

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____ )	
IN RE DIET DRUGS )	
(PHENTERMINE/FENFLURAMINE/ )	MDL No. 1203
DEXFENFLURAMINE) PRODUCTS )	
LIABILITY LITIGATION )	
_____ )	
This document relates to: )	
SHEILA BROWN, et al. v. AMERICAN )	Civil Action No. 99-20593
HOME PRODUCTS CORPORATION )	
_____ )	

**WYETH'S MEMORANDUM IN SUPPORT OF ITS MOTION  
TO HOLD CLASS MEMBER LANNA J. NUSTAD AND HER COUNSEL  
IN CONTEMPT OF PTO 3503**

Wyeth is compelled to return to the Court for further emergency relief in the matter of Lanna J. Nustad's Intermediate Opt Out case pending in Upshur County, Texas. Regrettably, this is not the first time Wyeth has been forced to seek the Court's intervention to ensure compliance by the plaintiff and her counsel with the Court's orders.<sup>1</sup> Wyeth now is seeking relief because plaintiff's counsel, Douglas Monsour, made statements during *voir dire* that violate the Court's order barring any statement or argument "related directly or indirectly to: (a) punitive, exemplary or multiple damages, however described; [or] ... (d) Wyeth's profits, size or financial condition." PTO 3503. In those comments, as discussed further below, Mr. Monsour dwelt at length and in detail on the size of the law firm and the number of lawyers representing Wyeth at trial – an indirect but obvious way of telling the jury about Wyeth's own size and financial resources. In the same connection, Mr. Monsour also told the jury that Wyeth's lead trial counsel, Dan Webb, has also represented "Big Tobacco" in litigation and General

<sup>1</sup> This case, which is now in trial in the Texas state court, is the subject of PTOs 3490 and 3503 and was the subject of Wyeth's recent Emergency Motion For Further Injunction And For Sanctions To Enforce PTOs 3490 and 3503 Against Class Member Lanna Nustad And Her Counsel, filed on May 6, 2004.

Electric in “a criminal price fixing case” – another indirect but transparent effort to inflame the jury against Wyeth by comparing it to the tobacco industry and to a corporate defendant charged with criminal conduct. To prevent further such efforts to inject punitive-type arguments against Wyeth in this trial, the Court should enter an order finding that these and similar arguments violate PTO 3503 and, therefore, are also barred by the Settlement Agreement.

### **FACTUAL BACKGROUND**

*Voir dire* in the Nustad case occurred on Monday, May 10, 2004.<sup>2</sup> During the course of his questioning of the venire panel, plaintiff’s counsel Douglas Monsour spoke at length about Wyeth’s counsel in the case – contrasting the number of lawyers, and the size of one of the law firms, representing Wyeth with “the only two lawyers who are working on this case” for the plaintiff. Tr. of 5/10/04, at 37. (A copy of the morning session of the *voir dire* is attached hereto as Exhibit A.) Thus, Mr. Monsour told the jury:

Wyeth has designated sixteen lawyers as trial court counsel in this case. They have a battlefield headquarters set up in Longview, Texas right up the street from my office and I think they’ve got thirty more there. They’ve got law offices in Washington, D.C., Houston, working on this with lawyers full time and I’m scared to death. And you know why I’m scared to death, because I’m worried that she, because she only has me, and I ain’t that good, and Keith, who’s better than me. I’m worried that she’s going to be outgunned and her rights are going to be impaired because they got more lawyers. Who here thinks that that’s a legitimate concern? Who here thinks that’s fair?

*Id.* at 37-38. Mr. Monsour then went on to point out that Wyeth’s “lead law firm is Winston & Strawn out of Chicago,” led by Dan Webb. *Id.* at 38. After identifying some

---

<sup>2</sup> Despite persistent efforts, Wyeth did not obtain a transcript of the morning session on May 10 until the evening of May 12. A complete transcript of the proceedings on May 10 is still not available.

of the Winston & Strawn lawyers by name, Mr. Monsour further informed the jury that Winston & Strawn has “858 lawyers, offices in Geneva, London, Los Angeles, Chicago, New York, San Francisco, and Washington, D.C., and Paris. And I’m not – Mr. Webb, is it Paris, France or Paris, Texas?” *Id.*

After Wyeth’s objection to these tactics was overruled by the trial court, *id.* at 39-40, Mr. Monsour completed his assault on Wyeth’s counsel.<sup>3</sup> He told the jury:

The reason, the primary reason that I am concerned is – the primary reason that I’m concerned, it’s not all the lawyers that I’m really worried about, it’s Mr. Webb here. He is from Chicago. He’s very very good. He’s a much better lawyer than I could ever dream of. We all aspire to be Mr. Webb as a lawyer, but only a few people get there. He – he has litigated some high profile cases. I need to ask if you know about it. He prosecuted Admiral Poindexter in the Iran-Contra Affair. ***He defended General Electric in a criminal price fixing case. Then there was a case down here in Texas. He represented tobacco against the State of Texas. Anybody – I think that was in Judge Fulsom’s court in Texarkana. Anybody know about that? Okay. They wrote an article about it in Business Week, I don’t know if anybody read it, it’s called “Can Dan Webb Pull Big Tobacco Out of the Fire.”*** Have you guys, has anybody read that article? Mr. Edwards, you read it. ***Here’s what I’m worried about, Mr. Edwards, I’m worried that Mr. Webb is going to pull Wyeth out of the fire on this one, so that’s my concern.***

*Id.* at 42-43 (emphasis added). Later in the day, the trial court overruled Wyeth’s motion for a mistrial based on these prejudicial statements.

Wyeth was unable to obtain the relevant portion of the trial transcript from the court reporter until the evening of May 12. Wyeth, therefore, refrained from filing this motion until it could obtain that transcript because of the importance of verifying the

---

<sup>3</sup> Mr. Monsour’s excessive flattery does not disguise the real point of his comments – *i.e.*, that he wants the jury to believe he is being “outgunned.” *Id.* at 38.

precise content of Mr. Monsour's statements in *voir dire*. The transcript, indeed, confirms that Mr. Monsour's statements violate PTO 3503's proscriptions.

### **ARGUMENT**

PTO 3503, among other things, enjoins the plaintiff and her counsel from making statements or arguments at trial that relate "directly or indirectly to: (a) punitive, exemplary or multiple damages, however described; [or] ... (d) Wyeth's profits, size or financial condition." As the Court has held in related orders, this injunction gives effect to the Settlement Agreement's prohibition on IOO plaintiffs seeking punitive, exemplary, or any multiple damages by barring the use of evidence and argument that "have the sole or predominant purpose of inflaming the jury to punish Wyeth." PTO 2828, Memorandum, at 4-5. Mr. Monsour's foregoing statements about Wyeth's counsel violated this prohibition in a number of related ways.

As a general matter, Mr. Monsour's comments about the number of lawyers representing Wyeth, and about the size and numerous offices of Winston & Strawn, have no bearing on any legitimate issues in this IOO case. That information, of course, is relevant neither to Wyeth's liability nor to the causation and damages issues in the case. Nor could Mr. Monsour's disclosure of that information uncover potential juror bias; indeed, if anything, his comments appear designed to incite bias against Wyeth. Since his comments were not relevant to legitimate issues, they could have only one true purpose – to "rile up" the jury against Wyeth by building up an image of a vast army of lawyers arrayed on its behalf against the plaintiff. This alone makes Mr. Monsour's comments improper under PTO 3503.

Mr. Monsour's violations of PTO 3503 do not stop there, however. More specifically, Mr. Monsour's repeated reference to the number of lawyers and size of the law firm representing Wyeth conveys indirectly, yet clearly, to the jury that Wyeth itself must be very large. Mr. Monsour's meaning could not be more obvious: Only a very

large, rich company could afford to employ so many lawyers, such a large firm, and such renowned lawyers as Dan Webb. This in itself violates the prohibition on statements and arguments relating “directly *or indirectly* to .... Wyeth’s profits, size or financial condition.” PTO 3503 (emphasis added).

In addition, Mr. Monsour’s association of Wyeth’s counsel, Mr. Webb, with “Big Tobacco” and General Electric’s criminal defense was a thinly disguised effort to compare Wyeth with those other clients of Mr. Webb. Indeed, Mr. Monsour made the comparison directly when he expressed concern that “Mr. Webb is going to pull Wyeth out of the fire on this one,” just as he had reportedly done for “Big Tobacco.” It is no secret that the tobacco industry has been widely vilified for alleged wrongdoing and harm to public health. There is no conceivable purpose for having juxtaposed Wyeth with “Big Tobacco,” especially in the context of a lawsuit against the State of Texas, except to attempt to suggest that Wyeth’s conduct in these cases is comparable to the conduct of the tobacco industry – and therefore deserving of punishment. Any such suggestion or argument, whether direct or indirect, is of course enjoined by PTO 3503.

For the foregoing reasons, the Court should find that the plaintiff and her counsel have violated PTO 3503 and enter appropriate relief for Wyeth.

### **RELIEF REQUESTED**

The statements made by Mr. Monsour in *voir dire* cannot be undone. Wyeth has now been severely prejudiced in the eyes of the jury and made to seem like “Big Tobacco” with its army of lawyers in their “battlefield headquarters.” No curative instruction would be adequate to “unring the bell.” Indeed, to remind the jury of Mr. Monsour’s remarks about Wyeth’s counsel would only make matters worse. Accordingly, Wyeth believes it would be appropriate to enjoin the trial from proceeding until a new, untainted jury is empanelled. Nevertheless, given the Court’s previously stated reluctance to enjoin ongoing trials, Wyeth requests in the alternative that the Court

enter an order (1) holding that the plaintiff and her counsel have violated PTO 3503 for the reasons identified above and (2) specifically enjoining any future statements and arguments of the same or similar nature by plaintiff and her counsel. While such an order would not remove the prejudice Wyeth has already suffered, it would at least prevent the plaintiff and her counsel from employing the same tactics during the remainder of the trial.

### **CONCLUSION**

For the reasons stated herein, Wyeth respectfully requests that the Court grant Wyeth's motion finding the plaintiff and her counsel in civil contempt of PTO 3503 and enter the proposed order filed herewith.

