

APPEARANCES OF COUNSEL:

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

FOR THE DEFENDANT: PETER T. GROSSI, ESQ.
 PETER BLEAKLEY, ESQ.
 ARNOLD & PORTER

 RICHARD SINKFIELD, ESQ.
 ROGERS & HARDIN

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3 THE COURT: IT'S MY UNDERSTANDING THAT THE JURORS
4 ARE ALL BACK. SO THE FIRST ORDER OF BUSINESS IS GOING
5 TO BE TO SEND THEM HOME, UNLESS THE GAME PLAN HAS
6 CHANGED.

7 MR. BLEAKLEY: I DON'T THINK SO.

8 MR. FLEMING: NO CHANGES.

9 THE COURT: ALL RIGHT. BRING THE JURY IN.

10 (THE JURY RETURNED TO THE
11 COURTROOM AT 2:00 P.M.)

12 THE DEPUTY SHERIFF: JUDGE, THE JURY IS ALL
13 PRESENT.

14 THE COURT: ALL RIGHT. YOU MAY BE SEATED.

15 LADIES AND GENTLEMEN, THERE'S SOME MATTERS THAT
16 HAVE COME UP THAT WE NEED TO RESOLVE. AND I THINK IT
17 WILL BE THE BEST USE OF YOUR TIME FOR US TO TAKE THE
18 AFTERNOON TO RESOLVE THEM AS OPPOSED TO HAVING YOU
19 HERE. OKAY. NOW, SO WHAT THAT MEANS FOR YOUR PURPOSES
20 IS THAT I'M GOING TO EXCUSE YOU, AND YOU WILL REPORT
21 BACK TOMORROW MORNING.

22 AS I TOLD YOU, DURING THE COURSE OF THE TRIAL,
23 THERE MAY BE SOME DAYS THAT WILL BE LONGER OR SHORTER.
24 TOMORROW YOU ARE TO REPORT AT 10:30, RIGHT HERE,
25 COURTROOM 5-B. YOU WILL BE HERE UNTIL ABOUT 2:00

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1 O'CLOCK. SO BRING A SNACK WITH YOU BECAUSE WE WILL
2 PROBABLY TAKE A BRIEF RECESS AS OPPOSED TO TAKING A
3 FULL LUNCH BREAK.

4 IT IS MY HOPE, AS I SAID, BY ALLOWING YOU TO LEAVE
5 TODAY, THAT WE CAN TAKE CARE OF SOME MATTERS THAT WILL

6 BASICALLY FACILITATE THE OFFICIAL PRESENTATION OF THIS
7 CASE TO YOU.

8 INSOFAR AS YOU'RE NOT HAPPY, REMEMBER, ME, NOT
9 THEM.

10 ALL RIGHT. PLEASE LEAVE YOUR PADS HERE. AND I
11 WILL SEE YOU TOMORROW MORNING AT 10:30. AND THANKS
12 ONCE AGAIN FOR BEING TIME CONSCIOUS. I REALLY
13 APPRECIATE IT.

14 (THE JURY RETIRED FROM THE
15 COURTROOM AT 2:05 P.M.)

16 MR. GROSSI: YOUR HONOR, ONE TIME-SENSITIVE THING.
17 I DON'T KNOW IF MR. FLEMING AND THE COURT WAS RELYING
18 ON US TO SEND THAT SECOND PIECE OF TRANSCRIPT TO
19 PHILADELPHIA. I DON'T THINK WE'VE BEEN PROVIDED WITH
20 IT YET.

21 THE COURT: THE COURT REPORTER ACTUALLY SHOULD BE
22 FINISHING IT UP. AND IF YOU-ALL WILL JUST HANG RIGHT
23 HERE, I'LL SEE HOW MUCH LONGER IT'S GOING TO TAKE.

24 MR. GROSSI: THANK YOU, YOUR HONOR.

25 (PAUSE IN THE PROCEEDINGS.)

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1 THE COURT: MR. FLEMING, THERE WAS A
2 MISCOMMUNICATION. AND I WANT TO MAKE SURE THAT I TOLD
3 THE COURT REPORTER CORRECTLY. SHE THOUGHT YOU WANTED
4 MR. O'BRIEN'S OPENING AS WELL AS THE OBJECTIONS. AND
5 IT WAS MY UNDERSTANDING THAT ALL YOU WANTED TRANSCRIBED
6 FOR SENDING WAS THE SPECIFIC BASIS FOR THE OBJECTION,
7 MY REMARKS, AND YOUR RESPONSE TO THE OBJECTION. IS

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THAT RIGHT?
MR. FLEMING: THAT WOULD BE RIGHT, AFTER
MR. BLEAKLEY CONCLUDED HIS STATEMENT.
THE COURT: RIGHT.
MR. FLEMING: IT'S NOT THAT I'M NOT INTERESTED IN
WHAT MR. O'BRIEN SAID.
MR. O'BRIEN: CNN ASKED FOR MINE.
MR. FLEMING: BUT JUST THAT PIECE. YOU GOT IT.
YOU'RE RIGHT, YOUR HONOR.
THE COURT: AND IT WILL BE HALF AN HOUR OR LESS
NOW THAT SHE UNDERSTANDS EXACTLY WHAT IT IS. SO IT
WILL BE READY SHORTLY.
AND WHEN CNN CALLS, PLEASE LET HER KNOW.
ALL RIGHT.
MR. FLEMING: MAY I, YOUR HONOR?
THE COURT: YOU MAY, YES.
MR. FLEMING: YOUR HONOR, YOU BROUGHT UP A MATTER
IN CHAMBERS RIGHT BEFORE THE BREAK. AND IF THIS IS AN

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APPROPRIATE TIME, I WOULD LIKE TO TAKE THAT UP NOW.
THE COURT: IT IS.
MR. FLEMING: AND BASICALLY WE HAVEN'T HAD MUCH
CHANCE TO DO A LOT OF RESEARCH WITH THIS, BUT
MR. O'BRIEN IS READY TO STATE OUR POSITION WITH REGARD
TO IT.
MIKE.
THE COURT: ALL RIGHT. WELL, THE FIRST THING I
WOULD LIKE FOR YOU TO DO OR I'LL DO IT, IS SUMMARIZE
FOR THE RECORD EXACTLY WHAT THE ISSUE IS SO WE'RE ALL

11 IN AGREEMENT AS TO EXACTLY WHAT HAS OCCURRED.

12 FOR THE RECORD, ONE OF THE JURORS APPROACHED THE
13 BAILIFF AFTER THE OPENINGS AND INDICATED THAT SHE HAD
14 AN OPINION BASED UPON THE FACT THAT MS. EICHMILLER IS A
15 NURSE. AND I BELIEVE THE PHRASE SHE USED WAS THAT SHE
16 WAS BIASED. AND SPECIFICALLY SHE SAID HAD SHE KNOWN
17 THAT MS. EICHMILLER WAS A NURSE, THAT SHE WOULD HAVE
18 BEEN MORE FORTHCOMING IN HER RESPONSES TO THE QUESTIONS
19 THAT WERE RAISED DURING VOIR DIRE.

20 AND IF ANYBODY DISAGREES WITH THAT SUMMARY OF WHAT
21 THE BAILIFF COMMUNICATED, I WILL BE HAPPY TO HAVE THE
22 BAILIFF COME OUT AND STATE FOR THE RECORD HER BEST
23 RECOLLECTION OF WHAT WAS SAID TO HER.

24 MR. BLEAKLEY, ARE YOU SATISFIED?

25 MR. BLEAKLEY: NO, THAT'S CORRECT.

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1 MR. FLEMING: THAT'S FAIR.

