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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)
IMPAX LABORATORIES, INC,)
a corporation,) Docket No. 9373
Respondent.)
-----)

November 8, 2017
9:53 a.m.

TRIAL VOLUME 10
PART 1, PUBLIC RECORD

BEFORE THE HONORABLE D. MICHAEL CHAPPELL
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C.

Reported by: Josett F. Whalen, Court Reporter

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1	FEDERAL TRADE COMMISSION					
2	I N D E X					
3	IN THE MATTER OF IMPAX LABORATORIES, INC.					
4	TRIAL VOLUME 10					
5	PART 1, PUBLIC RECORD					
6	NOVEMBER 8, 2017					
7						
8	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR
9	ADDANKI	2371	2386	2496	2505	
10	COBUZZI	2509	2564	2622	2630	
11	HOXIE	2636				
12						
13						
14	EXHIBITS	FOR ID IN EVID IN CAMERA STRICKEN/REJECTED				
15	CX					
16	(none)					
17						
18	RX					
19	(none)					
20						
21	JX					
22	(none)					
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1 P R O C E E D I N G S

2 - - - - -

3 JUDGE CHAPPELL: We're back on the record.
4 Proceed.

5 MR. McINTYRE: Thank you, Your Honor.

6 - - - - -

7 Whereupon --

8 SUMANTH ADDANKI

9 a witness, called for examination, having been
10 previously duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION (continued)

13 BY MR. McINTYRE:

14 Q. Good morning, Dr. Addanki.

15 A. Good morning.

16 Q. Yesterday you testified about the economic
17 analysis that you use to assess the competitive effects
18 of settlements between brand and generic companies, and
19 as I recall, you testified that the first step in that
20 analysis is the monopoly power screen. Did I get that
21 right?

22 A. That's correct.

23 Q. And I believe you also testified that one test
24 for monopoly power is whether we see an expansion in
25 output when a generic enters; is that correct?

1 A. Yes. Well, the -- typically we do define the
2 relevant market and examine competitive conditions in
3 the relevant market. I testified that on occasion you
4 do have the natural experiment of observing, if you
5 believe that generic entry would dissipate monopoly
6 power, of observing the effects of generic entry and
7 seeing whether in fact it dissipated monopoly power and
8 expanded output.

9 Q. And can you remind us why output is important
10 to look for?

11 A. Because from the economic standpoint, consumer
12 harm comes about because of a reduction in output
13 brought about by a monopolist.

14 The harm to consumers comes from the reduction
15 in output, and so when we see monopoly power being
16 dissipated, we see an expansion in output.

17 Q. And can you remind us, did you see an expansion
18 of output in oxymorphone ER when Impax launched its
19 product in January 2013?

20 A. No, I did not.

21 Q. And I believe you testified yesterday that in
22 your decades of experience studying the pharmaceutical
23 industry, you have seen instances where a generic
24 entrant caused an expansion in output. Did I --

25 A. Certainly -- I beg your pardon.

1 Q. I'm sorry.

2 Did I get that right?

3 A. Certainly that generic entry has been followed
4 by an expansion in output.

5 Q. And as I recall, yesterday you testified that
6 if the brand company does not have monopoly power, then
7 the analysis stops right there; correct?

8 A. That's correct.

9 Q. But if we assume that the brand company does
10 have monopoly power, then can you please remind us how
11 the analysis proceeds.

12 A. Well, then you proceed to the second prong of
13 the analysis, whether you've assumed the monopoly
14 power or found it to exist, which is to ask whether
15 the settlement at issue was any less effective at
16 dissipating completely or partially the monopoly power
17 that you found or assumed than would have transpired
18 but for the settlement.

19 So it's really a test of consumer benefits in
20 two worlds, the world that we actually have with the
21 settlement that took place and a but-for world where no
22 settlement happened.

23 Q. And I believe you testified yesterday that the
24 relevant but-for world is one in which the parties
25 continue to litigate instead of settling the patent

1 case. Is that right?

2 A. That's correct.

3 And the reason for that is that we have no
4 reason to believe that any alternative settlement
5 would actually have been acceptable to the parties.
6 To hypothesize a settlement and say they would have
7 agreed to it would be the purest speculation, and so
8 the only real alternative we have to the settlement
9 that we have before us is that the parties continue to
10 litigate.

11 Q. And can you remind us what that but-for world
12 looks like in this case.

13 A. Well, we can be informed quite a bit about
14 that but-for world by the events that unfolded
15 actually in the world as we observed them and from what
16 we understand about the economic incentives of the
17 parties, in particular Endo.

18 And what we saw in the actual world was that
19 Endo continued to acquire patents, both patents that
20 had been applied for and patents that it acquired from
21 others, and continued to assert them against ANDA
22 filers.

23 Q. And yesterday you mentioned the Johnson Matthey
24 patent.

25 Can you remind us when that patent issued.

1 A. That patent issued at the end of 2010. But
2 Johnson Matthey had put Endo on notice of that pending
3 patent in 2009.

4 Q. And Endo in the real world ultimately acquired
5 that patent; correct?

6 A. It did. In March 2012.

7 JUDGE CHAPPELL: What other world would there
8 have been?

9 MR. McINTYRE: Huh?

10 JUDGE CHAPPELL: You asked him about the real
11 world. What other world would there have been?

12 MR. McINTYRE: That's a fair point, Your Honor.

13 JUDGE CHAPPELL: I've heard him say
14 "actual world." I'm assuming that's the same thing;
15 right?

16 THE WITNESS: Yes, Your Honor.

17 JUDGE CHAPPELL: Actual world, real world, this
18 world?

19 THE WITNESS: The actual things that happened,
20 the events that actually transpired, as opposed to what
21 we need to really hypothesize as the alternative to the
22 settlement.

23 BY MR. McINTYRE:

24 Q. And I believe you testified yesterday,
25 Dr. Addanki, that in your report you assumed, in

1 reliance on Mr. Figg's opinions, that had Impax and
2 Endo continued to litigate the original patent case to
3 a final conclusion, that they would not have received a
4 nonappealable, final judgment until November 2011 at
5 the earliest. Did I get that right?