Respectfully submitted,

/s/ Donald R. Gordon

---

Peter L. Zimroth  
ARNOLD & PORTER LLP  
399 Park Avenue  
New York, NY 10022  
(212) 715-1000

Steven G. Reade  
M. Sean Laane  
Donald R. Gordon  
ARNOLD & PORTER LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004  
(202) 942-5000

Michael T. Scott  
Paul B. Kerrigan  
REED SMITH, LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301  
(215) 851-8100

ATTORNEYS FOR WYETH

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____ )	
IN RE DIET DRUGS )	
(PHENTERMINE/FENFLURAMINE/ )	MDL No. 1203
DEXFENFLURAMINE) PRODUCTS )	
LIABILITY LITIGATION )	
_____ )	
This document relates to: )	
SHEILA BROWN, et al. v. AMERICAN )	Civil Action No. 99-20593
HOME PRODUCTS CORPORATION )	
_____ )	

**WYETH'S MOTION TO HOLD CLASS MEMBER LANNA J. NUSTAD  
AND HER COUNSEL IN CONTEMPT OF PTO 3503**

Wyeth hereby moves the Court to hold class member Lanna J. Nustad and her counsel in contempt of PTO 3503, for the reasons set forth in the accompanying memorandum. Because the underlying Intermediate Opt Out case is currently in trial in Texas state court, and Wyeth's rights under the National Class Action Settlement Agreement have been violated and are threatened with further violation as the trial progresses, Wyeth respectfully requests expedited consideration of this motion by the Court. Wyeth also respectfully requests that the Court enter an order in the form attached hereto.

Respectfully submitted,

/s/ Donald R. Gordon

\_\_\_\_\_  
Peter L. Zimroth  
ARNOLD & PORTER LLP  
399 Park Avenue  
New York, NY 10022  
(212) 715-1000

Steven G. Reade  
M. Sean Laane  
Donald R. Gordon  
ARNOLD & PORTER LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004  
(202) 942-5000

Michael T. Scott  
Paul B. Kerrigan  
REED SMITH, LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301  
(215) 851-8100  
ATTORNEYS FOR WYETH

Dated: May 14, 2004

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____ )	
IN RE DIET DRUGS )	
(PHENTERMINE/FENFLURAMINE/ )	MDL No. 1203
DEXFENFLURAMINE) PRODUCTS )	
LIABILITY LITIGATION )	
_____ )	
This document relates to: )	
SHEILA BROWN, et al. v. AMERICAN )	Civil Action No. 99-20593
HOME PRODUCTS CORPORATION )	
_____ )	

**[PROPOSED] PRETRIAL ORDER NO. \_\_\_\_\_**

The Court having considered Wyeth’s Motion To Hold Class Member Lanna J. Nustad And Her Counsel In Contempt of PTO 3503 (“Motion”), and the parties’ submissions and arguments with respect thereto,

IT IS HEREBY ORDERED that Wyeth’s Motion is GRANTED; and

IT IS FURTHER ORDERED that the Court finds Lanna J. Nustad and her counsel, Douglas Monsour, to be in civil contempt of PTO 3503 for the reasons set forth in the Motion; and

IT IS FURTHER ORDERED that Lanna J. Nustad and her counsel are hereby further ENJOINED from introducing any evidence, making any statement before or argument to the jury, related directly or indirectly to the number of lawyers representing Wyeth, the size of any law firm representing Wyeth, the number or location of offices of such law firms, or the identity of any other clients represented by those lawyers or law firms; and

IT IS FURTHER ORDERED that Wyeth shall deliver forthwith a copy of this order to the state court trial judge.

SO ORDERED this \_\_\_\_\_ day of May, 2004.

\_\_\_\_\_  
Harvey Bartle, III  
United States District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of Wyeth's Motion to Hold Class Member Lanna J. Nustad and Her Counsel in Contempt of PTO 3503, Wyeth's Memorandum in Support of its Motion to Hold Class Member Lanna J. Nustad and Her Counsel in Contempt of PTO 3503 and Proposed Order, were served this 14th day of May, 2004 by Federal Express Overnight Delivery and by Hand Delivery upon:

**Douglas Monsour  
Sloan Monsour, P.C.  
101 East Whaley Street  
P.O. Drawer 2909  
Longview, TX 75606**

**Keith Jensen  
Law Office of Keith Jensen, P.C.  
514 East Belknap  
Fort Worth, TX 76102**

and by first-class mail, postage prepaid, upon all other counsel required to be served by Pretrial Order No. 19 (the names of whom appear on the attached service list).

/s/ Donald R. Gordon  
\_\_\_\_\_  
Donald R. Gordon

Dated: May 14, 2004

Arnold Levin, Esquire  
Levin, Fishbein, Sedran & Berman  
510 Walnut Street  
Suite 500  
Philadelphia, PA 19106  
**Co-Chair of Plaintiffs' Management Committee**

John J. Cummings, III, Esquire  
Cummings, Cummings & Dudenhefer  
416 Gravier Street  
New Orleans, LA 70130  
**Co-Chair of Plaintiffs' Management Committee**

Stanley M. Chesley, Esquire  
Waite, Schneider, Bayless, Chesley Co., L.P.A.  
1513 Central Trust Tower  
One West Fourth Street  
Cincinnati, OH 45202  
**Co-Chair of Plaintiffs' Management Committee**

Ms. Deborah A. Hyland  
Plaintiffs' Management Committee  
Constitution Place  
325 Chestnut Street, Suite 200  
Philadelphia, PA 19106  
**Co-Chair of Plaintiffs' Management Committee**

Michael T. Scott, Esquire  
Reed Smith LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301  
**Liaison Counsel for Fenfluramine/Dexfenfluramine Defendants**

Edward W. Madeira, Jr., Esquire  
Pepper Hamilton LLP  
300 Two Logan Square  
Philadelphia, PA 19103-2799  
**Liaison Counsel for Phentermine Manufacturers & Suppliers**

Peter G. Resnick, Esquire  
McDermott, Will & Emery  
28 State Street, 34<sup>th</sup> Floor  
Boston, MA 02109-1775  
**Co-Lead Counsel for Phentermine Defendants**

Edward S. Weltman, Esquire  
Goodwin Proctor LLP  
599 Lexington Avenue, 30<sup>th</sup> Floor  
New York, NY 10022  
**Co-Lead Counsel for Phentermine Defendants**

1 R E P O R T E R ' S R E C O R D  
2 VOLUME 1 OF 1 VOLUME.  
3 MASTER FILE NO. MISC. #PHF-001  
4 IN ALL PHEN-FEN CASES \* TEXAS RULES OF  
5 PENDING OR TO BE PENDING IN \*  
6 THE COUNTIES OF THE FIRST \* JUDICIAL ADMINISTRATION  
7 ADMINISTRATION JUDICIAL REGION, \*  
8 STATE OF TEXAS \* RULE 11 PRETRIAL JUDGE  
9 CAUSE NO. 254-02  
10 VICKIE CAROL CAMPBELL-REESE, \* IN THE DISTRICT COURT OF  
11 ET AL. \*  
12 (LANNA NUSTAD) \*  
13 V. \* UPSHUR COUNTY, TEXAS  
14 WYETH-AYERST LABORATORIES \*  
15 COMPANY, ET AL \* 115TH JUDICIAL DISTRICT

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\*\*\*\*\*  
JURY SELECTION  
EXCERPT RECORD OF MR. MONSOUR'S VOIR DIRE EXAMINATION  
\*\*\*\*\*



ON THE 10TH DAY OF MAY, 2004, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the HONORABLE LAUREN PARISH, Judge  
presiding, held in Gilmer, Upshur, County, Texas:

Proceedings reported by computerized machine  
shorthand.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

MR. DOUGLAS C. MONSOUR  
Sloan-Monsour  
P. O. Drawer 2909  
Longview, Texas 75606  
Phone: 903-757-7000  
ATTORNEY FOR PLAINTIFF LANNA NUSTAD

MR. DAN K. WEBB  
Winston & Strawn  
35 West Wacker Drive  
Chicago, Illinois 60601-9703  
Phone: 312-558-5856  
ATTORNEY FOR DEFENDANT WYETH AYERST

MR. DON C. GRIFFIN  
Vinson & Elkins  
2300 First City Tower  
1001 Fannin Street  
Houston, Texas 77002-6760  
Phone: 713-758-3508  
ATTORNEY FOR DEFENDANT WYETH AYERST

MR. DAVID P. STONE  
Hartline, Dacus, Barger, Dreyer & Kern  
6688 North Central Expressway  
Suite 1000  
Dallas, Texas 75206  
Phone: 214-369-2100  
ATTORNEY FOR DEFENDANTS WAL-MART,  
RITE-AID

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHRONOLOGICAL INDEX

JURY SELECTION

EXCERPT RECORD OF VOIR DIRE EXAMINATION

MAY 10, 2004	PAGE
Instructions from the Court . . . . .	4
Voir Dire Examination by Mr. Monsour. . . . .	7
Court Reporter's Certificate. . . . .	53

## P R O C E E D I N G S

(May 10, 2004)

1  
2  
3 THE COURT: Okay. Members of the Jury  
4 Panel, this is a civil case which is going to be tried  
5 before you the jury and your duty as jurors in this case  
6 is going to be to decide the disputed facts. It will be  
7 the duty of the court to see that the case is tried in  
8 accordance with the rules of law. In this case -- excuse  
9 me -- as in all cases the actions of the judge, the  
10 parties, the witnesses, the attorneys, and the jurors  
11 must be according to our law. Texas law permits proof of  
12 any violation of the rules of proper jury conduct. By  
13 this I mean that jurors and others may be called upon to  
14 testify in open court about acts of jury misconduct. I  
15 instruct you therefore to follow carefully the  
16 instructions I'm going to be giving you now as well as  
17 others which you later may receive while this case is on  
18 trial. If for some reason a juror does not obey these  
19 instructions, then it could mean that we have to dismiss  
20 this case, retry it again, and all your time as well as  
21 taxpayers' dollars would be wasted. So please listen  
22 carefully as I go over these instructions with you. Do  
23 not mingle or talk with the lawyers, the witnesses, the  
24 parties, or any other person who might be connected with  
25 or interested in this case except for casual greetings.

1 They have to follow the same instructions so you'll  
2 understand it when they do. Do not accept from nor give  
3 to any of those persons any favors however slight such as  
4 rides, food, or refreshments. Do not discuss anything  
5 about this case or even mention it to anyone whomsoever  
6 including your spouse nor permit anyone to talk about in  
7 your presence until you are discharged or excused as  
8 jurors from this case. If anyone attempts to discuss the  
9 case with you, please report it to me at once.