2 THE COURT: MR. O'BRIEN.

3 MR. O'BRIEN: YES. THANK YOU, YOUR HONOR.

4 THE COURT: YES, SIR.

5 MR. O'BRIEN: THANK YOU. I DON'T PRESUPPOSE TO
6 TELL THE COURT ABOUT GEORGIA LAW SINCE YOU'RE CERTAINLY
7 MORE VERSE IN IT THAN I AM. THAT'S WHY WE'RE
8 CONDUCTING THIS RESEARCH. I WOULD NOTE TWO THINGS.
9 THIS COURT HAS REPEATEDLY INSTRUCTED THESE JURORS THAT
10 WHAT THE LAWYERS SAY IS NOT EVIDENCE, THAT THEY ARE
11 DUTY BOUND TO FOLLOW THE LAW AND THE EVIDENCE,
12 INSTRUCTIONS YOU GIVE, AND THAT THEY ARE NOT TO FORM

13 ANY OPINIONS OR TO HAVE ANY BIAS OR PREJUDICE. THIS
14 PARTICULAR STATEMENT CLEARLY SHOWS A VIOLATION OF THESE
15 COURT'S INSTRUCTIONS.

16 BACK TO THE ISSUE OF THEIR SELECTION OF THE
17 JURORS, HOWEVER, IT ALSO IMPINGES UPON WHAT I THINK WAS
18 FUNDAMENTAL FAIRNESS FOR BOTH SIDES, AND THAT IS THAT
19 THE JURORS ALL STATED AT SOME POINT IN TIME THAT THEY
20 COULD BE FAIR AND IMPARTIAL, THAT THEY WOULD WAIT TO
21 HEAR ALL OF THE EVIDENCE. HERE'S CLEARLY AN INSTANCE
22 WHERE THIS JUROR WITH ONE BIT OF INFORMATION HAS NOW
23 TILTED THE SCALES INAPPROPRIATELY. AND THAT IS THE
24 TYPE OF ISSUE THAT SHOULD HAVE BEEN DISCLOSED BY THIS
25 JUROR AT VOIR DIRE. SO IT GOES TO THE VERY ISSUE OF

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1 WHETHER OR NOT THE JUROR HAS PROPERLY DISCLOSED THE
2 BIAS OR PREJUDICE RAISED BOTH IN QUESTIONS BY BOTH
3 SIDES WHETHER OR NOT THIS PARTICULAR JUROR COULD BE
4 FAIR.

5 IT RAISES THE IMPORTANCE, OF COURSE, WHY WE SELECT
6 ALTERNATES. AND THAT IS NOT ONLY TO TAKE CARE OF
7 INSTANCES WHERE PHYSICAL OR OTHER ELEMENTS PRECLUDE A
8 JUROR'S ATTENDANCE OVER A LONG TERM BUT INSTANCES WHERE
9 JURORS, FOR ONE REASON OR ANOTHER, DO VIOLATE THAT
10 OATH, DO NOT DISCLOSE INFORMATION THAT IS VERY
11 IMPORTANT AT THE TIME OF VOIR DIRE, AND VIOLATE COURT'S
12 INSTRUCTIONS EXPLICITLY GIVEN BEFORE THEY HEAR ANY
13 ARGUMENT ON THE CASE.

14 I WILL GET CASE LAW. WE BELIEVE THERE IS CASE LAW
15 FROM GEORGIA THAT SAYS EVEN AFTER SELECTION, THESE

16 ISSUES RAISE, THEY MAY BE A BASIS FOR DISQUALIFICATION
17 AND EXCUSAL OF THAT JUROR. AND I WILL WAIT TO GET THAT
18 CASE LAW AND ARGUE THE ISSUE FURTHER TO YOU. THANK
19 YOU.

20 THE COURT: MR. BLEAKLEY. MR. SINKFIELD --
21 MR. BLEAKLEY.

22 MR. BLEAKLEY: YES, YOUR HONOR. I OBVIOUSLY CAN'T
23 REPRESENT ANY BETTER THAN MR. O'BRIEN DID AS TO WHETHER
24 THERE IS ANY VERY APPLICABLE GEORGIA CASE LAW. I HAVE
25 CONSULTED WITH MR. SINKFIELD, WHO ISN'T AWARE OF ANY.

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1 AND IF THERE IS CASE LAW, OBVIOUSLY THAT SHOULD BE
2 TAKEN INTO ACCOUNT BY THE COURT. BUT SINCE NONE HAS
3 BEEN CITED TO THE COURT, I THINK IT WOULD CLEARLY BE
4 INAPPROPRIATE TO DISQUALIFY THAT JUROR NOW. BUT
5 ASSUMING THERE ISN'T ANY CASE LAW CLEARLY ON POINT, I'M
6 SURE THIS IS NOT THE FIRST TIME THIS HAS HAPPENED TO
7 MR. O'BRIEN AND TO MR. FLEMING. IT SURE ISN'T THE
8 FIRST TIME IT'S HAPPENED TO ME OVER THE YEARS. JURORS
9 DO CHANGE THEIR MIND DURING THE COURSE, AND SOMETIMES
10 IT'S AFTER OPENING.

11 IT SEEMS TO -- YOU KNOW, THIS JUROR HAD NO
12 OBLIGATION TO DISCLOSE ANYTHING OTHER THAN HOW SHE FELT
13 AT THE TIME. SHE IS SAYING THAT HER MIND HAS BEEN
14 CHANGED -- WE DON'T KNOW WHAT'S GOING ON IN HER HEAD,
15 OBVIOUSLY; BUT SHE'S SAYING THAT FINDING OUT THAT THE
16 WOMAN IS A NURSE, THAT MS. EICHMILLER IS A NURSE.
17 WELL, YOU KNOW, SHE DOESN'T KNOW THAT YET. THAT'S

18 EVIDENCE. SHE'S GOING TO FIND THAT OUT WHEN EVIDENCE
19 IS INTRODUCED. AT THIS POINT IN TIME, ALL SHE KNOWS IS
20 WHAT I SAID.

21 IT SEEMS TO ME UNLESS THERE'S CLEARLY GEORGIA LAW
22 TO THE CONTRARY, THAT THE APPROPRIATE COURSE OF ACTION
23 AT MOST -- MAYBE NOT AT MOST, PROBABLY IS FOR YOU TO
24 REMIND THEM AGAIN, AGAIN GIVE THEM THE ADMONITION THAT
25 I TOLD YOU WHAT ALL OF THOSE PEOPLE SAID YESTERDAY WAS

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1 NOT EVIDENCE. YOU CAN'T MAKE UP YOUR MIND. OBVIOUSLY
2 SOME OF YOU HAVE GOT VIEWS THAT YOU HAVE FORMULATED TO
3 SOME EXTENT AFTER HEARING THESE ARGUMENTS. DON'T MAKE
4 UP YOUR MIND YET. I'M SURE YOUR HONOR HAS DONE THIS
5 MANY TIMES, TOLD THE JURORS AT THE END OF EVERY DAY IT
6 AIN'T OVER YET, YOU'RE GOING TO HEAR A LOT MORE
7 EVIDENCE, DON'T DECIDE. I THINK THAT KIND OF AN
8 ADMONITION TO THE JURORS IN GENERAL IS THE APPROPRIATE
9 COURSE OF ACTION.