6 A. That's correct.

7 Q. And so can you walk us through, beginning with
8 that point in the but-for world, the issuance of a
9 Federal Circuit opinion in the patent litigation, how
10 the but-for world would have played out from that
11 point.

12 A. Well, again, I just want to remind all of us
13 that in the actual settlement that we have before us,
14 Impax and consumers got two things from that
15 settlement, an entry on a date certain in
16 January 2013 and a license under future Endo patents,
17 so I think we need to keep those two mileposts in
18 mind.

19 In the but-for world, had there not been a
20 final, nonappealable resolution of the original patent
21 case until November 2011, I would expect that Endo and
22 Impax would have been embroiled in continuing patent
23 litigation from the time of the settlement that we
24 actually observed for many years after.

25 JUDGE CHAPPELL: Hold on a second.

1 When you say you would expect they would have
2 been embroiled in continuing patent litigation, is
3 that an assumption, a prediction, an opinion? What is
4 that?

5 THE WITNESS: It is an opinion and a
6 prediction, Your Honor. It is what I would expect as
7 an economist looking at what Endo actually did, which
8 was to sue ANDA filers on all the patents that it had
9 and all the patents it was getting as of when it got
10 them.

11 And so we talked yesterday about the fact that
12 the Johnson Matthey patent was actually acquired by
13 Endo in March 2012. But given that that patent had
14 issued at the end of 2010, I would expect that without
15 the alleviation of the urgency that Endo had because of
16 settling with Impax, Endo would have had a great deal
17 of urgency to acquire that Johnson Matthey patent when
18 it issued, and so I would expect as an economist, given
19 how aggressively Endo was pursuing intellectual
20 property protection, I would assume that it would have
21 got that Johnson Matthey patent before the
22 November 2011 resolution date I was talking about and
23 proceeded to assert it against Endo -- pardon me --
24 against Impax just as it did against all the other ANDA
25 filers.

1 And so that's the basis for my expectation as
2 an economist and my opinion that this is what would
3 have happened, that the patent litigation would have
4 not had any hiatus, it would have continued with new
5 patents.

6 JUDGE CHAPPELL: So that is an opinion.

7 Is that based on some type of model or is that
8 based on the facts as you assume them to be?

9 THE WITNESS: It's based on the facts that I
10 see that Endo -- what Endo actually did, what I can
11 infer about Endo's strategy from those facts, and what
12 I would assume as an economist would be Endo's
13 rational -- what I could infer as an economist would be
14 Endo's rational strategy to pursue had it not settled
15 with Impax.

16 JUDGE CHAPPELL: All right.

17 BY MR. McINTYRE:

18 Q. And so, Dr. Addanki, if, as you say, Endo and
19 Impax would have been tied up in litigation for years
20 in the but-for world, what does that tell us about
21 consumer benefits in a but-for world?

22 A. Well, again, if we're assuming monopoly power
23 and that generic entry would dissipate monopoly power,
24 an alleviation of the monopoly power and the
25 alleviation of the consumer harm would only come about

1 with an entry from Impax. And any such entry by Impax
2 would have been a launch at risk.

3 Q. And what do you mean, that any such entry by
4 Impax in the but-for world would have been a launch at
5 risk?

6 A. What I mean is, as long as Impax and Endo
7 continued to be embroiled in patent litigation, had
8 Impax launched before resolution of that litigation,
9 the launch would expose Impax to potential damages in
10 the form of lost profits in a patent case.

11 Q. And remind us, I believe you testified
12 yesterday that you have previously testified as an
13 expert witness on patent damages? Correct?

14 A. On several occasions, yes. And I have written
15 articles about it and lectured about it.

16 Q. And can you explain to us from an economic
17 perspective what "lost profit damages" refers to.

18 A. The -- the concept there, Your Honor, is
19 simply that the damages owed by Impax were it found to
20 be infringing a patent, Endo's patents in this case,
21 would be the profit that Endo would have made on each
22 sale that Impax made in place of Endo.

23 And given that brand manufacturers, as we
24 discussed yesterday, sell for higher prices than the
25 generic manufacturers, that means that on every unit

1 and every pill that Impax sold in place of Endo, the
2 patentee, the lost profit that Endo could claim on
3 that pill would be greater than the profit that Impax
4 would actually earn selling that pill, so the exposure
5 to damages would exceed any profits from the launch.

6 Q. Dr. Addanki, did you assess Impax' economic
7 incentives and disincentives for launching at risk?

8 A. Yes, I did.

9 Q. And what did you conclude?

10 A. Well, I concluded that it was perfectly
11 reasonable for Impax to view a launch at risk as a
12 losing proposition, and that's for two reasons.

13 One is exactly what I just said, which is the
14 potential profit earned by Impax from the launch would
15 fall short of the lost profit exposure should it have
16 been found liable for infringement and liable for
17 damages.

18 That's exacerbated here by the fact that
19 Actavis also had a settlement agreement in place, a
20 preexisting settlement agreement in place, with Endo
21 which would trigger Actavis' entry upon the expiration
22 of the 180-day exclusivity that Impax could claim.

23 Once Actavis entered, you would have further
24 deterioration in Impax' profitability with further
25 damages occurring to harm Endo, and so that just

1 worsens the picture from the standpoint of the
2 cost-benefit analysis of the launch.

3 Finally, Impax, just as I mentioned, did have
4 180-day exclusivity. Now, the thing about that
5 180-day exclusivity is the clock starts ticking from
6 the moment of launch.

7 Now, had Impax launched at risk and then
8 subsequently been enjoined through a PI by a district
9 court, that clock would not stop, so for the period --
10 for the remainder of the 180-day period, if Impax were
11 off the market, Impax would make no sales and no
12 profits, and in essence Impax will have of forfeited
13 the 180-day exclusivity period.

14 Given that that's one of the important carrots
15 that helps induce generic companies to file ANDAs, it
16 is very important to a generic company not to lose
17 that 180-day exclusivity. The problem with a launch at
18 risk is that you put the 180 days in jeopardy, because
19 if you have a PI, an at-risk PI, you basically lose the
20 180 days.

21 So for those reasons, it would make complete
22 economic sense for Impax to view a launch at risk as a
23 money-losing proposition.