10           The parties through their attorneys will have  
11 the right to direct questions to each of you concerning  
12 your qualifications your background, your experiences,  
13 and your attitudes. In questioning you they are not  
14 meddling into your personnel affairs but instead are  
15 trying to select fair and impartial jurors who are free  
16 from any bias or prejudice in this particular case. Do  
17 not conceal information or give answers which are not  
18 true. Listen carefully to the questions and give full  
19 and complete answers. If the lawyers ask a question of  
20 you as a group that would require an answer on your part  
21 individually, be sure and raise your hand until a lawyer  
22 or the court has seen you, recognized you, and you've had  
23 a chance to answer that question fully and completely.  
24 Another thing I'm going to ask you to do is that when you  
25 are called upon to answer a question or if you have a

1 question, I think I've mentioned this earlier, be sure,  
2 I'm going to ask you to stand, state your name, and then  
3 either answer the question or ask the question that you  
4 might have. Does everybody understand these  
5 instructions? Okay. Did everybody get lunch? Hope so.  
6 All right. This is going to be rather lengthy, if  
7 you-all need a break and I haven't taken one, if you will  
8 get my attention or Louie's attention we will take a  
9 break, okay, and don't be shy about it, okay.

10 All right. This case is Cause Number 254-02,  
11 Lanna Nustad versus Wyeth-Ayerst Laboratories Company,  
12 Rite-Aid Pharmacy and Wal-Mart. I'm going to attempt to  
13 introduce the lawyers, at least the ones that I know of  
14 that are going to be actively participating in the case.  
15 For the plaintiffs it's Mr. Doug Monsour. Thank you,  
16 Mr. Monsour. And Mr. Keith Jensen. Thank you,  
17 Mr. Jensen. For the defendant Wyeth Dan Webb, Mr. Webb.  
18 Thank you, Mr. Webb. Ed Arnold, I've missed him. There  
19 he is, Mr. Arnold. Don Griffin. Mr. Griffin, thank you.  
20 Debra Riley. Thank you, Ms. Riley. I also have listed  
21 Robbi Hull. Ms. Hull may or may not be participating,  
22 but I wanted to identify her. And Mr. Dwight Brannon.  
23 Okay. For Rite-Aid Pharmacy and Wal-Mart Mr. David  
24 Stone. Thank you, Mr. Stone. And Mr. Alfred Ramirez.  
25 Thank you, Mr. Ramirez. I have given each side one hour

1 for their voir dire or jury selection, actually the  
2 questions they'll be asking you and the time they'll be  
3 visiting with you. There will be some time after that  
4 that we will need to visit with either individual groups  
5 of you or individual jurors, but at this time I'm going  
6 to turn it over to Mr. Monsour who will be conducting the  
7 voir dire for the plaintiffs.

8 MR. MONSOUR: Thank you, Your Honor.  
9 September 11th, 1997 the drug company Wyeth  
10 received a phone call from the Food and Drug  
11 Administration. Food and Drug Administration advised  
12 them that because of a link associated with valvular  
13 heart disease they needed to have an emergency meeting.  
14 The meeting was scheduled for the following day. The  
15 meeting was held, Wyeth attended with doctors,  
16 scientists, lawyers, company executives and the like. It  
17 was a big meeting. The FDA looked down at Wyeth and they  
18 said there's a problem with your drugs and we recommend  
19 that you take them off because there's an association,  
20 there's a link between your drugs and valvular heart  
21 disease. Wyeth called a meeting, asked for a recess,  
22 went out in the hallway and came back in, and that day  
23 they agreed to withdraw the drugs from the market because  
24 of the risk of valvular heart disease. The drugs were  
25 withdrawn three days later on September 15th of 1997 and

1 they have never been put back on the market. They never  
2 will be put back on the market. No one has tried to put  
3 them back on the market. That's why we're here. A bad  
4 drug was manufactured and it is shown, it is linked, it  
5 causes, it's associated with valvular heart disease. So  
6 why am I here? I'm here because I represent her and she  
7 has valvular heart disease. She has a disease on the  
8 aortic valve of her heart. How do I know this? Her  
9 cardiologist told me in Longview, our expert cardiologist  
10 told me, our expert heart surgeon told me, their expert  
11 cardiologist told me, and their expert heart surgeon told  
12 me, so five people have told me that. The only  
13 difference is their expert cardiologist and expert heart  
14 surgeon say it wasn't the drugs that caused, it was  
15 something else. Y'all will be the judges as to how  
16 realistic that position is. So you might say, why are we  
17 here. Their position, even though they made the drugs  
18 and they took them off the market, their position is they  
19 didn't do anything wrong. They think they acted  
20 reasonably. They think they designed a good drug, they  
21 think they acted reasonably. They think it's pure  
22 happenstance or there are other causes, which we will  
23 show you are not true, that caused her heart valve  
24 disease. That's what they're going to tell you. So  
25 that's what this case is about. The diet drugs in

1 question are called phen-fen. You've heard  
2 advertisements about it and you've probably read about it  
3 in the paper. It was a very very bad bad drug and it is  
4 no longer available.

5 Good morning or actually good afternoon. All  
6 right. Let me try that one more time. This is my only  
7 chance to talk to you. This is called jury selection.  
8 All right. This is the only time I get to talk to you.  
9 If you're seated on that jury and we're rocking along in  
10 trial and you think of something that you want to hear,  
11 you can't go, hey, Doug, I got a question I got to ask  
12 you. This is the only time, this is the only time we can  
13 talk. So now we're going to try this one more time.

14 Good afternoon. Very good. Very good. My name is Doug  
15 Monsour. I'm a lawyer in Longview, Texas. My law firm  
16 is Sloan-Monsour. I represent a lot of people here in  
17 Upshur County and I represent Ms. Lanna Nustad, she lives  
18 here in Gilmer.

19 Basically what is jury selection? Jury  
20 selection is our chance to figure out if there are any  
21 hidden biases or leanings about a particular case. I'm  
22 not giving you evidence, I'm telling you kind of what the  
23 evidence is going to show, but jury selection is you try  
24 and find out, some people are going to be leaning one way  
25 too much and other people are going to be leaning another

1 way way too much. I'll give you an example, I would love  
2 nothing more than to try all cases and have my hunting  
3 buddies on the jury. I would do very very well, I bet I  
4 would bat a thousand, but that probably wouldn't be very  
5 fair to these people over here. Now on the converse, if  
6 we were trying this case and it was a bunch of drug  
7 company executives in the jury, that probably wouldn't be  
8 very fair to her. So what we're trying to do in this  
9 case is we're going to try and find out if people have  
10 biases one way or the other. It's not only evidence,  
11 you're not going to hear any evidence. You might say,  
12 well, if you're going to say this, if you could prove all  
13 that, then I'm going to win. It's basically inherent  
14 biases that you might have prejudging evidence. You're  
15 not going to hear any evidence. You're just going to  
16 hear -- I could be wrong. Literally I could be up here  
17 making all of this stuff up. It's not true, and I'm  
18 going to have evidence, but you're not hearing any  
19 evidence right now, we're just trying to find out if  
20 there's one reason or another you wouldn't be a qualified  
21 juror in this case. So that's what we're looking at.  
22 For instance, if you took -- let me give you an example  
23 of a juror where you probably wouldn't be good in this  
24 case. Is there anybody here who took phen-fen who has  
25 been diagnosed as having valvular heart disease, anybody,

1 any hands, because if you are, because it's unfair to  
2 them, I will agree to strike you. If you took phen-fen  
3 and you have valvular heart disease, I will agree to  
4 Wyeth to strike for cause. Is there anybody here today?  
5 Yes, ma'am.

6 PROSPECTIVE JUROR RICHARDSON: I have a  
7 sister.

8 MR. MONSOUR: You have a sister.

9 PROSPECTIVE JUROR RICHARDSON: That took  
10 phen-fen, has valvular heart disease.

11 MR. MONSOUR: And her name?

12 PROSPECTIVE JUROR RICHARDSON: Julia Cole.

13 THE COURT: Could you state your name,  
14 please.

15 PROSPECTIVE JUROR RICHARDSON: Debra  
16 Richardson.

17 THE COURT: Thank you.

18 MR. MONSOUR: I don't think it would be  
19 fair for you to be a juror in this case, okay. So if  
20 they move to strike you for cause, I'm going to agree to  
21 it because we want to be fair. We are not trying to take  
22 advantage of them. We're going to win this case, not  
23 with biased jurors, we're going to win this case on the  
24 merits of the case. So thank you for answering that  
25 question. I appreciate that. Yes, sir.

1 PROSPECTIVE JUROR TEFTELLER: My aunt, my  
2 aunt Ann Stegall has took phen-fen and has heart  
3 problems.

4 MR. MONSOUR: She has pretty severe heart  
5 problems, doesn't she?

6 PROSPECTIVE JUROR TEFTELLER: I don't know  
7 the details. I know she took phen-fen. She's having  
8 major problems.

9 MR. MONSOUR: I do know the details and  
10 you're right.

11 THE COURT: Is this Mr. Tefteller?

12 PROSPECTIVE JUROR TEFTELLER: Yes.

13 MR. MONSOUR: She's a very nice lady and  
14 I'll tell her I met you. I'm her lawyer. Yes, ma'am.

15 PROSPECTIVE JUROR GOWAN: My mother.

16 MR. MONSOUR: Your mother took phen-fen?

17 THE COURT: Could you -- we need you-all  
18 to state your names because I can't see you. We've got  
19 to make a record of who these folks are, I'm sorry.

20 PROSPECTIVE JUROR GOWAN: Angela Gowan.

21 THE COURT: Okay. Ms. Gowan. I couldn't  
22 -- I can't -- also so you'll know, I can't tell where the  
23 sound's coming from in here sometimes, okay.

24 MR. MONSOUR: Ms. Gowan, you said that  
25 your mother took phen-fen?

1 PROSPECTIVE JUROR GOWAN: Yes, sir.

2 MR. MONSOUR: Does she have valvular heart  
3 disease?

4 PROSPECTIVE JUROR GOWEN: Yes, sir.

5 MR. MONSOUR: What kind of valvular heart  
6 disease does she have?

7 PROSPECTIVE JUROR GOWEN: She has  
8 blockage. She's already had a stint put in there. She  
9 also took the other drug too.