10 MR. O'BRIEN: IF I MAY HAVE JUST A BRIEF REBUTTAL.
11 ONLY BECAUSE IT WAS SOMEWHAT INVITED BY HIS ARGUMENT,
12 YES, IT HAS HAPPENED TO ME AND IT'S HAPPENED TO ME IN A
13 CAPACITY NOT UNLIKE THIS COURT'S, THAT'S WHY YOU HAVE
14 ALTERNATE JURORS. A JUROR CLEARLY BOTH IN VOIR DIRE
15 DID NOT REVEAL THAT INFORMATION, ALSO SPECIFICALLY
16 VIOLATED THE COURT'S INSTRUCTION GIVEN TO THOSE JURORS
17 THAT THEY ARE NOT TO HAVE AN OPINION. THEY ARE TO WAIT
18 TO HEAR THE EVIDENCE.

19 IF I HAD ALTERNATE JURORS AVAILABLE, THE VERY
20 THING I WOULD DO -- AND I WILL ADVOCATE THAT THIS IS

21 NOT A POSITION I'M TAKING FOR PURPOSE OF THIS CASE, IS
22 THE POSITION I WOULD TAKE PERIOD, IS THAT THAT JUROR
23 SHOULD BE EXCUSED AND AN ALTERNATE PUT IN THAT PLACE.
24 THERE'S NOT ANY MORE FUNDAMENTAL TO THIS CASE FOR
25 THEM OR FOR US IS THAT WE HAVE A SET OF JURORS WHO WILL

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1 BE FAIR AND IMPARTIAL AND WILL FOLLOW YOUR DIRECTIONS.
2 THIS JUROR HAS ESSENTIALLY TOLD YOU "I CAN'T DO IT."
3 FOR US TO THEN GO FORWARD, IGNORE WHAT IS BEFORE US, IS
4 NOT APPROPRIATE. NOT WHEN THE ISSUE IS FUNDAMENTAL
5 FAIRNESS. THANK YOU.

6 THE COURT: OKAY. I'M NOT GOING TO MAKE ANY
7 DECISION RIGHT NOW. SO ANYBODY WHO WANTS TO PRESENT ME
8 WITH ANY AUTHORITY IS CERTAINLY WELCOME TO DO SO. I
9 WILL TELL YOU MY CONCERNS, TO THE EXTENT THAT MAY
10 FACILITATE ANY RESEARCH YOU WANT TO PRESENT TO ME,
11 FIRST IS WHETHER OR NOT THE JUROR, IN FACT, FAILED TO
12 DISCLOSE ANY INFORMATION. IF THE JUROR WAS VOIR DIRE
13 AND WAS NOT ASKED ANYTHING WHICH WOULD HAVE INVITED HER
14 OR REQUIRED HER TO DISCLOSE WHAT SHE NOW SAYS HER
15 PROBLEM IS, I DON'T KNOW THAT THERE'S A BASIS FOR THIS
16 COURT TO TAKE ANY ACTION SUCH AS DISQUALIFYING A JUROR
17 WHO DIDN'T DISCLOSE WHAT WASN'T ASKED. INSOFAR AS SHE
18 NOW SAYS SHE HAS BIASES AND OPINIONS, QUITE FRANKLY,
19 THE FACT THAT THIS TRIAL WILL TAKE TWO TO THREE WEEKS
20 PROBABLY HELPED HER TO START GETTING SOME.

21 SO BEFORE I DECIDE THAT SHE HAS ANY OR WHAT SHE
22 HAS, IN FACT, SAID, AT A MINIMUM, SHE WILL BE

23 QUESTIONED REGARDING WHATEVER IT IS SO THAT I'M
24 SATISFIED THAT WE HAVE NO ISSUE. AT LEAST IN THE FIRST
25 INSTANCE, THE QUESTION IS DID SHE FAIL TO DISCLOSE

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1 SOMETHING THAT SHE SHOULD HAVE DISCLOSED GIVEN WHAT WAS
2 ASKED. SO I'M DONE WITH THAT ONE UNTIL SOMEBODY GIVES
3 ME SOMETHING.

4 YES, SIR.

5 MR. FLEMING: IT'S A LITTLE BIT DIFFICULT FOR US
6 TO DO ANYTHING ABOUT THIS BECAUSE WE DON'T KNOW WHAT
7 JUROR IT WAS.

8 THE COURT: IT WAS THE WOMAN WHO IS SEATED RIGHT
9 HERE ON THE CORNER ON THE FIRST ROW.

10 BAILIFF, DO YOU HAVE HER NAME?

11 THE DEPUTY SHERIFF: MS. GREENE.

12 THE COURT: MS. GREENE.

13 MR. O'BRIEN: WAS THAT GWEN OR GREENE?

14 THE COURT: GREENE, MS. GREENE.

15 MR. O'BRIEN: GREENE, THANK YOU.

16 THE COURT: SHE WAS THE BLACK FEMALE SEATED ON THE
17 FIRST ROW WITH THE GRAY HAIR, IF THAT'S ANY HELP.

18 THE DEPUTY SHERIFF: I'M SORRY, GRIFFIN.

19 THE COURT: GRIFFIN.

20 MR. O'BRIEN: GRIFFIN.

21 THE COURT: GRIFFIN. ALL RIGHT.

22 MR. O'BRIEN: GRIFFIN, CORRECT.

23 THE COURT: IS THAT SUFFICIENT INFORMATION FOR
24 YOU-ALL TO TELL WHO IT WAS?

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

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1 THE COURT: ALL RIGHT. OKAY, DEPUTY. THE THIRD
2 TIME IS THE CHARM. THE JUROR WAS?

3 THE DEPUTY SHERIFF: VERNEDA JOHNSON. I'M SORRY.

4 THE COURT: OKAY. AND WAS IT THE LADY THAT I
5 DESCRIBED?

6 THE DEPUTY SHERIFF: IT'S THE LADY. SHE SITS
7 RIGHT ON THE END, OLDER BLACK LADY WITH THE
8 SALT-AND-PEPPER HAIR PAST HER EARS.

9 THE COURT: OKAY. GREAT. THIRD TIME IS THE
10 CHARM.

11 MR. MAYER: HOW COME SHE'S SALT-AND-PEPPER AND I'M
12 GRAY?

13 MR. O'BRIEN: HE'S BEEN SMARTING OVER THAT THE
14 WHOLE PROCEEDING I CAN TELL YOU.

15 THE COURT: DO YOU WANT ME TO SAY DISTINGUISHED?
16 HOW IS THAT?

17 MR. SINKFIELD: I LIKE THAT, "THAT GRAY-HAIRED
18 FELLOW OVER THERE."

19 THE COURT: HOW ARE WE DOING WITH EXHIBIT 2?

20 MR. FLEMING: WELL, WE'VE DONE A LOT OF WORK. AND
21 I'LL TELL THE COURT THAT I THINK WE'VE GOT IT IN SHAPE
22 NOW. I DON'T KNOW WHAT REMAINING OBJECTIONS THERE ARE.
23 BUT I BELIEVE YOU RECEIVED EARLIER IN THE DAY THE THIRD
24 AMENDED EXHIBIT 2.

25 THE COURT: OKAY. IF I DID, I'M NOT SURE WHERE.

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1 MR. FLEMING: ALL RIGHT. LET ME GIVE THE COURT MY
2 COPY. I'LL GET ONE.

3 THE COURT: DO YOU WANT US TO MAKE YOU A COPY?

4 MR. FLEMING: NO. I HOPE I HAVE GOT ONE BACK HERE
5 BUT NOT YET ANYWAY. THIS IS THE EXHIBIT 2.

6 NOW, WHAT THAT IS, YOUR HONOR, IS A SUMMARY OF
7 VOLUMINOUS RECORDS, WHICH IS THE ADE'S. WE'VE GONE
8 THROUGH, AND I WILL REPRESENT TO THE COURT THAT WE HAVE
9 TRIED, AND I THINK SUCCESSFULLY BUT I'LL WAIT TO HEAR
10 FROM COUNSEL ON THAT, TO TAKE OUT ANYTHING THAT HAS TO
11 DO WITH THE RIGHT-SIDED VALVE REPORTS ONLY.