24 Q. Now, assuming that, consistent with these
25 disincentives, Impax likely would not have launched at

1 risk in the but-for world, how would consumers have
2 fared?

3 A. Well, again, if Impax would not have launched
4 at risk but for the settlement, we know that Impax was
5 entitled to and actually did launch on
6 January 1, 2013 and that it has remained on the
7 market since that time.

8 But for the settlement, had there been
9 continued litigation, as I fully expect there would
10 have been because of all I've explained so far, and
11 had Impax not been willing to launch at risk, then
12 Impax would not have launched at any date before
13 January 1, 2013, if at all, to date, just based on the
14 events that have actually occurred in the real world
15 with the ongoing litigation.

16 Q. And does your opinion depend in any way on how
17 the patent suits between Endo and Impax would
18 ultimately have been resolved?

19 A. No. This is simply a question of whether
20 consumers would have been better off had Impax not
21 settled with Endo and taking account of the continuing
22 litigation that Endo engaged in and under the
23 assumption that Impax would not have launched at risk.

24 It doesn't matter for purposes of my opinion
25 there whether ultimately Endo would have prevailed in

1 these patent lawsuits or Impax would have prevailed,
2 because all of those events would unfold after the
3 dates we're talking about.

4 And just to remind us of the facts of what
5 happened, in 2016 all generics were enjoined from
6 selling oxymorphone ER, and today Impax is the only
7 seller of that product.

8 Q. And so having applied your analysis in this
9 case, what do you conclude about whether the
10 Impax-Endo settlement agreement was anticompetitive?

11 A. Well, based on the facts I've analyzed, to
12 begin with, the correct test is a two-part test, a
13 screen for monopoly power, and if we assume or find
14 monopoly power, we proceed to the second part. If we
15 don't, we can stop the analysis there. The agreement
16 would not be anticompetitive.

17 If we assume monopoly power, contrary to my
18 findings and to the facts, the second prong of our
19 test asks what would have happened to benefit consumers
20 but for the settlement before us, and I find that there
21 would not have been entry by Impax, had Impax not been
22 willing to enter at risk, before January 1, 2013, and
23 so consumers were made no worse off by the settlement
24 agreement before us.

25 Q. And again, circling back to the monopoly power

1 screen, what -- can you remind us what your
2 conclusions are about the relevant market in this
3 case.

4 A. The relevant market is no smaller than the
5 market for long-acting opioids, extended-release
6 long-acting opioids, in the United States. And Endo
7 had no monopoly power in that market. Opana ER had no
8 monopoly power in that market.

9 Q. Now, before we wrap up, Dr. Addanki, yesterday
10 we spent some time discussing Dr. Noll's opinion that
11 Impax received a large and unjustified payment as of
12 June 2010 under the Endo credit and no-AG provisions of
13 the settlement. Do you recall that?

14 A. I do.

15 Q. And I believe you testified that you reviewed
16 both of -- both the original report and the rebuttal
17 report that Dr. Noll had submitted in this case?

18 A. I did.

19 Q. Did Dr. Noll conduct any expected value
20 calculations of the Endo credit and no-AG provisions
21 either separately or in tandem?

22 A. Dr. Noll did not conduct an expected value
23 calculation because he acknowledged that there were no
24 probabilities available to populate such an expected
25 value calculation.

1 MR. McINTYRE: Your Honor, may I briefly confer
2 with counsel?

3 JUDGE CHAPPELL: Go ahead.

4 MR. McINTYRE: We have no further questions at
5 this time.

6 JUDGE CHAPPELL: Any cross?

7 MR. LOUGHLIN: Yes, Your Honor.

8 JUDGE CHAPPELL: Go ahead.

9 MR. LOUGHLIN: Your Honor, may I approach with
10 a binder for the witness?

11 JUDGE CHAPPELL: Go ahead.

12 Is anybody familiar with the company called
13 Actavis? And I mean familiar enough to know for
14 certain whether it's pronounced "Actavis" or "Actavis"?
15 Anyone?

16 MR. HASSI: Your Honor, Mr. Figg, who testified
17 yesterday, pronounces it "Actavis," and Actavis has
18 been a client of his, so I'm assuming he knows how to
19 pronounce it correctly. That's an assumption based on
20 an inference that one tries to get one's client's name
21 right.

22 JUDGE CHAPPELL: That's the best source I've
23 heard.

24 Go ahead.

25 I have heard three people out of millions say

1 "Actavis."

2 MR. HASSI: I've always said "Actavis." I
3 heard him say "Actavis," and I know it's a client of
4 his, so...

5 JUDGE CHAPPELL: Thank you.

6 - - - - -

7 CROSS-EXAMINATION

8 BY MR. LOUGHLIN:

9 Q. Good morning, Dr. Addanki.

10 A. Good morning, Mr. Loughlin.

11 Q. Now, in your report, you discuss what you call
12 a pure term-split settlement; correct?

13 A. I do.

14 Q. And by "a pure term-split settlement" you mean
15 a settlement on an entry date without any payment
16 terms; correct?

17 A. I mean a settlement on an entry date with no
18 other terms whatsoever.

19 Q. Okay. I mean, there would be some other terms
20 presumably; right? There would be normal contract
21 terms, but you mean no terms related to any sort of
22 payments.

23 A. I mean no terms related to anything other than
24 whatever you attorneys would need to put in to make an
25 agreement an agreement, but really no terms of any

1 economic import other than an entry date.

2 Q. Okay. Now, the settlement in this case is not
3 a pure term-split settlement; correct?

4 A. That's correct.

5 Q. It has a no-AG agreement in it?

6 A. It has various provisions in it, including a
7 no-AG agreement.

8 Q. It has an Endo credit provision in it?

9 A. That's correct.

10 Q. Now, Dr. Addanki, going into a settlement
11 negotiation, all else equal, a branded company prefers
12 later generic entry to earlier generic entry; correct?

13 A. That's correct.

14 Q. And all else equal, a generic would prefer
15 earlier entry to later entry; correct?

16 A. Yes.

17 Q. Now, I want you to assume, Dr. Addanki, that a
18 brand and a generic company are in settlement
19 negotiations, and they cannot agree on an entry date in
20 a pure term-split settlement. Okay?

