO PONDIMIN AS THE CULPRIT FOR
14 EICHMILLER'S AORTIC REGURGITATION.

15 THE EVIDENCE IN THIS CASE, LADIES AND GENTLEMEN OF
16 THE JURY, IS GOING TO SHOW THAT AFTER WYETH TOOK OVER
17 PONDIMIN, THEY BEGIN TO GET REPORTS OF VALVULAR HEART
18 DISEASE, THAT THEY BEGIN TO GET REPORTS FOR PULMONARY
19 HYPERTENSION ASSOCIATED WITH VALVULAR HEART DISEASE,
20 THAT THEY BEGIN TO GET INCREASED REPORTS OF VALVULAR
21 HEART DISEASE, THAT THEY BEGIN TO GET INCREASED REPORTS
22 OF PULMONARY HYPERTENSION ASSOCIATED WITH VALVULAR
23 HEART DISEASE, THAT THEY KNEW THAT THE DRUG WAS NOT
24 EFFECTIVE, THAT THEY KNEW THERE WAS A MINIMAL LOSS OF
25 WEIGHT WITH THE DRUG, THEY HAD IN THEIR INTERNAL FILES

574

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1 THAT -- AND THEIR INTERNAL FILES WILL SHOW THAT AND AT
2 THE TIME SHE TOOK THE DRUG, THEY HAD NO VALVULAR HEART
3 DISEASE WARNING. THEY HAD NO PULMONARY HYPERTENSION
4 WARNING. THEY HAD NONE IN '96. AGAIN SHE KEPT ON
5 TAKING THE DRUG. AND THEY WERE FORCED FINALLY TO TAKE
6 THIS DRUG OFF THE MARKET BECAUSE OF 24 REPORTS THAT
7 THEY GOT IN 1995 THAT FORCED THEM TO FINALLY TAKE IT
8 OFF THE MARKET WHEN THEY KNEW THAT BEFORE SHE EVEN
9 STARTED TAKING THE DRUG.

10 THE EVIDENCE WILL SHOW THAT THIS IS A DANGEROUS,
11 IT IS A NON-EFFECTIVE DRUG. THE EVIDENCE WILL SHOW IT
12 NEVER SHOULD HAVE BEEN ON THE MARKET AT THIS TIME.

13 IF YOU TAKE A LOOK AT THIS GRAPH, YOU'LL SEE THE
Page 41

14 CHANCES OF A PERSON HERE HAVING CIGARETTE SMOKING AND
15 GETTING LUNG CANCER IS AN ODDS -- WHAT THEY CALL AN
16 ODDS RATIO OR CHANCE RATIO OF 8. WITH FEN-PHEN, THE
17 CHANCE OF THE FEN, THE FENFLURAMINE, THE PONDIMIN
18 CAUSING VALVULAR HEART DISEASE IS ABOUT 7 TIMES AS
19 GREAT. SEVEN TIMES AS GREAT.

20 MOST PEOPLE ACCEPT THE FACT THAT SMOKING CAUSES
21 LUNG CANCER. THAT'S WHY ON THOSE LITTLE CIGARETTE
22 PACKS THAT YOU SEE, YOU SEE THESE BOLD WARNINGS. BUT
23 YOU'VE GOT A DRUG HERE IN FEN-PHEN THAT'S 7 TIMES MORE
24 LIKELY TO CAUSE VALVULAR HEART DISEASE, AND YOU DON'T
25 HAVE ANY WARNING AT ALL. NONE.

575

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1 ONE OF THE THINGS THAT WE'LL TALK ABOUT A LITTLE
2 BIT IS THE FDA. AND I WANT YOU TO UNDERSTAND THE
3 RELATIONSHIP TO THIS COMPANY WYETH AND THE FDA. AND I
4 WANT YOU TO UNDERSTAND THE DIFFERENCES IN SIZE BECAUSE
5 THIS IS NOT THE ONLY DRUG COMPANY THAT THE FDA HAS
6 RESPONSIBILITY FOR. YOU KNOW, THERE'S THE PFIZER'S OF
7 THIS WORLD, THERE'S THE ELI LILLY'S, GLAXOSMITHKLINE
8 BEECHAM, THERE'S ALL OF THESE DRUG COMPANIES THAT ARE
9 HUGE.

10 WYETH HAS 52,000 EMPLOYEES. THAT'S WHAT WE'RE
11 LOOKING AT. IN CONTRAST, WHAT THE FDA HAS IS A LITTLE
12 DIFFERENT. THEY HAVE 1400 EMPLOYEES WHOSE PRINCIPAL
13 DUTIES RELATE TO NEW DRUG APPROVAL. WE'RE NOT TALKING
14 ABOUT NEW DRUG APPROVAL. NEW DRUG APPROVAL ALREADY
15 OCCURRED BEFORE WYETH TOOK THIS DRUG IN 1990. WHAT

16 WE'RE TALKING ABOUT IS MONITORING OF THAT DRUG FOR
17 ADVERSE DRUG EVENT REPORTS. AND WHAT THE FDA HAS IS
18 52, COUNT THEM, 1998, STATISTICAL DATA, 52 TOTAL
19 MONITORS OF THE SAFETY OF 5,000 BRAND NAMES, GENERIC,
20 AND OVER-THE-COUNTER DRUGS THAT ARE ALREADY ON THE
21 MARKET. FIFTY-TWO FOR 5,000. THAT'S WHAT THE FDA HAS.