12 I THINK, CORRECT ME IF I'M WRONG, BUT I THINK WHAT
13 MR. GROSSI SAID RIGHT BEFORE WE BROKE WAS THE ONLY
14 ISSUE REALLY AS FAR AS THEY WERE CONCERNED WAS THE POST
15 LINDA EICHMILLER TAKING THE DRUG ADE'S. I WILL TELL
16 THE COURT THAT WE WOULD OFFER THOSE ADE'S AS GOING TO
17 THE ELEMENTS OF THE RISK UTILITY ANALYSIS ON THE RISK
18 SIDE, SOME OF THESE ADE'S POST MS. EICHMILLER. KEEP IN
19 MIND THAT WHILE MS. EICHMILLER TOOK THE DRUG IN '95 AND
20 '96, SHE WAS NOT REALLY DIAGNOSED UNTIL LATER THAN
21 THAT, 1998. ALL OF THESE ADE'S COME IN AFTER -- OR
22 BEFORE THAT DATE OF DIAGNOSIS.

23 THE COURT: WELL, IS THE ISSUE WITH RESPECT TO THE
24 RISK ANALYSIS WHEN SHE WAS DIAGNOSED OR WHEN SHE
25 SUFFERED THE INJURY?

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1 MR. FLEMING: I THINK, YOUR HONOR, AS TO THE
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2 NOTICE OF WYETH, IT'S PROBABLY WHEN SHE TOOK THE DRUGS.
3 AS TO THE RISK ANALYSIS, I THINK IT DOESN'T MAKE ANY
4 DIFFERENCE AS TO WHEN THE ADE FELL WITH RELATIONSHIP TO
5 WHEN SHE TOOK THE DRUG. AS TO THE RISK ANALYSIS, THE
6 ADVERSE DRUG EVENT -- AND SOME OF THESE ADVERSE DRUG
7 EVENTS -- AND I'M LOOKING THROUGH A MUCH MARKED-UP COPY
8 HERE, UNLIKE YOURS. SOME OF THESE IF YOU LOOK OVER IN
9 THE RIGHT-HAND SIDE, YOU'RE SEEING ADVERSE TERMS. CD
10 STANDS FOR CARDIOVASCULAR DISORDER. PH, PULMONARY
11 HYPERTENSION. THEN IF YOU GO OVER TO THE FAR
12 RIGHT-HAND SIDE, OUTCOME, SERIOUS, SERIOUS, SERIOUS,
13 HOSPITALIED, LIFE-THREATENING. WHAT WE'RE TALKING
14 ABOUT IS THIS IS WYETH'S LANGUAGE. THIS IS NOT OURS.
15 THIS IS HOW THEY CHARACTERIZED THE ADE COMING IN TO
16 THEM.

17 AND SO I WOULD SUGGEST TO THE COURT THAT IT IS
18 ADMISSIBLE WITH REGARD TO AN ADMISSION AGAINST
19 INTEREST, AND IT'S ALSO ADMISSIBLE WITH REGARD TO THE
20 RISK UTILITY ANALYSIS ON THE RISK SIDE BECAUSE IT SHOWS
21 THE SERIOUSNESS OF THE RISK OF TAKING PONDIMIN OR REDUX
22 AT ANY TIME.

23 MR. BLEAKLEY: WHAT IS TRUE IS THAT THIS VERSION
24 OF EXHIBIT 2 IS DIFFERENT FROM YESTERDAY'S VERSION.
25 WHAT IS TRUE IS THAT THIS VERSION IS DIFFERENT FROM THE

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1 ONE THAT WAS APPENDED TO OUR MOTION TO JUDGE BARTLE.
2 IT'S AN IMPROVEMENT. IT TOOK A LOT TO GET THERE, BUT
3 IT'S AN IMPROVEMENT. IT IS NOT, HOWEVER, ENOUGH. WE

4 HAVE SEVERAL PROBLEMS, CONTINUE TO HAVE SEVERAL
5 PROBLEMS WITH EXHIBIT 2.

6 THE FIRST IS THE ONE TO WHICH MR. FLEMING ALLUDED,
7 WHICH IS THAT MOST OF THE REPORTS THAT ARE SUMMARIZED
8 ON THIS EXHIBIT ARE REPORTS THAT WERE MADE AFTER MS.
9 EICHMILLER STOPPED TAKING PONDIMIN. SOME ARE REPORTS
10 AFTER MS. PONDIMIN -- I MEAN, AFTER MS. EICHMILLER
11 STOPPED TAKING PONDIMIN BUT BEFORE THE DRUG WAS
12 WITHDRAWN FROM THE MARKET. SOME ARE AFTER IT WAS
13 WITHDRAWN FROM THE MARKET.

14 OUR VIEW IS NEITHER OF THOSE IS RELEVANT TO THE
15 ISSUES IN THIS CASE. THE ISSUE IS NOTICE TO WYETH
16 PRIOR TO MAY OF 1996. THE ISSUE WITH RISK UTILITY IS
17 WHEN SHE WAS TAKING THE DRUG. THE FACT THAT SOME DAY
18 DOWN THE ROAD IT TURNS OUT THAT PRODUCT DOESN'T HAVE
19 BENEFITS THAT OUTWEIGH THE RISKS LONG AFTER SHE STOPPED
20 TAKING IT AND LONG AFTER IT WAS TAKEN OFF THE MARKET IS
21 NOT RELEVANT.

22 SO OUR FIRST ARGUMENT IS THERE SHOULDN'T BE
23 ANYTHING ON THIS EXHIBIT, ANY REPORT SUMMARIZED THAT
24 WAS RECEIVED OR PREPARED BY WYETH AFTER MAY OF 1996
25 WHEN MS. EICHMILLER STOPPED TAKING THE DRUG.

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1 BUT WE HAVE OTHER OBJECTIONS TO THIS EXHIBIT AS
2 WELL STILL. AND WE HAVE ADVISED COUNSEL FOR THE
3 PLAINTIFF OF THESE OBJECTIONS A LONG TIME AGO. AND
4 THAT IS THAT THE ADVERSE EVENT TERMS COLUMN IS NOT
5 RIGHT. IT SIMPLY ISN'T ACCURATE. IT DOES NOT REFLECT
6 WHAT IS ON THE REPORTS. AND THEY KNOW IT BECAUSE WE

7 TOLD THEM ABOUT IT A LONG TIME AGO. AND THEY HAVE
8 CHOSEN NOT TO MAKE THAT CHANGE AS WELL.

9 THE THIRD OBJECTION THAT WE HAVE TO IT --

10 THE COURT: LET ME -- HANG ON. GO BACK TO THE
11 SECOND ONE. ALL RIGHT. IT IS YOUR POSITION THAT THE
12 TERMS ARE INCORRECT?