21 A. Okay.

22 Q. And that's because the generic wants an earlier
23 entry date and the brand wants a later entry date.

24 Do you have that?

25 A. Okay.

1 Q. The brand then offers a cash payment to the
2 generic. Okay? And the parties reach a settlement.
3 Okay?

4 A. Okay.

5 Q. In that hypothetical, you would assume that the
6 entry date has moved back towards the brand's later
7 entry date; correct?

8 A. So if there is nothing known other than they
9 couldn't reach an agreement on an entry date and -- in
10 your hypothetical, and the only thing that changes is
11 that the brand says, I'll pay you some money, you're
12 asking can we infer that the entry date -- and what do
13 you mean by "the entry date"? They agreed on an entry
14 date in your hypothetical.

15 Q. In my hypothetical, yes, after the payment of
16 cash, the parties now have reached a settlement,
17 including an entry date.

18 And my question is, we know from those facts
19 that the entry date has moved back in time towards the
20 brand's later entry date; correct?

21 A. When you say "moved back in time," I'm not sure
22 what you mean by "moved back in time" because there was
23 no entry date before.

24 Q. Okay. Then the entry date has -- the
25 agreed-upon entry date is now going to be at the

1 brand's later entry date rather than the generic's
2 earlier entry date; correct?

3 A. Well, by hypothesis, it's a date that the
4 brand agreed to, right, so it is presumably within
5 what the brand finds agreeable as an entry date. But
6 I'm not sure you can call it later than or earlier than
7 anything, because there is no other entry date on the
8 table.

9 Q. Okay. Let's do it this way then.

10 A. Okay.

11 Q. We're going to do it the same way we did it in
12 the deposition. Okay?

13 So we're going to assume that the generic wants
14 a generic entry date no later than January 1, whatever
15 year you want to pick. Okay?

16 A. Okay.

17 Q. The brand wants generic entry no earlier than
18 June 1 --

19 A. Okay.

20 Q. -- whatever year -- the same year.

21 Do you have that?

22 A. Okay.

23 Q. The brand now -- and they can't settle, okay,
24 under those terms.

25 A. Right.

1 Q. The brand now makes a cash payment to the
2 generic. Okay?

3 A. Okay.

4 Q. And they reach a settlement.

5 A. Okay.

6 Q. The entry date is going to be June 1 or just
7 about June 1; correct?

8 A. It's your hypothetical. I don't know. If you
9 tell me it's June 1, okay, it's June 1.

10 Q. I'm not asking -- I'm not stating that as a
11 hypothetical.

12 I'm stating that you can infer and you know as
13 an economist that when I tell you they settled, the
14 entry date that you're going to expect is going to be
15 June 1; correct?

16 A. Well, it has to be agreeable to the brand,
17 that's correct.

18 Q. The brand wouldn't -- it's going to be -- it
19 has to be acceptable to the brand, it was not
20 acceptable to the generic, but now it's acceptable to
21 both parties; right?

22 A. So, again, when you have the fact that parties
23 didn't agree, right, you have the fact the parties
24 didn't agree. I don't think you can infer anything
25 about what either party's reservation date was from the

1 fact that they didn't agree. They didn't agree.

2 Parties do all sorts of things in negotiation.

3 They've got postures.

4 So I don't think you can infer what someone's
5 true reservation date was from a negotiation posture in
6 a settlement negotiation. But in a hypothetical you
7 can assume anything you like.

8 Q. Okay. And this is a hypothetical.

9 A. Right.

10 Q. Okay? Can you follow a hypothetical, sir?

11 A. Sure.

12 JUDGE CHAPPELL: I'm trying to follow your
13 hypothetical also.

14 MR. LOUGHLIN: Great.

15 JUDGE CHAPPELL: And the way you presented it,
16 you gave the witness two possible dates.

17 MR. LOUGHLIN: That's right.

18 JUDGE CHAPPELL: You told him to assume a cash
19 payment.

20 MR. LOUGHLIN: Right.

21 JUDGE CHAPPELL: So if I'm following your
22 hypothetical correctly, you're giving the witness only
23 two possible choices, one date or the other date.

24 MR. LOUGHLIN: That's not -- I'll be clearer.

25 JUDGE CHAPPELL: All right.

1 BY MR. LOUGHLIN:

2 Q. Here's my hypothetical.

3 A. Okay.

4 Q. Going into the negotiation, the generic wants
5 to come in no later than January 1.

6 A. So you're asking me to assume that we know
7 that.

8 Q. We know it.

9 A. We know it. Okay.

10 Q. Okay?

11 The brand does not want generic entry to occur
12 before June 1. We know it.

13 A. And again, that's something we can know what's
14 the actual -- and that's called a reservation date,
15 Your Honor. We know the actual reservation date for
16 both parties.

17 Q. Under those --

18 (Counsel and witness speaking at the same time
19 and cautioned by court reporter.)

20 BY MR. LOUGHLIN:

21 Q. Under that situation, there will not be a pure
22 term-split settlement; correct?

23 A. That's correct.

24 Q. But under my hypothetical, now, the brand makes
25 a cash payment to the generic. Okay?

1 A. Okay.

2 Q. And they reach a settlement. Okay?

3 A. Okay.

4 Q. You know, as an economist, that the entry date
5 they will have agreed upon will be the brand's entry
6 date of June 1; correct?

7 A. So if we know what the generic wants and we
8 know what the brand wants, and you tell me that a
9 payment made a settlement possible, then yes, I would
10 say that both parties had to have agreed to it, and
11 because you told me to assume that the brand would
12 settle for nothing earlier than June 1, I would have to
13 agree that it would be June 1.

14 Q. And the same is true if I change my
15 hypothetical to, instead of a cash payment, now there's
16 a no-AG provision; correct?

17 A. Oh, I don't know about that. I think that
18 depends a lot on how a no-AG provision is valued.

19 JUDGE CHAPPELL: I'm not sure I understood
20 your question. He answered it, but were you saying --
21 was your question, is the same true if there is no-AG
22 agreement? That's not what I heard. Is that what you
23 were asking? The same is true if there is no-AG
24 agreement?