22 THIS IS AN INDUSTRY THAT RELIES UPON THE
23 INTEGRITY, THE SELF-REGULATION OF THE COMPANIES THAT
24 RATE. THIS IS AN INDUSTRY IN WHICH THE FDA RELIES UPON
25 THE REPORTING OF ADE'S, ADVERSE DRUG EVENT REPORTS,

576

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1 FROM THESE COMPANIES TO THE FDA. AND IT RELIES UPON
2 THEM TO TAKE ACTION. FDA DOESN'T MAKE THESE DRUGS.
3 THE SELLERS OF THESE DRUGS ARE THE DRUG COMPANIES,
4 WYETH-AYERST. THEY'RE THE ONES UNDER THE FEDERAL
5 REGULATIONS THAT ARE RESPONSIBLE FOR THE WARNING
6 LABELS. THE DRUG COMPANIES ARE THE ONES THAT ARE
7 RESPONSIBLE FOR THE SALES OF THE PRODUCTS, AND THEY'RE
8 ALSO RESPONSIBLE TO TAKE THE PRODUCT OFF THE MARKET
9 WHEN IT BECOMES APPARENT THAT THERE ARE SOME REASONABLE
10 DANGERS. DRUG COMPANIES DO THAT. THIS ONE DIDN'T.
11 THIS ONE WAS FORCED TO TAKE IT OFF THE MARKET BASED
12 UPON NEW INFORMATION THEIR CEO FOUND OUT ABOUT IN 1991.
13 IT TOOK THEM SIX YEARS TO REACT. THAT'S TOO LONG THE
14 EVIDENCE WILL SHOW.

15 THESE ADE'S, YOU'LL HEAR A LOT ABOUT THEM, THE
16 ADVERSE DRUG EVENT REPORTS, THEY COME INTO THE COMPANY,
17 THEY'RE MINIMALLY MULTIPLIED BY A HUNDRED BY THE
18 COMPANY. AND IT DOESN'T TAKE MANY OF THEM, AS YOU CAN

19 SEE HERE 24, FOR MOST COMPANIES TO REACT AND TAKE THE
20 DRUG OFF THE MARKET. THE EVIDENCE WILL SHOW THAT THEY
21 HAD MORE THAN THIS 24 BEFORE LINDA EICHMILLER TOOK THE
22 FIRST PILL AND THAT THIS DRUG SHOULD HAVE NEVER BEEN ON
23 THE MARKET FOR HER TO BE ABLE -- FOR HER DOCTOR TO
24 PRESCRIBE IT FOR HER TO TAKE IT.

25 HERE'S THE BENEFITS. HERE'S THE RISKS. THE

577

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1 BENEFITS: LITTLE OR NONE. FOUR TO 6 POUNDS. RISKS:
2 VALVULAR HEART DISEASE. RISK PULMONARY HYPERTENSION
3 ASSOCIATED WITH VALVULAR HEART DISEASE. YOU GET A
4 CHANCE TO HAVE YOUR HEART OPENED UP AND MECHANICAL
5 VALVE INSERTED IN AND THAT'S THE GOOD NEWS. IF THEY
6 DON'T GET YOU THE GOOD NEWS, THEN YOU HAVE CONGESTIVE
7 HEART FAILURE.

8 THIS IS A CASE ABOUT A COMPANY, LADIES AND
9 GENTLEMEN, A DRUG COMPANY THAT SOLD A PRODUCT THAT GOT
10 TO MS. EICHMILLER WHEN IT HAD VERY LITTLE BENEFIT, WHEN
11 IT HAD GREAT RISKS.

12 YOU'RE SEEING RIGHT HERE WHAT LINDA EICHMILLER
13 HAS. THIS IS A BETTER VERSION OF IT OVER HERE. YOU'RE
14 SEEING WHAT SHE HAS. AND WHAT SHE'S GOT IS AORTIC
15 VALVE REGURGITATION. THAT'S THIS ARROW RIGHT HERE.
16 THAT'S A BACKFLOW. THIS BLOOD IS SUPPOSED TO BE GOING
17 OUT THIS WAY AND UNDERNEATH THIS BLUE ARTERY. AND IT'S
18 ACTUALLY BACKFLOWING. AND WHAT WE'RE TALKING ABOUT IS
19 LITERALLY HUNDREDS OF GALLONS OF BLOOD THAT BACKFLOWS
20 IN HER HEART EVERY DAY IN THIS DISEASE VALVE.