13 MR. BLEAKLEY: YES.

14 THE COURT: WHAT MAKES THEM INCORRECT?

15 MR. BLEAKLEY: THEY DON'T HAVE ADVERSE EVENT TERMS
16 THAT ARE ON THE REPORTS.

17 THE COURT: STEP ASIDE.

18 MR. PERERIA: IF I MAY RESPOND TO THAT, YOUR
19 HONOR.

20 THE COURT: NO, SIR, YOU MAY NOT. THE WAY THIS
21 WORKS IS IF WE'RE HAVING ARGUMENT, I GET TO HEAR FROM
22 ONE PERSON PER SIDE, UNLESS YOU TELL ME YOU'RE
23 SPLITTING IT UP, BECAUSE OTHERWISE EVERYBODY POPS UP
24 AND DOWN AND IT MAKES ME NUTS. OKAY? SO, NO, YOU
25 CAN'T. YOU CAN TALK TO HIM. IF HE WANTS TO LET YOU

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1 TALK, THEN YOU'RE TALKING; BUT IF HE'S TALKING, HE'S
2 TALKING.

3 ALL RIGHT.

4 MR. BLEAKLEY: JUST TO MAKE IT CLEAR, I'M NOT
5 SUGGESTING TO THE COURT THAT EVERY SINGLE ONE OF THEM
6 INCORRECTLY IDENTIFIES THE ADVERSE TERMS, THE ADVERSE
7 EVENT TERMS, BUT SOME OF THEM ARE MISSING. AND WE'VE
8 TOLD THEM THAT. AND WE THINK IF THIS IS GOING TO BE AN

9 ACCURATE SUMMARY, IT SHOULD HAVE ALL OF THE CORRECT
10 ONES. THAT'S THE SECOND ONE.

11 THE COURT: SO TELL ME WHAT THAT MEANS AS A
12 PRACTICAL MATTER. THESE TERMS, ARE THEY TERMS THAT ARE
13 INCLUDED ON THE ADE'S OR ARE THESE TERMS THAT THEY HAVE
14 MADE UP AND THEY ARE NOT THERE, IT'S JUST INCOMPLETE?

15 MR. BLEAKLEY: THEY ARE TERMS THAT ARE ON ADVERSE
16 EVENT REPORT UNDER THE ADVERSE EVENT SECTION BUT
17 HAVEN'T BEEN PUT ON THIS SUMMARY.

18 THE COURT: YOU WANT THEM TO PUT ALL THE TERMS ON?

19 MR. BLEAKLEY: YES.

20 THE COURT: OKAY. NOW, ARE THE ADE'S, THAT IS THE
21 UNDERLYING DOCUMENTS, ARE THEY AVAILABLE? ARE THEY
22 HERE IN COURT?

23 MR. BLEAKLEY: I DON'T KNOW WHETHER THEY'RE IN THE
24 COURT THIS INSTANT, BUT THEY'RE CERTAINLY AVAILABLE.

25 THE COURT: THAT'S MY QUESTION. NOT WHETHER

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1 THEY'RE HERE RIGHT THIS SECOND.

2 MR. BLEAKLEY: BOTH OF US HAVE THESE REPORTS.

3 MR. FLEMING: THEY ARE AVAILABLE.

4 THE COURT: OKAY.

5 MR. BLEAKLEY: WHICH LEADS ME TO MY THIRD
6 ARGUMENT, WHICH IS THAT THIS IS NOT A SUMMARY OF THE
7 KIND THAT I UNDERSTAND THAT IS ADMISSIBLE UNDER GEORGIA
8 LAW. AND IT'S CERTAINLY NOT ADMISSIBLE UNDER MOST
9 RULES AND CERTAINLY NOT IN FEDERAL COURT, IN ANY EVENT.
10 THIS IS A SUMMARY THAT WAS PREPARED BY THEM. THEY MADE
11 THIS SUMMARY UP. THIS IS NOT SOMETHING AN EXPERT DID

12 FOR THEM. THEY MADE IT UP.

13 AND ALTHOUGH I'M TOLD THERE'S NO SPECIFIC RULE
14 LIKE THERE IS IN THE FEDERAL COURTS ON SUMMARIES, THAT
15 ONE OF THE REQUIREMENTS OF A SUMMARY, AT LEAST
16 ACCORDING TO THIS BOOK I'M READING FROM, COURTROOM
17 HANDBOOK ON GEORGIA EVIDENCE, IS THAT THE PERSON WHO
18 EXAMINED THE RECORDS AND PREPARED THE SUMMARY IS
19 AVAILABLE FOR CROSS-EXAMINATION.

20 NOW, I KNOW THEY'RE GOING TO BRING DR. TACKETT IN
21 HERE TO TESTIFY ABOUT IT, BUT HE DIDN'T MAKE THIS UP.
22 THEY DID.

23 THE COURT: WELL, IS HE GOING TO SAY: I'VE LOOKED
24 AT THESE RECORDS; I'M FAMILIAR WITH THIS SUMMARY; THIS
25 SUMMARY, IN FACT, ACCURATELY SUMMARIZES MY TESTIMONY

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1 BASED ON THE UNDERLYING ORIGINAL DOCUMENTS OR NOT?

2 MR. BLEAKLEY: I DON'T KNOW WHAT HE'S GOING TO SAY
3 BECAUSE THIS IS A NEW SUMMARY.

4 THE COURT: OKAY.

5 MR. FLEMING: I'LL REPRESENT TO THE COURT THAT HE
6 WILL. AND I'LL ALSO REPRESENT TO THE COURT THAT THIS
7 IS THE KIND OF SUMMARY THAT HAS BEEN ACCEPTED IN
8 NUMEROUS DIET DRUG CASES. IT'S BEEN ACCEPTED IN THE
9 STATE DISTRICT COURTS IN TEXAS. IT'S BEEN ACCEPTED IN
10 THE STATE DISTRICT COURTS OF OREGON. THIS IS NOT AN
11 UNUSUAL SUMMARY UNDER RULE 1001 OF THE FEDERAL RULES OF
12 EVIDENCE OR UNDER STATE PROCEDURES.

13 I WOULD ALSO REPRESENT TO THE COURT THAT ADVERSE

14 TERMS --
15 THE COURT: NOW, MR. FLEMING --
16 MR. FLEMING: I'M TAKING IT OUT OF ORDER?
17 THE COURT: YEAH, YOU ARE. SAME PROBLEM. ONCE
18 YOU STAND UP, YOU GET TO FINISH BEFORE THE OTHER GUY
19 SAYS: WELL, LET ME TELL YOU WHAT IS GOING ON WITH PART
20 A. OKAY?
21 SO, MR. BLEAKLEY, WERE YOU DONE?
22 MR. BLEAKLEY: YES, I'M DONE -- EXCUSE ME JUST ONE
23 SECOND, YOUR HONOR.
24 MR. FLEMING: I'LL SIT DOWN.
25 MR. BLEAKLEY: I GUESS I SHOULD HAVE MENTIONED

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1 THAT ACTUALLY.
2 THE COURT: YOU WEREN'T DONE. OKAY.
3 MR. BLEAKLEY: I WAS DONE, BUT I FORGOT. I KNEW,
4 BUT I FORGOT THAT. MR. DOUGLAS REMINDED ME THAT A LOT
5 OF THESE REPORTS ARE NOT SCIENTIFIC REPORTS. THEY ARE
6 REPORTS OF CASES, LAWSUITS, LITIGATION REPORTS, THAT
7 ARE REQUIRED BY LAW TO BE MADE. BUT THEY DON'T PROVE
8 ANYTHING. THEY PROVE AN ALLEGATION HAS BEEN MADE IN A
9 LAWSUIT, AND THAT IS REQUIRED TO BE PUT IN AN ADE. AND
10 A LOT OF THESE THAT ARE IN THERE ARE THOSE KINDS OF
11 REPORTS.
12 MR. FLEMING: YOUR HONOR, THE REPORTS ARE IN THE
13 MAIN, DONE UNDER WHAT'S CALLED A MED WATCH PROGRAM.
14 AND IT'S AN FDA PROGRAM THAT HAS A STANDARDIZED FORM
15 THAT GETS SENT IN TO THE DRUG MANUFACTURER. AND THE
16 MED WATCH HAS A FORMAT. AND THE FORMAT BASICALLY HAS

17 DIFFERENT FINDINGS FROM DIFFERENT PEOPLE. AND THIS
18 DRUG COMPANY, LIKE EVERY OTHER DRUG COMPANY, CATALOGS
19 THAT IN THEIR ADVERSE DATA -- ADVERSE EVENT DATABASE.
20 AND THEY HAVE TERMS. THE DRUG COMPANY HAS TERMS THAT
21 THEY USE TO CATALOG THOSE IN.