25 MR. LOUGHLIN: Rather than a cash payment,

1 there's a no-AG provision. I'll state the hypothetical
2 differently.

3 JUDGE CHAPPELL: Is that what you understood?

4 THE WITNESS: That's what I understood his
5 question to mean, sir.

6 JUDGE CHAPPELL: All right.

7 BY MR. LOUGHLIN:

8 Q. I'll restate it just so the record is clear.

9 A. Okay.

10 Q. We're going to assume that the parties are in a
11 settlement negotiation, the generic wants to come in no
12 later than January 1. Okay?

13 A. I'm listening. Yes.

14 Q. The brand does not want the generic to come in
15 any earlier than June 1; correct?

16 A. Okay.

17 Q. Okay?

18 They can't reach a pure term-split settlement;
19 right?

20 A. Well, they can't -- based on the assumptions
21 you've asked me to make, they can't, that's correct.

22 Q. Now, I'm telling you that the brand offers a
23 no-AG provision and they settle. Okay?

24 Do you have that in mind?

25 A. Okay.

1 Q. You would expect --

2 JUDGE CHAPPELL: Hold on, hold on.

3 Just so I'm following this, there's no cash
4 being offered now; correct?

5 MR. LOUGHLIN: Rather than cash -- yes,
6 Your Honor. Rather than cash, there's a no-AG
7 provision.

8 JUDGE CHAPPELL: Okay. I didn't hear that
9 part.

10 Go ahead.

11 BY MR. LOUGHLIN:

12 Q. And the parties settle, so now there's an
13 agreement with an entry date and a no-AG provision.
14 Okay?

15 A. Okay.

16 Q. You would expect that the entry date is the
17 brand's entry date of June 1; correct?

18 A. So I really have no idea of what you can
19 assume there, because with a cash payment I can say,
20 you tell me there's a cash payment, that's something
21 that is incontrovertible. It's money. It got paid.

22 A no-AG agreement has uncertain value, so if
23 you say that's what caused there to be a settlement and
24 you make me -- have me make that additional assumption,
25 that the no-AG provision caused them to be able to

1 settle, right, and that's what you're telling me, well,
2 then if they settled, it had to be a date agreeable to
3 both parties. And if it was a date agreeable to both
4 parties, I have to assume that it was somewhere for
5 some reason at a point where both would agree to. But
6 not knowing what the value of the no-AG agreement is,
7 if at all, I'm stuck sort of having to make
8 assumptions about what might have happened in your
9 hypothetical.

10 Q. Yes. I understand I'm asking you to make
11 assumptions, and based -- your economic assumption
12 would be that if there's a -- they couldn't settle
13 before, now there's a no-AG added and they settle, the
14 entry date is going to be June 1; correct?

15 A. That would -- I think that would follow,
16 although I'm still a little troubled by the fact that
17 we don't know if any value changed hands in your no-AG
18 agreement.

19 JUDGE CHAPPELL: I'm trying -- I'm not an
20 economist, but I'm trying to follow your hypothetical.
21 And it sounded to me like you're offering only two
22 possible dates. Why -- and is it because he's an
23 economist that there's no middle date possible in this
24 scenario in this hypothetical? Because that's not
25 adding up for me.

1 MR. LOUGHLIN: Your Honor --

2 JUDGE CHAPPELL: You're giving him two
3 dates --

4 MR. LOUGHLIN: Right.

5 JUDGE CHAPPELL: -- and making him choose one
6 or the other, if I'm following this, and you're saying
7 "as an economist." Is there something about economic
8 theory that says there can't be a date somewhere in the
9 middle in your hypothetical or in --

10 MR. LOUGHLIN: Yes, there is.

11 JUDGE CHAPPELL: -- in actuality?

12 MR. LOUGHLIN: Yes, there is, Your Honor.

13 The brand and the generic have different
14 reservation points. That's why they can't reach a
15 settlement. But when you add value, suddenly they can
16 reach a settlement, and the settlement is going -- the
17 point is that settlement is going to be at the brand's
18 later date.

19 The brand is not going to pay money and give up
20 an earlier entry date. The brand is going to pay money
21 and get a later entry date from the generic.

22 JUDGE CHAPPELL: All right. That's fine. I
23 just didn't hear you say that only two dates were
24 possible, but if that's what you're saying, then I
25 follow it.

1 MR. LOUGHLIN: In my hypothetical, that's what
2 I'm saying.

3 JUDGE CHAPPELL: All right. Thank you.
4 I'm not the witness, but I'm going to be
5 reading the record trying to make sense of the
6 hypothetical and the answer.

7 MR. LOUGHLIN: No. I appreciate that,
8 Your Honor. I want it to make sense and I appreciate
9 your questions.

10 BY MR. LOUGHLIN:

11 Q. Now, Dr. Addanki, I want to go back to my
12 hypothetical. Okay?

13 Again, we're assuming that the generic in the
14 settlement negotiation does not want to and will not
15 accept an entry date later than January 1. Okay?

16 A. Okay.

17 Q. And the brand will not accept generic entry
18 earlier than June 1; correct?

19 A. Okay.

20 Q. And so under that scenario, there will not be a
21 pure term-split settlement; correct?

22 A. If we know that the latest the entry -- latest
23 entry date the generic would accept is January 1 and
24 the earliest entry date the brand would accept is
25 June 1 and we actually know that, then I would not

1 expect to see a settlement.

2 Q. Okay. And then the brand provides some other
3 form of value, net value, going to the generic. It
4 doesn't matter what it is, whether it's a no-AG,
5 whether it's cash or something else. There's net
6 value from the brand to the generic, and they settle.
7 Okay?

8 A. Okay.

9 Q. As an economist, you know the settlement entry
10 date that they're going to agree on is the brand's
11 June 1 date; correct?

12 A. No. No, you don't. Because you don't know
13 what value the other terms may have conferred on the
14 brand.

15 Q. Yes, but I'm -- in my hypothetical, the net
16 value is going from the brand to the generic. Okay?
17 Do you have that? And that allows there to be a
18 settlement. Okay?

19 A. Well, there could be value going from the
20 brand to the generic, but that doesn't mean there
21 isn't value that could be accruing to the brand, not
22 as a payment from the generic, but from whatever other
23 terms they've entered into.