10 MR. MONSOUR: Okay. A little bit  
11 different. In this case, phen-fen, what causes valvular  
12 -- do you know if she has regurgitation or anything like  
13 that?

14 PROSPECTIVE JUROR GOWAN: I don't know.

15 MR. MONSOUR: Okay. But your  
16 understanding she took phen-fen and has some of the  
17 problems that phen-fen caused.

18 PROSPECTIVE JUROR GOWAN: Yes, she's  
19 already won the other case.

20 MR. MONSOUR: Okay. She won?

21 PROSPECTIVE JUROR GOWAN: Yes.

22 MR. MONSOUR: Okay. So she did something  
23 like this and she prevailed.

24 PROSPECTIVE JUROR GOWAN: Yes, sir.

25 MR. MONSOUR: Okay.

1 THE COURT: Mr. Monsour, you do have  
2 another hand on the back row. I think it's Mr. Wright.  
3 PROSPECTIVE JUROR LEWIS: Mr. Lewis.  
4 MR. MONSOUR: Yes, --  
5 THE COURT: I'm sorry.  
6 MR. MONSOUR: -- sir, Mr. --  
7 THE COURT: Okay.  
8 MR. MONSOUR: -- Lewis.  
9 THE COURT: Lewis, excuse me.  
10 PROSPECTIVE JUROR LEWIS: My sister.  
11 MR. MONSOUR: Your sister took phen-fen?  
12 PROSPECTIVE JUROR LEWIS: In Dallas,  
13 Texas.  
14 MR. MONSOUR: Does she have valvular heart  
15 disease?  
16 PROSPECTIVE JUROR LEWIS: Yes.  
17 MR. MONSOUR: As a result of taking  
18 phen-fen?  
19 PROSPECTIVE JUROR LEWIS: The case is over  
20 but they had a settlement.  
21 MR. MONSOUR: What did you say?  
22 PROSPECTIVE JUROR LEWIS: The case was  
23 over, they've settled it.  
24 MR. MONSOUR: They settled.  
25 PROSPECTIVE JUROR LEWIS: Yes.

1 MR. MONSOUR: Okay.

2 THE COURT: Can you-all find his number?

3 Okay. Sixty.

4 MR. MONSOUR: Let me ask you, Mr. Lewis,  
5 we're trying to be fair here, we want to get honest  
6 opinions from everybody and I expect them to do the same  
7 thing as I'm doing for them, to be fair, do you think  
8 because your sister had valvular heart disease as a  
9 result of taking phen-fen and they settled with her, do  
10 you think -- do you think that you could be a fair juror  
11 in this lawsuit or are you already leaning against them?

12 PROSPECTIVE JUROR LEWIS: Leaning against  
13 them.

14 MR. MONSOUR: You're leaning against them.  
15 All right. I will agree to strike you for cause. And  
16 I'll get you in one second. Let me go back to her, Ms.  
17 Gowan, it was your mother.

18 PROSPECTIVE JUROR GOWAN: Yes, sir.

19 MR. MONSOUR: Your mother, valvular heart  
20 disease or some other heart problem caused by phen-fen.  
21 She's already won her case against them. Do you think  
22 you could be leaning against them already?

23 PROSPECTIVE JUROR GOWAN: No.

24 MR. MONSOUR: No? You think you could be  
25 fair?

1 PROSPECTIVE JUROR GOWAN: Yes, sir.

2 MR. MONSOUR: Okay. I'll let Mr. Griffin  
3 ask you some questions. And then you are one, two,  
4 three, four, five, six, seven, Mr. Yohn.

5 PROSPECTIVE JUROR YOHN: Yohn.

6 MR. MONSOUR: Yohn, I'm sorry.

7 PROSPECTIVE JUROR YOHN: My mother took  
8 phen-fen but it was only for -- it was I'm assuming only  
9 about a couple of weeks.

10 MR. MONSOUR: Okay.

11 PROSPECTIVE JUROR YOHN: But she did not  
12 develop any adverse effects, I just thought I would state  
13 that.

14 MR. MONSOUR: That's not going to have you  
15 leaning one way or the another, is it?

16 PROSPECTIVE JUROR YOHN: Huh-uh, no.

17 MR. MONSOUR: Okay. I've been making a  
18 mistake and the judge is going to get on me and the court  
19 reporter is going to kick me and I'm so sorry, from now  
20 on when we talk, would you stand up when we start talking  
21 because it's hard to hear. In the court reporter's  
22 defense I have a loud voice, but sometimes y'all might  
23 not be able to -- she might not be able to hear y'all.  
24 Let me -- let me give you a pointer with regard to this.  
25 As far as fears, I have a lot of things that I am scared

1 about, but they did a survey recently and it was what are  
2 the things that Americans are most scared of. Does  
3 anybody have an idea of what Americans were most scared  
4 of? Miss, is it, Hebert? Ms. Hebert, do you have any  
5 idea what Americans are most scared of?

6 PROSPECTIVE JUROR HEBERT: Jury duty.

7 MR. MONSOUR: Jury duty, that didn't make  
8 the list, but if it was prospective jurors they were  
9 asking that would be on the first one. Okay. Any other  
10 ideas? I'm going to ask you, Mr. Grantham, any ideas?

11 PROSPECTIVE JUROR GRANTHAM: War.

12 MR. MONSOUR: War. Very good. And then  
13 I'm going to ask you, Mr., is it, Buchanan?

14 PROSPECTIVE JUROR BUCHANAN: Yeah.

15 MR. MONSOUR: What do you think it is?

16 PROSPECTIVE JUROR BUCHANAN: Death.

17 MR. MONSOUR: Death, very good. No, the  
18 number one cause, the one fear in America, is public  
19 speaking, and guess what I'm asking y'all to do, publicly  
20 speak, and now I'm asking you to stand up so everyone  
21 will stare at you and we'll look at you and say that  
22 person answered the question wrong or that person  
23 answered the question right, but there are no right or  
24 wrong answers, literally. All you're trying, all we're  
25 trying to do is find out opinions like Mr. Lewis back

1 there. Mr. Lewis, you get an A-plus. I asked a  
2 question, you answered it, and you were incredibly honest  
3 so you get an A-plus. You're not going to be on the  
4 jury, but you get an A-plus, you did what jury selection  
5 is intended to accomplish, Wyeth, the drug company,  
6 doesn't have somebody who's biased against them. And  
7 that's okay, that doesn't mean you're a bad person. Some  
8 people need to have a bias against them, but they have a  
9 right to a fair trial and because they have a right to a  
10 fair trial, they shouldn't have jurors that all think one  
11 way. Now y'all might be thinking why is he, why is Doug  
12 so dumb that he is striking jurors that would be good for  
13 him. Who here thinks I'm kind of stupid thus far? I  
14 mean, I've already gotten rid of four jurors. They bear  
15 the courthouse on these guys, why have I gotten rid of  
16 them? Fairness. This is a case of fairness and  
17 integrity. This is a case from the facts. We don't need  
18 to run from the facts. I embrace the facts of this case  
19 and the reason I embrace the facts in this case is I am  
20 going to prove to you negligence, product defect, and  
21 failure to warn about serious adverse side effects.  
22 That's what this case is about and I don't need jurors  
23 leaning in my favor to win this case.

24 So I've got a few questions for you, a few  
25 additional questions. Is there anybody here that has

1 ever given a deposition or testified in court, has  
2 anybody ever done that? Okay. And let me ask you,  
3 Mr. Simpson, tell me what the purpose of that was.

4 PROSPECTIVE JUROR SIMPSON: I --

5 THE COURT: Stand up.

6 PROSPECTIVE JUROR SIMPSON: -- witnessed a  
7 wreck. I witnessed an automobile accident. I had to  
8 testify --

9 MR. MONSOUR: Okay.

10 PROSPECTIVE JUROR SIMPSON: -- as to what  
11 I saw.

12 MR. MONSOUR: All right. Mr. Simpson, you  
13 seem like a nice person -- I'm not done yet, not done  
14 yet. Mr. Simpson, when you gave your testimony you were  
15 sworn in to tell the truth, the whole truth, and nothing  
16 but the truth, true?

17 PROSPECTIVE JUROR SIMPSON: That's right.

18 MR. MONSOUR: And you did that.

19 PROSPECTIVE JUROR SIMPSON: Yes.

20 MR. MONSOUR: Do you believe that  
21 everybody that takes an oath tells the truth?

22 PROSPECTIVE JUROR SIMPSON: Sometimes I  
23 kind of doubt it.

24 MR. MONSOUR: I think that's right. Who  
25 here agrees with Mr. Simpson, raise your hands. Okay.

1 Good. Thank you, Mr. Simpson, you can sit down.

2 THE COURT: He gets an A-plus too.

3 MR. MONSOUR: He does. You get an A-plus.

4 Now, another question that I've got is, we're  
5 going to be fair to both sides here, is there anybody  
6 here what works for a drug company, because I probably  
7 would want to know that and my client would want to know  
8 that, so is there anybody here work for Wyeth, Pfizer,  
9 Merck, Abbott, Bristol Myers Squibb, any employees around  
10 here, anybody ever worked for any of those companies?

11 Okay. Anybody have a family member? I don't work for  
12 Bristol Myers Squibb, but my dad who put me through  
13 college, he does, and I really like drug companies.  
14 Anybody? Okay. Good friend, family member, anything  
15 like that?

16 Okay. Anybody here ever seen a trial on TV?  
17 Okay. I'm going to ask you, is it, Miss Winn?

18 PROSPECTIVE JUROR WINN: Uh-huh.

19 MR. MONSOUR: Did I get that right? All  
20 right. Ms. Winn, would you please tell us what trial you  
21 saw on TV.

22 PROSPECTIVE JUROR WINN: I don't remember.

23 MR. MONSOUR: Okay. Okay. You've just  
24 seen them in general.

25 PROSPECTIVE JUROR WINN: Uh-huh.

1 MR. MONSOUR: Okay. All right. Let me  
2 ask you this, there was a football player by the name of  
3 O. J. Simpson, has anybody ever heard of him? Okay. How  
4 many O. J. Simpson trials were there? Two. Two. In the  
5 first one O. J. was found not guilty; in the second one  
6 O. J. was found guilty. Not really. Let me explain the  
7 difference. The first famous O. J. trial, Johnny  
8 Cochran.