22 THE SUMMARIES WILL BE, LIKE I SAID EARLIER, WILL
23 BE TESTIFIED TO BY DR. TACKETT. WE HAVE EXCLUDED SOME
24 OF THE THINGS THAT AREN'T RELEVANT TO THIS CASE. I
25 MEAN, HAIR LOSS IS NOT TERRIBLY RELEVANT TO THIS CASE.

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1 SOME OF THE OTHER THINGS THAT COME UP IN SOME OF THE
2 ADE'S. AND I'M GIVING A WILD EXAMPLE HERE, BUT WE HAVE
3 LIMITED IT DOWN TO WHAT'S RELEVANT IN THE CASE AND THE
4 OUTCOME THAT'S RELEVANT.

5 AND ONE OF THE THINGS THAT MR. BLEAKLEY BROUGHT UP
6 IN THE OPENING STATEMENT WAS WHEN THE SIGNAL CAME UP
7 AND WHEN WAS THERE A SIGNAL. AND I'VE ALREADY SAID
8 THAT I THINK THAT THESE REPORTS ARE ADMISSIBLE WITH
9 REGARD TO NOTICE AND THE SIGNAL THAT CAME UP. BUT ALSO
10 THE WITHDRAWAL ISSUE WITH REGARD TO WHEN IT WAS THAT
11 THEY COULD OR SHOULD HAVE WITHDRAWN THIS DRUG.

12 BUT MAINLY I THINK THAT THIS IS DIRECTLY RELEVANT
13 TO THE RISK UTILITY ANALYSIS AND TO THE RISK SIDE OF
14 THAT ANALYSIS. AND I DON'T BELIEVE THERE'S ANY
15 RELEVANCE AT ALL TO WHEN THOSE REPORTS TOOK PLACE IN
16 THE SPECTRUM WITH REGARD TO THAT ADMISSIBILITY BECAUSE
17 THE RISK HERE OF SERIOUS DANGER IS ONE THAT WE NEED TO
18 PROVE. WE NEED TO PROVE THAT THE DRUG RISKS OUTWEIGHED

19 ITS UTILITY. ANY MORE THAN THE EVIDENCE, FOR EXAMPLE,
20 THE FDA WITHDREW THE DRUG FROM THE MARKET.

21 THE COURT: EXCUSE ME. YOU NEED TO PROVE THE
22 RISKS OUTWEIGH THE UTILITY AT THE TIME MS. EICHMILLER
23 USED IT; RIGHT?

24 MR. FLEMING: YES. BUT THE ADE'S SHOW THAT AT THE
25 TIME SHE USED IT, THAT THE RISK OUTWEIGHED THE BENEFIT.

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1 THE COURT: SO THEN THE RELEVANT ADE'S WOULD BE
2 THE ONES THAT WERE IN EXISTENCE BEFORE AND DURING THE
3 TIME FRAME THAT SHE USED IT? NO?

4 MR. FLEMING: BUT AFTERWARDS, TOO, BECAUSE -- HER
5 DISEASE DIDN'T SHOW UP UNTIL, WHAT, 1998? 1998. SO
6 PEOPLE COULD TAKE THE DRUG IN ONE YEAR AND THE LESION
7 WOULDN'T SHOW ON AN ECHO UNTIL A YEAR OR TWO YEARS
8 LATER.

9 SO THE VERY FACT THAT WE'VE GOT '97 ADE'S ON HERE
10 REALLY BEGS THE QUESTION BECAUSE IT SHOWS THE RISK
11 THAT'S INVOLVED HERE. AND IT SHOWS THE DEFECT. ANY
12 MORE SO THAN A FIRESTONE TIRE, FOR EXAMPLE, THAT BLEW
13 OUT, HUNDREDS OF FIRESTONE TIRES BLEW OUT AFTER AN
14 ACCIDENT, SHOWS THE RISK INVOLVED FOR THE PERSON WHO
15 WAS USING THE TIRE ON A PARTICULAR DAY.

16 THE COURT: SO YOU WANT TO USE THESE FOR DIFFERENT
17 PURPOSES; IS THAT RIGHT?

18 MR. FLEMING: I BELIEVE THEY ARE ADMISSIBLE FOR
19 NOTICE. I BELIEVE THAT THEY'RE ALSO ADMISSIBLE ON RISK
20 AND ON SIGNAL. AND I BELIEVE THEY'RE IN A PROPER
21 FORMAT THAT WILL BE TESTIFIED TO AND VOUCHERED FOR BY AN

22 EXPERT WHO WILL BE HERE FOR MR. BLEAKLEY OR MR. GROSSI
23 OR WHOEVER TO CROSS-EXAMINE.

24 THE COURT: YES, SIR.

25 MR. BLEAKLEY: TWO THINGS. I'LL BE VERY SHORT, I

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1 PROMISE. ONE IS I WANT TO GIVE YOUR HONOR AN EXAMPLE
2 OF THE KIND OF ADE POST-WITHDRAWAL THAT THEY WANT TO
3 OFFER IN EVIDENCE. INFORMATION WAS RECEIVED FROM AN
4 ATTORNEY REGARDING A COMPLAINT. IN OTHER WORDS, THE
5 LAWYER IS SUBMITTING THIS INFORMATION; AND THEY WANT TO
6 OFFER THIS.

7 THE COURT: WELL, BUT LET ME ASK YOU IS THAT THE
8 SORT OF THING THAT WOULD HAVE BEEN PROVIDED TO WYETH
9 AND IT WOULD HAVE GONE INTO ITS DATABASE?

10 MR. BLEAKLEY: AFTER WITHDRAWAL FROM THE MARKET,
11 YEAH. IT'S REQUIRED BY LAW. IT DOESN'T HAVE ANYTHING
12 TO DO WITH THIS CASE OR WHETHER WYETH SHOULD HAVE BEEN
13 ON NOTICE IN 1995 OR 1996 OR WHETHER THE RISKS
14 OUT-WEIGHED THE BENEFITS THEN, WHICH LEADS ME TO THE
15 SECOND POINT, WHICH I WILL MAKE VERY BRIEFLY, WHICH IS
16 THEY WANT THIS BOTH WAYS. THEIR ARGUMENT IS THE RISKS
17 OUTWEIGH THE BENEFITS BASED ON THE INFORMATION THAT WAS
18 AVAILABLE IN 1995 AND 1996. BUT NOW THEY SAY, WELL, WE
19 WANT TO PUT THE REST OF THIS STUFF IN ON RISK BENEFIT.
20 THEY DON'T REALLY WANT TO PUT IT IN ON RISK BENEFIT,
21 YOUR HONOR. THEY WANT TO PUT IT IN TO LARD UP THE JURY
22 WITH A WHOLE BUNCH OF ADVERSE DRUG REPORTS AND PEOPLE
23 WHO SUFFER THIS DISEASE IN ORDER TO MAKE THE JURY

24

DISLIKE WYETH EVEN MORE.