24 Q. In my hypothetical, the net of the value is
25 going only to the generic. Okay?

1 Do you understand that?

2 A. Well, the point about net is you're netting --
3 you can only net things where they're opposite flows
4 between the same points. That's a net, right. But if
5 the brand is realizing value that is not coming out of
6 the generic, then I don't think you can make any
7 conclusions about where the date is going to end up.

8 Q. Okay. That's not part of my hypothetical, that
9 the brand is getting value outside of the generic.
10 That's not in my hypothetical. Okay?

11 In my hypothetical, there are two entry dates.
12 The brand has a June 1 entry date. The generic has a
13 January 1 entry date. Right?

14 A. You're talking about their reservation dates.

15 Q. Their reservation dates.

16 A. Okay.

17 Q. And now, I'm telling you they can't -- and they
18 can't settle; right?

19 A. Right.

20 Q. And now I'm telling you that they do settle
21 with an agreement where there is value, in whatever
22 form, flowing from the brand to the generic. Okay?

23 I'm not talking about whether the brand is
24 getting some value from outside the settlement.
25 Within the context of the settlement, the value is

1 flowing in the direction from the brand to the
2 generic. Okay?

3 A. Look, if you're asking me to assume that
4 whatever payment terms that you're not specifying or
5 whatever contract terms that you're not specifying do
6 not create any value for the brand, not coming from the
7 generic, I can assume that, but if you don't specify
8 that, then it's perfectly possible, because it's
9 certainly within my experience that when companies
10 settle, often they try to find things that they can
11 agree on which generate mutual value in order to break
12 the logjam and settle. And this is just from my
13 experience of three decades of patent cases.

14 But if you ask me to assume that that is not
15 possible in your hypothetical, that it's essentially
16 the same as a payment, you're asking me to assume that
17 they wrote a check, they had contract terms, but they
18 wrote a check, right, then okay, then we're back to
19 your first hypothetical.

20 Q. And in that world, you would expect the entry
21 date would be the brand's June 1 entry date; correct?

22 A. Again, under the circumstance of your
23 hypothetical, if we know that January 1 is the
24 drop-dead date for the generic and June 1 is the
25 drop-dead date for the brand, we would not expect them

1 to settle. And then if you then tell me that the brand
2 wrote a check to the generic, because that's what
3 you're asking me to assume, and that they settled and
4 ask me what the date is, yes, I would expect it would
5 be June 1.

6 Q. Now, Dr. Addanki, if the branded product has
7 monopoly power --

8 A. Yes.

9 Q. -- as you use that phrase in your report --

10 A. Yes.

11 Q. -- it can afford to pay some of its expected
12 profit to the generic to push back the entry date and
13 still be better off than the earlier generic entry;
14 correct?

15 A. You're asking whether the brand can give up
16 some monopoly profit, if it has monopoly power, to
17 induce the generic to enter later? Is that what you're
18 asking?

19 Q. Yes.

20 A. As a party to a contract, if you write a
21 check, you write a check. It doesn't much matter
22 where that money is coming from. If you're writing a
23 check, you're writing a check. If you're willing to
24 write the check, you're willing to write the check.

25 So I'm not sure if I understand your question.

1 Q. Here's the question.

2 A. Okay.

3 Q. The brand can afford to pay some of its
4 expected profit to the generic to push back the entry
5 date, correct, and still would be better off than
6 earlier generic entry?

7 JUDGE CHAPPELL: The question is "can afford
8 to." That's what he said, "can afford to."

9 THE WITNESS: Can afford to -- are you asking
10 because it has monopoly power?

11 BY MR. LOUGHLIN:

12 Q. Yes. I'm assuming that the brand has monopoly
13 power.

14 A. If the brand has monopoly profits, it can do
15 whatever it wants with that profits, and among those
16 things could be to pay a check to someone else, yes.

17 Q. It would be paying some of those monopoly
18 profits to push back the entry date of the generic
19 entry; correct -- in my question; correct?

20 A. I don't know. It's your question.

21 Q. Okay. I'll ask it again.

22 A. Okay.

23 Q. The brand can afford to pay some of its
24 expected profits to the generic to push back the entry
25 date, correct, and still would be better off than with

1 earlier generic entry?

2 A. Okay. If you're asking, when there's generic
3 entry, does the brand lose more profit than the
4 generic earns, that's correct. I've just explained
5 that, and that's exactly how it works. That's
6 correct.

7 And that really doesn't depend on monopoly
8 power. That's just true.

9 Q. Why don't you take a look in your binder at
10 your deposition.

11 A. Okay.

12 Q. And page 12 of your deposition.

13 A. Okay.

14 Which is that tab?

15 Q. I think it's the tab that says "DEP" on it.
16 It's the last one.

17 A. Oh, the last one. Okay. Oh, yes. Okay.

18 Q. And I'm going to direct you to line 11 on
19 page 12, and you'll see there I asked you, "And the
20 brand can afford to pay some of its expected profit to
21 the generic to push back the entry date, correct, and
22 still would be better off than with earlier generic
23 industry?"

24 "ANSWER: Again, if you're talking about a
25 situation in which you've established monopoly power

1 and you're saying that the brand earns monopoly
2 profits, then all else equal, if you're talking about
3 the difference between monopoly profits and duopoly
4 profits and that is the situation in which you find
5 yourself, then yes, it's possible that the brand could
6 pay a portion of safe monopoly profits to a generic."

7 A. Yeah, that's certainly not what I said, because
8 I don't even understand what safe monopoly profits are.
9 But it is certainly consistent with what I've just
10 replied to your answer -- to your question a few
11 minutes ago.

12 If you do have monopoly profits, then there is
13 a difference between monopoly and duopoly profits. And
14 I just made the further point that anytime a generic
15 takes a sale from a brand, because it makes a lower
16 profit per unit, the brand will lose more profit than
17 the generic earns. It's true.

18 Q. But my question was, and the brand can afford
19 to pay some of that to the generic to push back the
20 entry date; correct?