9 PROSPECTIVE JUROR EASLEY: Uh-huh.

10 MR. MONSOUR: What was his name, I always  
11 remember Cochran because I read his books, Cochran.

12 PROSPECTIVE JUROR: F. Lee Bailey.

13 THE COURT: Shapiro, what was his name?

14 MR. MONSOUR: Shapiro, thank you. Those  
15 guys defended them. Now real quick, just a showing of  
16 hands, first jury found him not guilty, the second one  
17 found him liable. Who here thinks the first jury got it  
18 right, raise your hand. Who here thinks the second jury  
19 got it right, raise your hand. Who here thinks both  
20 juries got it right, raise your hand. What kind of a  
21 dumb lawyer raises his hand and says they won them both.  
22 The difference, the reason involves burden of proof. To  
23 put O. J. away for life or to give him the death penalty,  
24 what is the standard of proof that Johnny Cochran had to  
25 defeat? Anybody know? Yes, sir.

1 PROSPECTIVE JUROR HOLLOWAY: The gloves.

2 MR. MONSOUR: Well, they used the glove,  
3 you're right, very good point, but the standard of proof,  
4 yes, sir.

5 PROSPECTIVE JUROR: Reasonable doubt.

6 MR. MONSOUR: Reasonable doubt, beyond a  
7 reasonable doubt. Johnny Cochran didn't prove that O. J.  
8 was innocent. Johnny Cochran proved that there was a  
9 reasonable doubt. He proved that the state didn't meet  
10 its burden. Typically if you were using numbers, you  
11 would say beyond a reasonable doubt means that 99 percent  
12 of the evidence must be in favor of conviction, 99  
13 percent.

14 Okay. Trial number two, the lawyer's name was  
15 Dan Petrocelli and Mr. Petrocelli got a verdict against  
16 O. J. Simpson for \$33 million. Everybody remembers that,  
17 right? The standard of proof in that case was a civil  
18 case like this one. This is a civil case. We're not  
19 trying to put Wyeth in jail or anything like that. We're  
20 trying to get a verdict against them. The standard of  
21 proof is lower, preponderance of the evidence which means  
22 more likely than not. Mathematically it means 51 percent  
23 of the evidence, much lower standard. Now basically what  
24 that means is that if we can tip the scales in our favor  
25 just a little bit, 50.0001 percent of the evidence goes

1 in our favor, we win. We don't have to prove 99 percent  
2 of the evidence, we have to prove 50.0001.

3           Who have I lost? Who's confused with what I'm  
4 talking about? Does everybody kind of understand the  
5 difference? O. J. Simpson, let's say the jurors in both  
6 trials found somehow that the evidence boiled down to 75  
7 percent of the evidence showed that O. J. did it. So if  
8 you use a 99 percent scale in criminal, he walks. But if  
9 you then apply that same evidence in a civil case, O. J.  
10 pays. This case is preponderance of the evidence. Who  
11 will hold me to the beyond a reasonable doubt standard  
12 that Judge Parish won't hold me to? Is there anybody  
13 here that says I understand what you're saying,  
14 preponderance of the evidence, beyond a reasonable doubt,  
15 but if I have a reasonable doubt I'm not going to find in  
16 your favor? Ms. -- is it Swanner?

17           PROSPECTIVE JUROR SWANNER: Swanner.

18           MR. MONSOUR: Ms. Swanner, what do you  
19 think about that?

20           PROSPECTIVE JUROR SWANNER: I'm the wrong  
21 person to ask because since the other people have said,  
22 you know, when you asked if they were involved with the  
23 case or knew anybody that had taken it before, I'm  
24 already suspicious about it because of the fact that  
25 there's cases right here in this room.

1 MR. MONSOUR: Hold on, we'll get to that,  
2 we'll get to that. And what I want you to do, Ms.  
3 Swanner, is remember this, you're not hearing evidence.  
4 What I'm worried about right now is people saying, well,  
5 it sounds like it causes it and this kind of stuff,  
6 therefore, I'm leaning one way. That's not fair. That's  
7 not right. Let me finish. Let me take the burden off  
8 you. You haven't heard any evidence yet. You've heard a  
9 lawyer talking. I could be making stuff up. They could  
10 not be telling the truth. The only thing you're going to  
11 have to judge this case on is what comes from the stand  
12 right over here where Louie is sitting. Evidence is  
13 going to come in and that's what you have to decide. So  
14 what I'm going to ask you is can you wait and hear the  
15 evidence from there before you decide?

16 PROSPECTIVE JUROR SWANNER: Oh, yes.

17 MR. MONSOUR: Okay. That's all we're  
18 asking. Prejudging evidence, what I'm talking about is  
19 there an inherent bias, that's one of the things I'm  
20 trying to get at. In other words, I hate lawsuits, I  
21 don't care about the evidence, I don't care, I don't like  
22 lawyers, I think damages are too high, I think juries are  
23 out of control, and no matter what happens I can't find  
24 in your favor, I'm going to be holding back, you might  
25 prove \$2 million worth of damages, you might prove \$10

1 million worth of damages, but I'm not going to award, I  
2 think lawsuits are worth \$50,000 period, across the  
3 board, end of story. That's who we're trying to get out.  
4 And who he's trying to get out is every person that says  
5 no matter what happens in a lawsuit the person is  
6 entitled to \$20 million. That's what we're look for.  
7 We're trying to look for the people that are on the  
8 fringes because they're probably not going to make very  
9 good jurors because they prejudge the case, okay. That's  
10 what I'm trying to get at. So let me ask you the  
11 question again, beyond a reasonable doubt, do you agree  
12 that you can listen to the Court's instructions and if we  
13 show more evidence, more likely that is more likely that  
14 Lanna Nustad should win, can you follow those  
15 instructions? That's the law.

16 PROSPECTIVE JUROR SWANNER: Yes, I can.

17 MR. MONSOUR: Okay. Is there anybody here  
18 who's going to say if you don't show me, if there is any  
19 doubt whatsoever, I'm not going to be able to find in  
20 your favor, I need to know who you are. And if that's  
21 your opinion, that's okay, but I need to know now. You  
22 can't tell me three days into trial. It's too late then.  
23 We can't even talk, remember. So is there anybody here  
24 that has any sort of -- they would hold me to the  
25 standard in a criminal case that doesn't apply here? And

1 the reason I ask these questions, all of my questions  
2 come from other jurors so I picked other juries and  
3 people have said, well, I think it should be beyond a  
4 reasonable doubt in every case, and so I ask y'all the  
5 questions. So let me ask you, is it, Mr. Jordan?

6 PROSPECTIVE JUROR JORDAN: Yes, sir.

7 MR. MONSOUR: We have some famous  
8 panelists, we have Michael Jordan and Charlie Daniels.  
9 Mr. Jordan, tell me what you think about that.

10 PROSPECTIVE JUROR JORDAN: It would all be  
11 the evidence. I'm indifferent right now.

12 MR. MONSOUR: Okay.

13 PROSPECTIVE JUROR JORDAN: I really don't  
14 have enough information to make any sort of judgment.

15 MR. MONSOUR: You just hit the nail on the  
16 head. Thank you. There is no evidence thus far. You're  
17 waiting to hear. But as we sit here right now, you are  
18 willing to follow preponderance of the evidence, listen  
19 to the evidence, and not prejudge one side or the other.

20 PROSPECTIVE JUROR JORDAN: Yes, sir.

21 MR. MONSOUR: Okay. You can have a seat.  
22 Thank you, sir. Appreciate it.

23 This case is going to involve circumstantial  
24 evidence. So you say, what's circumstantial evidence.  
25 Before I tell you what circumstantial evidence is let me

1 tell you what direct evidence is. Direct evidence is  
2 when somebody does something and they say I did it or you  
3 have a witness that literally watched them do something  
4 like you, sir, Mr. -- is it Simpson?

5 PROSPECTIVE JUROR SIMPSON: Yes.

6 MR. MONSOUR: Mr. Simpson saw a wreck. He  
7 saw the person do the wrong thing, so that would be  
8 direct evidence. In this case there is some direct  
9 evidence, but there's also a lot of circumstantial  
10 evidence because the company doesn't say, yeah, we knew  
11 and yeah, we marketed it or we sold it anyway and we just  
12 didn't care. They don't say things like that. You have  
13 to prove, you have to prove these things because, I mean,  
14 there's never been a company that said we did it, we fall  
15 on the sword, it's our fault, it was bad. They don't do  
16 that. So you have to prove it by circumstantial  
17 evidence. Now I'm going to ask, is it, Ms. Hart?

18 PROSPECTIVE JUROR HART: Uh-huh.

19 MR. MONSOUR: Ms. Hart, do you know what  
20 circumstantial evidence is?

21 PROSPECTIVE JUROR HART: I don't know  
22 the...

23 THE COURT: It's okay to say you don't  
24 know.

25 MR. MONSOUR: That's okay.

1 THE COURT: It's okay to say you don't  
2 know.

3 MR. MONSOUR: It's okay. Circumstantial  
4 evidence --

5 THE COURT: You still get an A-plus.

6 MR. MONSOUR: You did great and I don't  
7 know is a good answer. If you don't know something, it's  
8 okay, it's okay to tell us.

9 Circumstantial evidence is where you piece  
10 together circumstances and you look at them to prove a  
11 certain point. Let me give you an example. My oldest  
12 son Tucker, I came home a couple days ago from work and  
13 when I left in the morning from my house we had a cookie  
14 jar full of chocolate chip cookies. I come home -- and  
15 that's one of my favorite things is chocolate chip  
16 cookies -- and I go to the cookie jar and the chocolate  
17 cookies are gone, but there is a trail of crumbs that  
18 goes down the hall, into the playroom, and into the  
19 couch. And guess who's sitting on the couch, Tucker.  
20 Tucker has cookie crumbs all over his shirt, the  
21 chocolate is still in his teeth, he's got chocolate on  
22 his fingers, and so I ask him, I go, did you eat all the  
23 chocolate chip cookies, and he looks at me and he says  
24 no. Now using circumstantial evidence, did Tucker eat  
25 the cookies? Yes. That's circumstantial evidence. So

1 keep that in mind when we prove, try and prove points.  
2 The drug company's not going to say we did it, we're  
3 sorry. They're going to say wasn't our fault, we didn't  
4 do anything wrong. And that's when we pull out documents  
5 and we say, well, what about this, what about this, what  
6 about this. So that's how you prove the case. Anybody  
7 here have any problem with me using circumstantial  
8 evidence to prove this case? Okay.