25

THEY CAN'T HAVE IT BOTH WAYS. THEY STOOD UP HERE

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AND THEY TOLD THIS JURY THAT IN 1995 AND 1996, WE

2

SHOULD HAVE KNOWN THE RISKS OUTWEIGHED THE BENEFITS

3

THEN. AND THAT OUGHT TO BE THE ISSUE DECIDED BY THE

4

JURY WE SUBMIT.

5

AND I PROMISE NOT TO SAY ANY MORE ON THIS.

6

THE COURT: KING OF THE WEASEL CLAUSE. ARE YOU

7

DONE, MR. FLEMING?

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MR. FLEMING: I'M DONE.

9

THE COURT: OKAY. ALL RIGHT. WITH RESPECT TO

10

WHETHER IT IS AN APPROPRIATE EXHIBIT IN THIS FORMAT,

11

THAT IS THAT IT IS A SUMMARY OF ORIGINAL DOCUMENTS

12

WHICH ARE, IN FACT, AVAILABLE, IT IS, IN FACT,

13

ADMISSIBLE AS A SUMMARY OF ORIGINAL DOCUMENTS THAT ARE,

14

IN FACT, AVAILABLE AND I ASSUME WOULD BE TESTIFIED TO.

15

NOW, WITH RESPECT TO WHAT'S ON IT, THE ADVERSE

16

EVENT TERMS, AS I UNDERSTAND IT, MR. BLEAKLEY, YOUR

17

ISSUE IS THAT THERE'S SOME MORE THAT AREN'T ON HERE.

18

MR. BLEAKLEY: YES.

19

THE COURT: WELL, THAT'S WHAT CROSS-EXAMINATION IS

20

FOR. IT SEEMS TO ME YOU GET TO PUT TOGETHER AN EXHIBIT

21

THAT PRESENTS WHAT YOU WANT TO PRESENT, ASSUMING IT'S

22

ACCURATE. IT IS SUBJECT TO CROSS-EXAMINATION BY

23

SHOWING WHAT THEY LEFT OFF, IF THAT'S WHAT YOU CHOOSE

24

TO DO, PARTICULARLY WHEN THE UNDERLYING DOCUMENTS ARE

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AVAILABLE.

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1 INSOFAR AS ITS CONTENT, IF YOU'RE GOING TO USE AN
2 EXHIBIT SUCH AS THIS, MR. FLEMING, YOU NEED TO BREAK IT
3 UP. THE EVENTS THAT WOULD HAVE OCCURRED DURING THE
4 TIME THAT MS. EICHMILLER WAS TAKING THE DRUG AND PRIOR
5 TO MS. EICHMILLER TAKING THE DRUG, THAT IS ONE EXHIBIT
6 BECAUSE IT REFLECTS WHAT APPEARS TO BE THE ISSUE AS FAR
7 AS I SEE IT INSOFAR AS YOU HAVE GOT OTHER ADE'S THAT
8 YOU WANT TO USE FOR SOME PURPOSE, YOU PUT THEM ON
9 ANOTHER PIECE OF PAPER. OKAY.

10 MR. BLEAKLEY: AND WE WILL ARGUE ADMISSIBILITY OF
11 THOSE.

12 THE COURT: AND WE WILL ARGUE THE ADMISSIBILITY OF
13 THOSE.

14 MR. FLEMING: JUST SO I UNDERSTAND THE COURT. YOU
15 WANT BASICALLY TWO EXHIBITS. YOU WANT ONE THAT
16 CONTAINS UP TO AND DURING THE TIME THAT LINDA
17 EICHMILLER TOOK THE DRUG AND THEN ONE THAT IS AFTER
18 THOSE DATES?

19 THE COURT: THAT'S CORRECT. IF YOU WANT TO GIVE
20 ME ANY AUTHORITY ABOUT THE AFTER THOSE DATES, I'LL BE
21 HAPPY TO LOOK AT IT.

22 MR. FLEMING: ALL RIGHT.

23 THE COURT: ALL RIGHT. WHAT ELSE?

24 MR. BLEAKLEY: I THINK THAT'S IT UNTIL WE HEAR
25 FROM JUDGE BARTLE.

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1 WHAT DO YOU WANT US TO DO ABOUT ADVISING YOU OF
2 JUDGE BARTLE'S RULING, ASSUMING WE GET ONE THIS
3 AFTERNOON.

4 THE COURT: I ASSUME YOU WILL ALL BE IN THE SAME
5 SPOT, AND YOU JUST CALL ME UP.

6 MR. BLEAKLEY: YOU WANT US TO COME BACK AND TELL
7 YOU THAT?

8 THE COURT: YOU CAN COME BACK AND TELL ME IF
9 THERE'S SOMETHING WE HAVE TO DEAL WITH, EITHER WAY,
10 WHICHEVER WORKS.

11 MR. BLEAKLEY: YOU WANT TO US COME BACK RATHER
12 THAN PHONE. WE'RE PREPARED TO DO IT EITHER WAY.

13 THE COURT: ARE YOU IN A POSITION WHERE YOU CAN GO
14 WHERE YOU NEED TO GO AND JUST CALL ME BACK?

15 MR. FLEMING: WE CAN, YOUR HONOR.

16 MR. BLEAKLEY: IT SOUNDS LIKE THE ANSWER IS YES.

17 THE COURT: OKAY. THE ONLY CAVEAT ABOUT PHONE IS
18 I'M ONLY GOING TO WANT TO TALK TO ONE PERSON PER SIDE;
19 BECAUSE IF THERE ARE TOO MANY PEOPLE ON THE PHONE,
20 FRANKLY, IT GETS CONFUSING. SO IF YOU GOT SOMETHING
21 YOU WANT TO SAY AND YOU NEED MORE THAN ONE PERSON PER
22 SIDE TO SAY IT, THEN YOU HAVE TO COME BACK.

23 MR. BLEAKLEY: I THINK IT WILL ONLY BE ONE PERSON,
24 BUT I THINK WE'LL COME BACK.

25 MR. FLEMING: LET ME MAKE A SUGGESTION. I THINK

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1 MR. BLEAKLEY MAY EVEN GO ALONG WITH ME ON THIS ONE.
2 THAT IS YOU AND I CONFERENCE AND CALL THE COURT AFTER

3 THE HEARING BEFORE JUDGE BARTLE.

4 MR. BLEAKLEY: UNLESS WE DECIDE IT'S TOO
5 COMPLICATED, IN WHICH CASE WE'LL COME BACK.

6 THE COURT: OKAY. I WILL MAKE SURE THAT I'M HERE,
7 AT LEAST UNTIL 5:00 CLOCK, ALL RIGHT. AND WE'LL JUST
8 SEE HOW THE COURT REPORTER IS DOING.

9 NOW, THE 10:30 TO 2:00 O'CLOCK TIME FRAME, WHAT
10 DOES THAT DO IN TERMS OF YOUR WITNESS? HOW BAD IS IT?

11 MR. FLEMING: WELL, IT'S GOTTEN BADDER -- IT'S
12 GOTTEN WORSE, EXCUSE ME.

13 THE COURT: IT'S GETTING LATE.

14 MR. FLEMING: DR. TACKETT IS CHECKING ON HIS
15 SCHEDULE. HE'S PARTICULARLY CONCERNED WITH MONDAY, NOT
16 SO MUCH FOR TOMORROW. I'VE HEARD THE COURT'S
17 ADMONITIONS. I'VE REPEATED IT TO HIM. SO I DON'T KNOW
18 WHETHER WE'RE GOING TO HAVE TO CHANGE OUT A WITNESS OR
19 WHAT WE'RE GOING TO HAVE TO DO. I'LL FIND THAT OUT
20 WHEN I GET BACK AND TALK WITH DR. TACKETT. AND I'LL
21 LET --

22 THE COURT: NOW, AS FAR AS THIS REVISED EXHIBIT
23 NOW 2-A AND 2-B, AS SOON AS IT GETS DONE, IF IT'S THIS
24 SIZE, CAN YOU FAX IT TO HIM SO THEY HAVE IT AS SOON AS
25 IT'S DONE?