21 JUDGE CHAPPELL: Hold on.

22 You understand that before you went to the
23 deposition, you asked him a question --

24 MR. LOUGHLIN: Yes.

25 JUDGE CHAPPELL: -- and his answer said,

1 "That's just true." So if the pending question and he
2 says that's true, why are you going to the deposition?
3 He just answered your question, "That's just true."

4 MR. LOUGHLIN: Because I don't think he did
5 answer my question. He gave a long preamble that said
6 something different from what he said in the
7 deposition.

8 JUDGE CHAPPELL: Well, regardless of that, I
9 see "That's just true," so how is that not agreement?

10 MR. LOUGHLIN: Maybe it is, Your Honor, but I
11 heard him answering his own question as opposed to my
12 question. And I'm not sure I still got an answer to my
13 question, that the brand --

14 JUDGE CHAPPELL: The last answer was: "It's
15 true."

16 Go ahead.

17 MR. LOUGHLIN: Right.

18 BY MR. LOUGHLIN:

19 Q. My question was, Dr. Addanki, not simply that
20 there's a difference between monopoly and duopoly
21 profits but that the brand can afford to pay some of
22 its expected profit to the generic to push back the
23 entry date and still be better off; correct?

24 A. And as I had said, it is certainly true that
25 when the brand has monopoly power, its monopoly

1 profits will be greater than the combined profits in
2 duopoly, and so yes, it can pay some profit to the
3 generic. But I've mentioned that it's also true
4 without monopoly power because the brand will always
5 earn a greater profit per unit than the generic.

6 Q. Now, Dr. Addanki, in your report, you discuss
7 scenarios where parties may not be able to reach what
8 you term a pure term-split settlement; correct?

9 A. I'm sorry. I discuss what?

10 Q. You discuss various scenarios --

11 A. Various scenarios, yes.

12 Q. -- where the parties to a settlement
13 negotiation may not be able to reach a pure term-split
14 settlement. Do you recall that?

15 A. Yes. I discuss -- I make the point that a
16 pure term-split settlement may not be feasible, and I
17 point out various economic reasons why without
18 intending in any sense to exhaust all of the reasons
19 why.

20 Q. And one of the reasons that you describe or
21 one of the scenarios you describe is that a brand and a
22 generic may not be able to reach a pure term-split
23 settlement when the brand plans to introduce a new
24 product that's going to replace its current product on
25 the market; correct?

1 A. Yes.

2 Q. And that type of scenario can affect each
3 party's preferred entry dates; right?

4 A. Yes.

5 Q. And that's because the brand's profits depend
6 on whether generic entry occurs before or after the new
7 product launch; right?

8 A. That's correct.

9 Q. In other words, if a patentee introduces a new
10 product before the generic can enter, the prescriptions
11 would get shifted from the original product to the new
12 product; correct?

13 A. Well, if the patentee expects that
14 prescriptions will get shifted from the original
15 product to the new product, and indeed the new product
16 is intended as a replacement for the original product,
17 and the patentee believes that it can move those
18 prescriptions for whatever reason, the product quality
19 or what have you, then yes, that is exactly right.

20 Q. And if the brand is successful in shifting
21 prescriptions from the current product to the new
22 replacement product, that leaves fewer prescriptions of
23 the original product that can be substituted by the
24 generic; correct?

25 A. Are you talking now about what is anticipated

1 or what is -- what occurs?

2 Q. What is anticipated.

3 A. In other words, if in the anticipation of the
4 brand it is able to move those prescriptions -- well,
5 the point is not so much what the generic is doing.
6 The point is what is the brand doing. In other words,
7 the brand is making sales that do not face generic
8 competition. That's correct.

9 Q. And from the generic's perspective, there are
10 going to -- it expects that there are going to be
11 fewer prescriptions available for its product, its
12 AB-rated generic product, because the brand will have
13 shifted the market to the new product; correct?

14 A. But now we're talking about the generic's
15 expectations, so if the generic expects that the brand
16 will be able to move prescriptions before the generic
17 enters, then there will be fewer prescriptions for the
18 generic to be able to be substituted for.

19 Q. And that expectation on behalf of both the
20 brand and the generic creates further diversion
21 between the entry dates that the generic would be
22 willing to agree to and the dates that the brand would
23 be willing to agree to; correct?

24 A. What do you mean by "further"?

25 Q. There would be -- well, I'll get rid of the

1 word "further." Okay? And I'm discussing the scenario
2 you discuss in your report.

3 And the point of your scenario in the report
4 is that those differences in expectations about what's
5 going to happen with a new product creates a divergence
6 in the acceptable entry dates for the brand and the
7 generic; correct?

8 A. I've explained in my report that it can.
9 That's correct.

10 Q. And what you mean by that is the brand again
11 wants later generic entry; correct?

12 A. Well, we've established I think at the outset
13 that a brand wants later generic entry and the generic
14 wants earlier generic entry. That's generally true.

15 Q. Right.

16 And in the scenario that you lay out in your
17 report regarding the new -- the potential new
18 reformulated product, again, the brand wants even
19 later generic entry so that it has time to get its
20 product on the market before generic entry; correct?

21 A. The point I made in the report was fairly
22 straightforward, and we can go to the pages in the
23 report, if that's helpful.

24 The point I made in the report was simply that
25 among the factors that can make it impossible, as an

1 economic matter, for a brand and a generic to agree on
2 a pure term-split settlement is the prospect that the
3 brand might introduce a new product that would
4 supplant or replace the product for which the generic
5 manufacturer has an ANDA. And I explained that. And
6 it's just one of the ways in which the brand and
7 generic may find themselves unable to reach an
8 agreement, even if all the other stars aligned, was the
9 point I was making there.

10 Q. And by all the other stars aligning, you
11 include the fact that the parties may have exactly the
12 same views of the merits of the patent litigation;
13 correct?

14 A. Yes. That contrary to my experience and
15 common sense, that parties actually would have
16 identical views over what's going to happen in a patent
17 lawsuit, yes.

18 Q. But we're just talking about what's in your
19 report; correct?

20 A. That's right.

21 Q. Now, in that scenario where the parties agree
22 on the patent merits but still cannot agree on a pure
23 term-split settlement because of this expectation of a
24 new product being launched, you would expect that a
25 payment from the brand to the generic could cause a

1 settlement, and if it does, the entry date will move to
2 the brand's later expected entry date; right?