9 Okay. Here's the tough one, here's the  
10 question I always fear, the question is: Anybody heard  
11 about a lawsuit that makes them mad, and I know there's  
12 somebody out there that's heard about a lawsuit that they  
13 didn't like for one reason or another, so think about it.  
14 All right. I'm going to ask you, Mr. -- one, two, three,  
15 four, five, Mr. Edwards. Mr. Edwards, which one did you  
16 hear about?

17 PROSPECTIVE JUROR EDWARDS: McDonald's  
18 coffee case.

19 MR. MONSOUR: 25 juries in a row, I get it  
20 every time, McDonald's coffee. People are mad about it.  
21 And, yes, Ms. Hebert.

22 PROSPECTIVE JUROR HEBERT: Fast foods  
23 making you obese.

24 MR. MONSOUR: Yes, fast foods making you  
25 obese. I've been getting that one lately. That's a

1 newer one. A lot of people point though to those as  
2 situations where the justice system has broken down,  
3 courthouses are flooded with frivolous lawsuits.  
4 Whatever happened to that case?

5 PROSPECTIVE JUROR HEBERT: Threw it out.

6 MR. MONSOUR: They did, three weeks later.  
7 Three weeks later it was thrown out. So is the justice  
8 system broken or is working?

9 PROSPECTIVE JUROR HEBERT: Working.

10 MR. MONSOUR: It's working. Some people  
11 point at the fact it was filed as an indication that the  
12 system is broken. I view it as the fact that it was  
13 thrown out three weeks later as proof that the system  
14 works. Okay. Mr. Edwards, what happened in that  
15 McDonald's case?

16 THE COURT: You're going to get to stand  
17 back up.

18 PROSPECTIVE JUROR EDWARDS: I believe they  
19 were awarded the money.

20 MR. MONSOUR: They were awarded a bunch of  
21 money, over a million dollars for something, for  
22 something that wasn't that significant. Is that -- who  
23 here agrees that that's kind of what happened in the case  
24 from what they've heard about? Okay. Anybody else --  
25 you can sit down. Thank you. Anybody else here upset by

1 that verdict? Okay. Raise your hand. There's nothing  
2 wrong with it. It's not -- it's not the wrong answer.  
3 Okay. All right. That's fine. A lot of people. I  
4 don't like it either because I'm a trial lawyer. I pick  
5 juries for a living. This is what I do. I represent  
6 people like her and every time I pick a jury like this  
7 somebody says, yeah, well, but what about that McDonald's  
8 case and I say, yeah, well, this isn't the McDonald's  
9 case. So here -- I want to know who on this panel is  
10 going to hold the McDonald's hot coffee case against  
11 Lanna Nustad who took phen-fen and has valvular heart  
12 disease from taking phen-fen, who's going to hold that  
13 against Lanna Nustad, anybody? Anybody going to use that  
14 verdict to say people in general are just too greedy at  
15 the courthouse; therefore, because I know that McDonald's  
16 coffee case, I'm going to hold that against Lanna Nustad,  
17 anybody going to do that?

18 Okay. Who here thinks there's too many  
19 lawsuits, raise your hand. I know there's -- I do too, I  
20 mean, there's some bad ones out there, okay. Who here  
21 thinks that there are some very legitimate lawsuits that  
22 are brought? Okay. Let me ask it this way since I got a  
23 lot of hands, is there anybody who believes there are no  
24 legitimate personal injury lawsuits that are brought,  
25 anybody? Okay.

1 All right. This past year we have had a lot of  
2 issues that have hit us very hard in Texas and in East  
3 Texas in particular. We get a lot of advertising on  
4 certain issues. One of them was Prop 12. Does anybody  
5 remember what Prop 12 was? You probably got mailers, TV  
6 commercials. Anybody remember Prop 12? Prop 12 was the  
7 Constitutional amendment that was passed last year that  
8 capped damages in certain medical malpractice cases.  
9 Does that ring a bell with anybody? Okay. The cap was  
10 \$250,000. So my question is, it capped, it capped not  
11 all damages but the mental anguish, pain and suffering  
12 and those types of damages at \$250,000 in a med-mal case  
13 no matter how maimed you were. If you lost your legs,  
14 250,000. If you got your arms cut off, 250 plus medical  
15 bills. That's it. If you lost every limb, 250. If your  
16 child is brain damaged for the rest of his or her life  
17 because somebody made a mistake, 250. Who here thinks  
18 damages should be arbitrarily capped by the legislature,  
19 anybody think that? Who here is looking at this case and  
20 saying I think her damages should be capped, as I sit  
21 here today listening to this lawyer, I think she should  
22 get X amount period, I already have a limit? Yes, sir,  
23 Mr. Edwards.

24 PROSPECTIVE JUROR EDWARDS: I think they  
25 should be capped but not at \$250,000. I don't think they

1 should be 20 million or 250 million or whatever.

2 MR. MONSOUR: Okay. All right. What do  
3 you think would be a reasonable number to cap it at?

4 PROSPECTIVE JUROR EDWARDS: I don't know.

5 MR. MONSOUR: Okay. And when we're  
6 talking about capping damages, we're talking about on top  
7 of the medical bills and those kind of things. I mean,  
8 that's what they're saying, that's what the people down  
9 in Austin said, well, it's fair anyway because they still  
10 get their medical bills. You know, oh, you get a life of  
11 misery, you get \$250,000, great. So there's nobody here  
12 that thinks damages should be capped? Okay. I got kind  
13 of a puzzled look from, is it, Mr. Lowry? You kind of  
14 did one of these to me, so tell me what issues, do you  
15 think damages should be capped?

16 PROSPECTIVE JUROR LOWRY: Well, the  
17 question was -- the question was -- again you said that  
18 the legislature sets the cap.

19 MR. MONSOUR: Yes.

20 PROSPECTIVE JUROR LOWRY: And somebody  
21 said that they shouldn't be capped if they're -- you  
22 don't believe at \$20 million, but maybe 250 is too low.

23 MR. MONSOUR: Okay.

24 PROSPECTIVE JUROR LOWRY: I have to tell  
25 you I believe it ought to be somewhere in between.

1 MR. MONSOUR: All right. Big range,  
2 250,000 and 20 million. Do you --

3 PROSPECTIVE JUROR LOWERY: It would take  
4 like somebody smarter than me to figure out what that  
5 amount would be.

6 MR. MONSOUR: What's your opinion? And  
7 here's the reason I ask, you say it might be somebody --  
8 this case just so you know doesn't have a cap on it, but  
9 what I'm trying to find out is what your opinions are.  
10 So I don't care what the people in Austin think because  
11 they're not going to sit on this jury, but I do care what  
12 you think. Your opinion right now is very important to  
13 me. So what, if you were going to -- if you were the  
14 legislature and they said, Mr. Lowery, want you to draw  
15 up a number, what number do you think would be  
16 reasonable?

17 PROSPECTIVE JUROR LOWERY: I'd say one  
18 million dollars adjusted for inflation.

19 MR. MONSOUR: One million dollars. Who  
20 here agrees with Mr. Lowery? Mr. Edwards does. Okay.

21 PROSPECTIVE JUROR: Excuse me, is that  
22 including medical or not including medical?

23 MR. MONSOUR: That's not including  
24 medical. Who here agrees with Mr. Lowery and  
25 Mr. Edwards? Yes, that would be Mr. Walworth.

1 PROSPECTIVE JUROR JOHNSON: Carl Johnson.

2 MR. MONSOUR: Carl Johnson, I'm sorry.

3 Okay. Who here agrees with Mr. Lowery, Edwards, and  
4 Johnson. Mr. Morrow?

5 PROSPECTIVE JUROR MORROW: Uh-huh.

6 MR. MONSOUR: Okay. Mr. Morrow agrees  
7 with Mr. Lowery, Johnson, and Edwards. Anybody else?  
8 Okay. Is it fair to say that in this case, and it might  
9 not be, but I want to ask each of you, in this case as  
10 you walk into this case, do you personally feel that  
11 regardless of what is shown to you on damages that for  
12 intangible damages, meaning mental anguish, physical pain  
13 and suffering and those type of things, you have already  
14 in your mind basically set a cap of a million dollars?  
15 And I'll start with you first, Mr. Johnson, and I'll work  
16 my way across. Do you already have a cap in place,  
17 Mr. Johnson?

18 PROSPECTIVE JUROR JOHNSON: Yes.

19 MR. MONSOUR: You do. Okay. So  
20 regardless of what I prove, regardless of what I prove,  
21 you're staying at a million dollars plus out-of-pocket  
22 expenses, true?

23 PROSPECTIVE JUROR JOHNSON: True.

24 MR. MONSOUR: Thank you. The next one I  
25 will ask, Mr. Lowry, do you have a preset cap in mind and

1 could you not -- would that limit what you could award in  
2 this case?

3 PROSPECTIVE JUROR LOWRY: Yes, I do.

4 MR. MONSOUR: Okay. So regardless of what  
5 evidence is shown, you will stop at a million dollars.

6 PROSPECTIVE JUROR LOWRY: Yes.

7 MR. MONSOUR: Okay. The next one,  
8 Mr. Morrow, do you agree with Mr. Lowry and Mr. Johnson,  
9 that you are capped at a million regardless of what the  
10 evidence shows?

11 PROSPECTIVE JUROR MORROW: I don't think I  
12 would be capped at a million.

13 MR. MONSOUR: Okay.

14 PROSPECTIVE JUROR MORROW: But, you know,  
15 the 25, 30 million dollars' payout, sometime I think that  
16 would be excessive.

17 MR. MONSOUR: Okay. And then I'm going to  
18 go over to you, Mr. Edwards, would you be capped at a  
19 million regardless of the evidence that I proved?