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1 MR. FLEMING: ABSOLUTELY.

2 THE COURT: OKAY. I WILL FIND OUT HOW THAT
3 TRANSCRIPT IS DOING. AND OTHER THAN THAT, I GUESS
4 WE'RE DONE. ALL RIGHT. THANK YOU VERY MUCH.

(A RECESS WAS TAKEN.)

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THE COURT: WERE YOU-ALL ABLE TO REACH JUDGE BARTLE?

MR. BLEAKLEY: YES, WE WERE, YOUR HONOR.

THE COURT: AND WHAT HAPPENED?

MR. BLEAKLEY: WHAT HAPPENED, JUDGE BARTLE INSTRUCTED US TO -- I'M GOING TO CHARACTERIZE WHAT HE FOUND. WE BELIEVE THAT HE FOUND THAT THERE WAS A VIOLATION, BUT HE DID NOT ENTER SANCTIONS. HE INSTRUCTED US TO TRY TO NEGOTIATE A CURATIVE INSTRUCTION THAT WOULD BE ENTERED BY THE COURT. AND AS I UNDERSTAND IT, THEY HAVE AGREED IN PRINCIPLE. AND WHAT I PROPOSE IS WE TRY TO DO ONE TONIGHT AND SUBMIT IT TO YOUR HONOR IN THE MORNING.

THE COURT: THE REST OF THE STORY IS WHAT?

MR. O'BRIEN: I'M JUST -- HE OBVIOUSLY -- HE SIMPLY SAID CURATIVE INSTRUCTION. IN FACT, HE SAID WHAT'S GOOD FOR THE GOOSE IS GOOD FOR THE GANDER.

BECAUSE MY DEAR COLLEAGUE ALSO REFERRED TO PULMONARY HYPERTENSION WITHOUT SAYING THE MAGICAL WORD SECONDARY VALVULAR HEART DISEASE. THAT WAS

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SPECIFICALLY RAISED. A CURATIVE INSTRUCTION AGREED TO BOTH SIDES THAT APPLIES TO BOTH SIDES. AND IN THE END HE SAID: I'VE HEARD ENOUGH. THE GEORGIA COURT NEEDS TO DO WHAT THE GEORGIA COURT NEEDS TO DO. SO HE PRETTY MUCH SAID HAVE YOUR TRIAL AND THEN IF THERE ARE PROBLEMS, BRING THEM BACK TO ME. BUT MOST OF ALL WITH REGARDS TO WHAT HAS ALREADY OCCURRED, AGREE ON A

8 CURATIVE INSTRUCTION THAT THE PULMONARY HYPERTENSION
9 THAT WAS REFERENCED HERE IS TO THE SECONDARY TO THE
10 VALVULAR HEART DISEASE AND NOT TO ANYTHING ELSE.

11 TO THE EXTENT WE WANT TO SAY ANY MORE ON IT, WE
12 SHOULD AGREE TOGETHER ABOUT THE LANGUAGE THAT IS USED.

13 THE COURT: THIS IS WHAT YOU WILL SAY FROM HERE ON
14 OUT -- ONCE YOU FIGURE WHATEVER THE CURATIVE
15 INSTRUCTION IS GOING TO SAY, I WILL READ IT. AND FROM
16 HERE ON OUT, WE'LL SAY PH SECONDARY SECOND.

17 MR. BLEAKLEY: I HAVE TO MAKE ONE STATEMENT ABOUT
18 THAT.

19 THE COURT: OKAY.

20 MR. BLEAKLEY: I WASN'T GOING TO GET INTO AN
21 ARGUMENT. I HAVE NO DESIRE TO ARGUE ABOUT THIS. HIS
22 CHARACTERIZATION OF WHAT HAPPENED IS WRONG.

23 MR. O'BRIEN: I WAS THERE. YOU WEREN'T.

24 MR. BLEAKLEY: YES, I WAS.

25 MR. O'BRIEN: YOU DIDN'T TALK.

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1 MR. BLEAKLEY: I WAS THERE.

2 MR. O'BRIEN: GOOD. I DIDN'T HEAR YOU.

3 MR. BLEAKLEY: I DON'T SEE ANY NEED FOR THAT NOW.
4 WHAT I HAVE TO SAY, THERE IS PULMONARY HYPERTENSION
5 THAT IS NOT SECONDARY TO VALVULAR HEART DISEASE. AND
6 THAT IS WHAT I WAS TALKING ABOUT. AND THAT IS A
7 SUBJECT THAT WILL BE MENTIONED FROM TIME TO TIME WHEN
8 IT IS PULMONARY HYPERTENSION THAT IS NOT SECONDARY TO
9 VALVULAR HEART DISEASE. IT'S JUST THAT SIMPLE.

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THE COURT: STOP.

MR. BLEAKLEY: WHEN I SAID --

THE COURT: STOP. WHAT IS IT THAT YOU WANT THEM TO SAY?

MR. BLEAKLEY: WHAT I WANT THEM TO SAY IS THAT WHEN THEY OR I OR ANYBODY ELSE IN THIS COURTROOM IS TALKING ABOUT A FAILURE TO WARN, IT IS ABOUT PULMONARY HYPERTENSION SECONDARY TO VALVULAR HEART DISEASE.

THE COURT: YOU WANT THEM TO SAY THAT ENTIRE MOUTH-FULL?

MR. BLEAKLEY: I THINK -- JUDGE, THE JURY IS GOING TO BE CONFUSED IF THEY DON'T.

THE COURT: ANSWER MY QUESTION.

MR. BLEAKLEY: YES. AND I'LL DO IT, TOO.

THE COURT: I'M NOT GOING TO MAKE THEM DO THAT, AND I'M NOT GOING TO MAKE YOU DO THAT. WE'RE GOING TO

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GIVE THEM AN INSTRUCTION THAT EXPLAINS WHAT'S WHAT. WE'RE GOING TO AGREE ON A SHORTHAND. AFTER WE'VE GIVEN THEM THE INSTRUCTION, EVERYBODY IS GOING TO USE IT BECAUSE PULMONARY HYPERTENSION SECONDARY TO VALVULAR, LA, LA, LA. YOU WON'T BE ABLE TO DO IT, AND THEY WON'T EITHER. I'M NOT HAVING THAT FIGHT. YOU'LL EITHER FIGURE IT OUT OR I'LL FIGURE IT OUT. OKAY?

MR. BLEAKLEY: OKAY. WE'LL TRY TO NEGOTIATE SOMETHING TONIGHT.

THE COURT: GREAT. ARE WE DONE?

MR. O'BRIEN: WE'RE DONE.

THE COURT: ALL RIGHT. SO I'M HAVING MY TRIAL?

13 MR. BLEAKLEY: WE NEVER DOUBT OTHERWISE.
14 MR. SINKFIELD: WE'RE HAVING OUR TRIAL.
15 THE COURT: ALL RIGHT.
16 (PROCEEDINGS ADJOURNED.)
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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-C, PAGES 680 THROUGH 711, 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.

110603eichmiller2.txt
THIS, THE 6TH DAY OF NOVEMBER, 2003.

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

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