21 WE'RE ALSO TALKING ABOUT A MITRAL VALVE THAT
22 BACKFLOWS. THAT'S WHAT THAT MODERATE MITRAL
23 REGURGITATION FINDING IS. AND WE'RE TALKING ABOUT THAT
24 BACKFLOW CREATING A BACKUP OF PULMONARY ARTERY PRESSURE
25 INSIDE HER HEART THAT PLACES PRESSURE ON HER HEART AND

578

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1 CAUSES IT TO HAVE TO WORK HARDER.

2 THAT'S A PICTURE OF WHAT THIS LADY HAS. THAT'S
3 WHAT THE EVIDENCE IS GOING TO SHOW WITH REGARD TO THE
4 LIABILITY IN THIS CASE.

5 MR. O'BRIEN IS GOING TO TALK WITH YOU NOW A LITTLE
6 BIT ABOUT WHAT THE EVIDENCE IS GOING TO SHOW WITH
7 REGARD TO LINDA EICHMILLER'S DAMAGES.

8 THE COURT: THANK YOU. WE'RE GOING TO TAKE A
9 10-MINUTE RECESS, LADIES AND GENTLEMEN, BEFORE
10 MR. O'BRIEN DOES THAT BECAUSE YOU'VE BEEN SITTING THERE
11 A MINUTE. ALL RIGHT. AND YOU'RE WELCOME TO BRING
12 COFFEE AND COKE BACK WITH YOU.

13 (THE JURY RETIRED FROM THE
14 COURTROOM AT 10:15 A.M.)

15 THE COURT: YOU MAY BE SEATED.

16 MR. BLEAKLEY, IT IS MY UNDERSTANDING THAT IT IS,
17 IN FACT, WYETH'S POSITION, THAT ARGUMENT VIOLATED JUDGE
18 BARTLE'S ORDER; IS THAT RIGHT?

19 MR. BLEAKLEY: YES, YOUR HONOR.

20 THE COURT: OKAY. THIS IS WHAT WE'RE GOING TO DO.
21 I'M GOING TO SWITCH COURT REPORTERS OUT. THE COURT
22 REPORTER, THIS COURT REPORTER, WILL TRANSCRIBE THE
23 LIABILITY ARGUMENT. IT WILL BE SUBMITTED TO JUDGE

24 BARTLE. IF HE TELLS ME THERE'S BEEN A VIOLATION
25 BECAUSE I'M OBLIGATED TO ENFORCE THESE ORDERS, I'M

579

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1 DECLARING A MISTRIAL. ALL RIGHT? IF THERE'S NO
2 VIOLATION, WE WILL CARRY ON. IN THE MEANTIME, WE WILL
3 CARRY ON WITH THESE ARGUMENTS.

4 ALL RIGHT. WE NEED A FEW MINUTES FOR THE COURT
5 REPORTERS TO SWITCH OUT. SO IT WILL TAKE HER ABOUT AN
6 HOUR TO TRANSCRIBE THIS. SO IT WOULD BE NICE IF THAT
7 HEARING WAS AT 1:00 O'CLOCK.

8 MR. BLEAKLEY: I DIDN'T HEAR WHAT YOU SAID.

9 THE COURT: IT WILL TAKE ABOUT AN HOUR TO
10 TRANSCRIBE THIS HEARING. IF YOU GUYS HAVE ANYBODY UP
11 THERE THAT COULD FIND OUT, I WOULD APPRECIATE IT.

12 MR. O'BRIEN: IT WOULD BE MUCH BETTER TRYING TO
13 GET IT SCHEDULED BACK AT 1:00.

14 MR. PERERIA: IT'S CURRENTLY SCHEDULED AT 10:30.

15 MR. BLEAKLEY: I DIDN'T KNOW THAT.

16 MR. FLEMING: THAT'S THE FIRST TIME I HEARD IT
17 OBVIOUSLY.

18 THE COURT: NOTES. YOU WERE TALKING, WE WERE
19 PASSING NOTES.

20 ALL RIGHT. THANK YOU. WE'LL BE IN RECESS TO
21 ALLOW THE COURT REPORTERS TO SWITCH OUT.

22 (A RECESS WAS TAKEN.)

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C E R T I F I C A T E

STATE OF GEORGIA,
COUNTY OF FULTON:

I DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE TAKEN DOWN, AS STATED IN THE CAPTION, AND THAT THE FOREGOING VOLUME III-A, PAGES 531 THROUGH 580, REPRESENT A TRUE, CORRECT AND COMPLETE TRANSCRIPT OF SAID PROCEEDINGS.

THIS CERTIFICATION IS EXPRESSLY WITHDRAWN AND DENIED UPON THE DISASSEMBLY OR PHOTOCOPYING OF THE FOREGOING TRANSCRIPT OR ANY PART THEREOF, INCLUDING EXHIBITS, UNLESS SAID DISASSEMBLY OR PHOTOCOPYING IS DONE BY THE UNDERSIGNED OFFICIAL COURT REPORTER AND ORIGINAL SIGNATURE AND SEAL IS ATTACHED THERETO.

THIS, THE 6TH DAY OF NOVEMBER, 2003.

JULIE A. BRANDAU
OFFICIAL COURT REPORTER
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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