20 PROSPECTIVE JUROR EDWARDS: I don't know  
21 about just a million but real close to that.

22 MR. MONSOUR: Okay. Do you have some cap  
23 in mind, period?

24 PROSPECTIVE JUROR EDWARDS: Probably  
25 three.

1 MR. MONSOUR: Probably three million,  
2 okay. All right. Mr. Johnson, Mr. Lowry, Mr. Morrow,  
3 Mr. Edwards, I want to thank you. You-all get A pluses  
4 because you are giving -- Mr. Johnson, you were one of  
5 the first ones to do it, thank you. You gave me answers  
6 to my questions that you know I didn't want to hear, but  
7 thank you for your integrity to do the right thing. I  
8 appreciate that.

9 Now I have a very significant fear in this case  
10 and I am scared to death about it. I represent Lanna  
11 Nustad and I have one other lawyer that's helping me on  
12 the case. Keith, would you stand up. This is Keith  
13 Jensen.

14 MR. JENSEN: Good afternoon.

15 MR. MONSOUR: Doug, Keith, are the two  
16 lawyers on the case. I've got Mr. Altman over here who's  
17 kind of our computer guru who's going to help us with  
18 documents and then I've got a couple of other people that  
19 work with my law firm that are here today. They won't  
20 necessarily be here throughout the case, but the only two  
21 lawyers who are working on this case are me and  
22 Mr. Jensen and that's it. Wyeth has designated sixteen  
23 lawyers as trial court counsel in this case. They have a  
24 battlefield headquarters set up in Longview, Texas right  
25 up the street from my office and I think they've got

1 thirty more there. They've got law offices in Washington  
2 D. C., Houston, working on this with lawyers full time  
3 and I'm scared to death. And you know why I'm scared to  
4 death, because I'm worried that she, because she only has  
5 me, and I ain't that good, and Keith, who's better than  
6 me. I'm worried that she's going to be outgunned and her  
7 rights are going to be impaired because they got more  
8 lawyers. Who here thinks that that's a legitimate  
9 concern? Who here thinks that's fair?

10 Okay. Let me go through, I need to see if  
11 anybody here has ever been represented by any of their  
12 lawyers or any of their law offices so I've got a chart  
13 here. The lead law firm is Winston & Strawn out of  
14 Chicago. The lawyers in this case are Dan Webb, the  
15 gentleman to my left who's a very nice, very nice person;  
16 Debra Riley, who's right there; Susan Pipal who is not  
17 here; Christopher Essig who I've never met; Stacey Knox  
18 who I've never met; Ashley Raymond who I've never met;  
19 July Soloway who I have met; Nicole Wrigley. They are  
20 from Winston & Strawn, 658 lawyers, offices in Geneva,  
21 London, Los Angeles, Chicago, New York, San Francisco,  
22 and Washington, D. C., and Paris. And I'm not -- Mr.  
23 Webb, is it Paris, France or Paris, Texas?

24 MR. GRIFFIN: Judge, can we approach,  
25 please, ma'am? I apologize for interrupting.

1 THE COURT: Come on up.

2 (Bench conference)

3 MR. GRIFFIN: This is --

4 THE COURT: You can come -- you can come  
5 up.

6 MR. GRIFFIN: -- against a motion in  
7 limine.

8 MR. MONSOUR: No, it's not.

9 THE COURT: You can go ahead and ask how  
10 many of them know those lawyers, but then move along.

11 MR. MONSOUR: All right.

12 THE COURT: Okay.

13 MR. WEBB: Wait a minute, can I just ask a  
14 question. I thought there was a motion in limine.

15 MR. MONSOUR: There's a motion in limine  
16 that says I can't go through the names of every lawyer on  
17 the trial, but it's not this specific.

18 THE COURT: He'll have the right to ask if  
19 anybody's used these lawyers that are just on this list.  
20 I assume that's not every lawyer.

21 MR. MONSOUR: No, I'm not asking the name  
22 of every lawyer, but I'm going to go through the  
23 different offices.

24 THE COURT: The ones that are on the list  
25 that --

1 MR. WEBB: You can't -- Judge, I thought  
2 there was some limine point that says you can't say the  
3 number of lawyers that have worked on all these cases and  
4 Judge Rhea limited us to -- that's why we exchanged  
5 lists, to identify the lawyers.

6 THE COURT: Well, are you wanting to ask  
7 if these people -- if any of these people know these  
8 names that are on the list?

9 MR. MONSOUR: Yeah.

10 THE COURT: And this is a list of people  
11 approved that are approved to be in the courtroom, in the  
12 courthouse?

13 MR. GRIFFIN: The limine specifically  
14 prohibits him from saying thirty lawyers back in  
15 Longview.

16 MR. MONSOUR: No, it doesn't.

17 MR. GRIFFIN: Well, I'll show it to you  
18 because I'm going to move for a mistrial.

19 THE COURT: Are you going to do that when  
20 we break? You can do that when we break.

21 MR. MONSOUR: I have specifically adhered  
22 to Judge Rhea's ruling.

23 THE COURT: That's fine. He can do this  
24 when we break. Go ahead, with that instruction.

25 (End of bench conference)

1 MR. MONSOUR: Okay. I'm not going to  
2 mention any -- let me see, real quick, the other lawyers  
3 that are involved are Mark Callender who's not here;  
4 Donnie Griffin who is right here, he's a nice guy; Robbi  
5 Hull who's right over there; Justin Hodge; and then  
6 there's, I don't -- he's not here today, and then there's  
7 Edward Arnold who is right over there; there's Shawn  
8 Laane who is not here; and there is Ingrid Moeller who's  
9 not here; Dwight Brannon from Gilmer, Dwight. Anybody  
10 here know Dwight? Okay. Let me -- let me go through  
11 some of the Dwight's -- people that know Dwight, could  
12 you raise your hands again. All right. Is it Ms.  
13 Easley?

14 PROSPECTIVE JUROR EASLEY: Yeah.

15 MR. MONSOUR: And then it's, yes,  
16 Mr. Lowry. And then it's, okay, I see Ms. Walker and  
17 then it's Ms. Mitchell. Ms. Mitchell, is the fact that  
18 Mr. Brannon is Wyeth local counsel on this case, is that  
19 going to prejudice you one way or another?

20 PROSPECTIVE JUROR MITCHELL: No, it's not.

21 MR. MONSOUR: Okay. Let me ask the same  
22 question to you, Ms. Walker, is that going to prejudice  
23 you?

24 PROSPECTIVE JUROR WALKER: No.

25 MR. MONSOUR: Okay. Let me ask you, Ms.

1 Easley, is that going to prejudice you one way or the  
2 another.

3 PROSPECTIVE JUROR EASLEY: Huh-uh.

4 MR. MONSOUR: Okay. And then, Mr. Lowry,  
5 is that going to prejudice you one way or the other?

6 PROSPECTIVE JUROR LOWRY: No, sir.

7 MR. MONSOUR: Okay. The reason, the  
8 primary reason that I am concerned is -- the primary  
9 reason that I'm concerned, it's not all the lawyers that  
10 I'm really worried about, it's Mr. Webb here. He is from  
11 Chicago. He's very very good. He's a much better lawyer  
12 than I could ever dream of. We all aspire to be Mr. Webb  
13 as a lawyer, but only a few people get there. He -- he  
14 has litigated some high profile cases. I need to ask if  
15 you know about it. He prosecuted Admiral Poindexter in  
16 the Iran-Contra Affair. He defended General Electric in  
17 a criminal price fixing case. Then there was a case down  
18 here in Texas. He represented tobacco against the State  
19 of Texas. Anybody -- I think that was in Judge Fulson's  
20 court in Texarkana. Anybody know about that? Okay.  
21 They wrote an article about it in Business Week, I don't  
22 know if anybody read it, it's called "Can Dan Webb Pull  
23 Big Tobacco Out of the Fire." Have you guys, has anybody  
24 read that article? Mr. Edwards, you read it. Okay.  
25 Here's what I'm worried about, Mr. Edwards, I'm worried

1 that Mr. Webb is going to pull Wyeth out of the fire on  
2 this one, so that's my concern. So, Mr. Edwards, is the  
3 fact that you have read the article about Mr. Webb, is  
4 that going to cause you to lean in Wyeth's favor against?

5 PROSPECTIVE JUROR EDWARDS: No, not at  
6 all. I think he's talented, but that's all.

7 MR. MONSOUR: So you can be fair.

8 PROSPECTIVE JUROR EDWARDS: Yes.

9 MR. MONSOUR: Okay. All right. Let me  
10 ask you this, I'm going to point something out, and I've  
11 been asking you about numbers all along, the number in  
12 this case that Ms. Nustad believes is a fair number that  
13 I agree -- believe is a fair number for her injuries is  
14 three and a half million dollars. Who here thinks that  
15 sounds like a lot of money, raise your hand. Don't  
16 hesitate. That's a lot of money, three and a half  
17 million dollars, that's a lot of money. Now let me tell  
18 you why. She has valvular heart disease. She has this  
19 disease and it gets worse over time, okay. If it is not  
20 fixed, it can lead to death. Fixing it will require open  
21 heart surgery. They will cut her heart, they will stop  
22 her beating heart, they will recirculate her blood, they  
23 will cut -- open the heart, they will cut out the  
24 diseased valve, they will replace it with a mechanical  
25 valve, they will sew the heart back up, they will remove

1 the solution that stopped the heart in the first place,  
2 they will reintroduce blood, they will get the heart  
3 beating again, boom, start it back up, and then they will  
4 sew her back up and she will be on Coumadin therapy for  
5 the rest of her life. And that surgery might have to be  
6 repeated. The effects of this valvular heart disease  
7 cause, not right now, but will take years off the end of  
8 her life, okay. I'm not saying she's going to die today.  
9 She's not. She's actually doing okay today, but it's a  
10 progressive disease that's going to get worse. But  
11 whatever time God had intended for her to be on this  
12 planet, that time has been shortened by taking these  
13 defective diet drugs. Now I asked who here thinks 3.5  
14 million is a lot of money and a lot of people, probably  
15 90 percent of y'all, raised your hand. From what I just  
16 explained to you, who here believes that 3.5 million is  
17 just way too much? Yes, sir, Mr. Covington.  
18 Mr. Covington, you think that's way too much. Could you  
19 please stand up and tell us why.

20 PROSPECTIVE JUROR COVINGTON: I don't feel  
21 you should win the lottery for taking something you're  
22 not forced to take.

23 MR. MONSOUR: Okay. Mr. Covington said no  
24 lottery for taking something you're not forced to take.  
25 She took the drugs because she wanted to lose weight.

1 She now has this condition. Who here agrees with  
2 Mr. Covington? Okay. Hold on, hold on, let me get your  
3 hand. First one is Ms. Jesters; is that right? Okay.  
4 And then there were some other ones in the back. It was  
5 Ms. Walworth.

6 PROSPECTIVE JUROR WALWORTH: That's right.

7 MR. MONSOUR: Ms. Ashley.

8 PROSPECTIVE JUROR ASHLEY: Yes.

9 MR. MONSOUR: Mr. Lowry. And then it is  
10 Mr. -- Mr. Grant. Were there any other hands? Yes,  
11 ma'am, is it Ms. Holland?

12 PROSPECTIVE JUROR HOLLAND: Yes, sir.

13 THE COURT: You've got another hand over  
14 here.

15 PROSPECTIVE JUROR POPE: I think it could  
16 be too much.

17 MR. MONSOUR: Is that Mr. Pope?

18 PROSPECTIVE JUROR POPE: Yes, I think it  
19 could be too much, not necessarily.

20 MR. MONSOUR: Okay.

21 PROSPECTIVE JUROR YOHN: I have a  
22 question, is this a prescription drug or just  
23 over-the-counter drug.

24 MR. MONSOUR: Prescription drug.  
25 Prescription drug.

1 MR. MONSOUR: Can I ask you a question?

2 PROSPECTIVE JUROR YOHN: Yes, sir.

3 MR. MONSOUR: Why is that important to  
4 you?

5 PROSPECTIVE JUROR YOHN: It's being  
6 prescribed by a physician then obviously so there is a  
7 difference.

8 MR. MONSOUR: Okay.

9 PROSPECTIVE JUROR EASLEY: That's right.

10 MR. MONSOUR: Wyeth has brought forth the  
11 argument in this case, one of the defenses that they have  
12 alleged in this case is Lanna Nustad assumed the risk in  
13 taking these drugs. Their argument is that she took  
14 these drugs and whatever risks were associated with them,  
15 she took it on, and basically she's stuck with them. She  
16 assumed the risk. Now the risk for valvular heart  
17 disease was never disclosed to Lanna Nustad or her doctor  
18 while she was taking the drug.

19 THE COURT: Mr. Monsour, just so you know  
20 you have about six and a half minutes left.

21 MR. MONSOUR: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. MONSOUR: It was never disclosed while  
24 she was taking the drugs. So Ms. Nustad, they're  
25 claiming that she assumed risks that were never disclosed

1 to her. Does that make sense? Okay. Here's what  
2 they're saying, they're saying even though we didn't warn  
3 Ms. Nustad and even though we didn't warn her doctor, she  
4 assumed these undisclosed risks. Who here thinks that  
5 she did? Mr. Covington, do you think that she assumed  
6 the risk by voluntarily taking these drugs?

7 PROSPECTIVE JUROR COVINGTON: I do.

8 MR. MONSOUR: Okay. Could you explain to  
9 us why you think that?

10 PROSPECTIVE JUROR COVINGTON: If they're  
11 diet pills, you can't lose weight without doing something  
12 and taking a pill is not going to solve the answer to  
13 nothing. It's an easy way out and there's got to be a  
14 risk to it if it's too easy.

15 MR. MONSOUR: Okay. Who here agrees -- I  
16 want to thank you first because that was not the answer  
17 that you know that I wanted to hear since I represent  
18 her. Thank you. You get an A-plus. You were very  
19 honest. I appreciate your integrity. Who here agrees  
20 with Mr. Covington? Okay. Let me talk to you, Mr. --  
21 Ms. Walworth, Ashley, and Mr. Lowry, okay, and then  
22 Mr. Grant. I'm going to talk with you first, Ms. Ashley,  
23 since I hadn't talked to you yet. Please tell us why you  
24 think she would have assumed the risk associated with  
25 taking these drugs.

1 PROSPECTIVE JUROR ASHLEY: Because -- I'm  
2 sorry, were you finished?

3 MR. MONSOUR: Yes.

4 PROSPECTIVE JUROR ASHLEY: There are other  
5 ways that you can lose weight besides taking a pill and,  
6 I mean, I exercise pretty much every day and I'm not a  
7 fitness nut, but I do exercise to keep my weight where it  
8 should be.

9 MR. MONSOUR: Okay. All right, let me ask  
10 this, has anybody here ever been a defendant in a  
11 lawsuit, ever been sued, or their company ever been sued  
12 in a personal injury lawsuit? Anybody? All right. Is  
13 it, Mr. Morgan?

14 PROSPECTIVE JUROR MORGAN: Yes, sir.

15 MR. MONSOUR: Could you tell me about  
16 that.

17 PROSPECTIVE JUROR MORGAN: A lady slipped  
18 in our store claiming the floor was wet.

19 MR. MONSOUR: And it wasn't.

20 PROSPECTIVE JUROR MORGAN: No.

21 MR. MONSOUR: All right. Is that case  
22 still pending?

23 PROSPECTIVE JUROR MORGAN: No, sir.

24 MR. MONSOUR: Did it leave a bad taste in  
25 your mouth?

1 PROSPECTIVE JUROR MORGAN: Somewhat.

2 MR. MONSOUR: Okay. Was it tried?

3 PROSPECTIVE JUROR MORGAN: No, sir,  
4 settled out of court.

5 MR. MONSOUR: Okay. Is that going to  
6 affect you as a juror in this case, is that going to  
7 affect you as a juror in this case, you've been sued, you  
8 own the store, she's bringing a personal injury lawsuit  
9 against a company, is that going to affect you?

10 PROSPECTIVE JUROR MORGAN: It shouldn't.

11 MR. MONSOUR: Okay. What's that?

12 PROSPECTIVE JUROR MORGAN: It shouldn't.

13 MR. MONSOUR: Okay. Here's the problem,  
14 let me tell you the problem, I agree it shouldn't, but it  
15 might and if you're on this jury and you get into day  
16 four and you decide you are leaning one way and it's  
17 against Ms. Nustad because you've been sued before, we  
18 can't change it. So I have been very forthright in  
19 striking people, agreeing to strike people that are  
20 obviously leaning their way. Now I'm going to ask you,  
21 sir, are you leaning a little bit even if it's so slight  
22 against Lanna Nustad?

23 PROSPECTIVE JUROR MORGAN: No.

24 MR. MONSOUR: You're not. Okay.

25 THE COURT: Two minutes.

1 MR. MONSOUR: Is there anybody else that  
2 for whatever reason might be leaning against Lanna  
3 Nustad. She's an individual, she's brought a personal  
4 injury lawsuit against a corporation. She's asking for  
5 three and and a half million dollars. Is there anybody  
6 else who is leaning against Ms. Nustad? I said anybody  
7 else, there is nobody thus far, thank you for raising the  
8 question. Is there anybody who is leaning? Mr. Pope.

9 PROSPECTIVE JUROR POPE: I'm not  
10 necessarily against her, but I'm just, I just don't like  
11 -- I just don't like lawsuits that...

12 MR. MONSOUR: Okay.

13 PROSPECTIVE JUROR POPE: I'm a diet and  
14 exercise person myself. We depend upon the government to  
15 keep us inform, but also like this other person said, you  
16 know, it is -- you do assume a certain risk when you...

17 MR. MONSOUR: Okay. I'm seeing a couple  
18 of people nodding their head, and hold on, let me get to  
19 you. And is it, Ms. Bruce?

20 PROSPECTIVE JUROR BRUCE: Yes.

21 MR. MONSOUR: You're nodding your head so  
22 -- so Mr. Pope and Ms. Bruce, is it fair to say, I'm  
23 going to finish these questions with y'all two and I'm  
24 asking a general question and sit down. Because of your  
25 positions in this case, and I'm about out of time, would

1 y'all be leaning, and I'm not saying overtly biased, even  
2 the slightest lean, would there be the slightest tilt in  
3 favor of Wyeth or against Lanna Nustad? I'm not saying  
4 fifty yard line, I'm not saying going from the fifty yard  
5 line to the end zone. I'm saying could be on the 49 yard  
6 line, ever so slight.

7 PROSPECTIVE JUROR BRUCE: You know, they  
8 didn't force her to take it so...

9 MR. MONSOUR: Does that mean you would be  
10 leaning against Lanna?

11 PROSPECTIVE JUROR BRUCE: Slightly.

12 MR. MONSOUR: Slightly, okay.

13 PROSPECTIVE JUROR POPE: I'm pretty well  
14 fifty/fifty, either way. I'm not really...

15 MR. MONSOUR: Okay. All right. Ms.  
16 Bruce, you gave me an answer you know I didn't want to  
17 hear, but I appreciate your candor, so thank you.  
18 Mr. Pope, thank you.

19 I've taken up enough of your time. I've taken  
20 up enough of this Court's time. I look forward to trying  
21 this case in front of you and doing the best I can.  
22 Thank you.

23 THE COURT: Thank you, Mr. Monsour.

24 Members of the jury I'm going to give you a  
25 fifteen-minute break so we'll be -- I need you back in

1 your seats where you are at five till 2:00, and lawyers,  
2 if I could see y'all a second.

3 (End of excerpt record)

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 THE STATE OF TEXAS \*

2 COUNTY OF UPSHUR \*

3 I, DEANNA DRENNAN, CSR, Official Court Reporter

4 in and for the 115th Judicial District Court of Upshur

5 County, State of Texas, do hereby certify that the above

6 and foregoing contains a true and correct transcription

7 of all portions of evidence and other proceedings

8 requested in writing by Counsel for the parties to be

9 included in this volume of the Reporter's Record, in the

10 above-styled and numbered cause, all of which occurred in

11 open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record

13 of the proceedings truly and correctly reflects the

14 exhibits, if any, offered by the respective parties.

15 I further certify that the total cost for the

16 preparation of this Reporter's Record is \$ 530.00

17 and ~~was paid~~ will be paid by Winston K. Strawn.

18 May WITNESS MY OFFICIAL HAND this the 24th day of

19 May, 2004.

20

21

22 Deanna Drennan

23 DEANNA DRENNAN, Texas CSR 4565

24 Expiration Date 12/31/04

25 Official Court Reporter

Upshur County, Texas

405 North Titus Street

Gilmer, Texas 75644

(903) 843-2836