3 A. As I explained in my report and I explained at
4 length in my deposition, the problem for both the brand
5 and the generic -- and this infuses all of my
6 discussion of how to analyze these settlements and
7 what's feasible -- the problem facing both of them is
8 there is so much intrinsic uncertainty about the
9 future, and if you settle, you're agreeing to a course
10 of action which is going to expose you to uncertainty.

11 And I had mentioned that the prospect of a
12 product reformulation was one such source of
13 uncertainty, particularly acute for the generic
14 because it knows or should know from the economic
15 perspective that it doesn't know anywhere near as much
16 as the brand knows about what those plans are.

17 And I had explained in my deposition -- and I
18 think the report is entirely consistent with that --
19 that it's the mitigation of uncertainty that is really
20 much more important than anything else, and so both
21 sides may be looking for contractual provisions that
22 would help mitigate uncertainty attendant upon product
23 reformulation, upon other things, but that's the core
24 of what can bridge the gap when a settlement cannot be
25 reached otherwise. And this is one of those

1 situations.

2 Q. I'm sorry. What is the core that can bridge
3 the gap when a settlement cannot be reached otherwise?

4 A. The mitigation of uncertainty.

5 Q. And how do they mitigate uncertainty?

6 A. Well, whatever contractual provisions they get
7 into that mitigate uncertainty can certainly help
8 bridge a gap. And I certainly view the Endo credit
9 provision here as a provision that, from the economic
10 standpoint, is helping mitigate uncertainty.

11 Q. My question, Dr. Addanki, was, if the parties
12 in the scenario of a reformulation, potential
13 reformulation, cannot reach a pure term-split
14 settlement, okay, because they have different
15 reservation dates, and then the brand pays cash to the
16 generic, you would expect -- and then they settle,
17 okay, you would expect, just like we talked about
18 before, that the agreed-upon entry date is going to
19 move to the brand's reservation date; correct?

20 A. As a general matter, your very first
21 hypothetical really encompasses all of these in the
22 sense that if you say by assumption we know that the
23 generic's entry date, the drop-dead date for the
24 generic, is January 1 in your example, and the brand's
25 drop-dead date is June 1, and the brand writes the

1 generic a check and they settle, the question you
2 asked then about that hypothetical as to whether that
3 entry date would be June 1 and I answered yes, it
4 really is the same answer to the question you're just
5 asking.

6 If there's a divergence of entry dates and we
7 assume that to be true and then you would tell me to
8 assume that there was a payment and a settlement and
9 ask me what the date is, the answer will be the same.

10 But if you take it out of the realm of the
11 payment, then I say, well, it depends on what the terms
12 are because the key to reaching settlement is
13 mitigating uncertainty.

14 Q. Do I understand that the answer to my question
15 is yes?

16 A. The answer to your question is it's no
17 different from your first hypothetical, if that's what
18 your hypothetical is.

19 Q. Dr. Addanki, if the answer to my question is
20 yes, you're free to say "yes." Okay?

21 A. I guess what I'm trying to explain to you and
22 to the court is that it doesn't much matter what
23 causes a divergence that results in an inability to
24 reach a term-split settlement. If you ask me to assume
25 that we know what the reservation dates are and further

1 ask me to assume that a payment engendered a
2 settlement, then the outcome is pretty clear.

3 Q. Okay. And what I'm telling you, Dr. Addanki,
4 is that if I ask a yes-or-no question, you can say
5 "yes" or you can say "no." You don't have to give a
6 long explanation. You can just answer my question.
7 Okay?

8 A. I understand that. But when the hypotheticals
9 are complicated, I think it's worth explaining them.

10 Q. Now, in developing your economic framework in
11 this matter, you did not consider the current legal
12 standard; correct?

13 A. I'm an economist. I'm really not a lawyer of
14 any kind.

15 Q. Is that --

16 A. I did not consider legal standards, no.

17 Q. And your economic framework is --

18 A. I'm sorry. Excuse me. I should amend that
19 answer a little bit.

20 I'm generally aware of an analysis under the
21 rule of reason, and that is the extent of the guidance,
22 of the legal guidance to my analysis, so I think that's
23 the more complete answer.

24 Q. Okay. So is the answer then, in developing
25 your economic framework in this matter, you did

1 consider the current legal standard or not?

2 A. I have been guided -- to the extent I've been
3 guided by the law, it has been that I understand what
4 it means to do a rule of reason analysis. But beyond
5 that, I have not paid attention to the ins and outs of
6 the jurisprudence on these line of cases.

7 JUDGE CHAPPELL: Just so the record is clear,
8 what do you mean by "the legal standard"? Standard for
9 what?

10 MR. LOUGHLIN: The legal standard governing
11 reverse payment settlement cases.

12 JUDGE CHAPPELL: Well, that wasn't spoken by
13 you. I'm trying to figure out what you mean by
14 "the legal standard."

15 MR. LOUGHLIN: Okay. Well, thank you for
16 that --

17 JUDGE CHAPPELL: And I don't know if the
18 witness understands or not. I don't like having
19 assumptions in the record.

20 MR. LOUGHLIN: I appreciate that, Your Honor.

21 BY MR. LOUGHLIN:

22 Q. Dr. Addanki, I'll ask it again in a more
23 complete way.

24 In developing your economic framework in this
25 matter, did you consider the current legal standard

1 governing reverse payment settlements?

2 A. I've not been guided by legal jurisprudence
3 regarding reverse payment settlements beyond what I
4 said about conducting a rule of reason analysis.

5 Q. Now, your economic framework is to compare
6 expected consumer benefits under the settlement at
7 issue compared to expected consumer benefits under
8 continued litigation; correct?

9 A. That's correct.

10 Q. And the expected value is a mathematical
11 expected value; correct?

12 A. "Expected value" when we use the term in
13 economics is a mathematical expectation, which is a
14 probability-weighted average of the different outcomes
15 that could occur. That's correct.

16 Q. It's a mathematical formula.

17 A. That's correct.

18 Q. And the expected value is a calculation, a
19 mathematical calculation, based on that formula;
20 correct?

21 A. It's a mathematical calculation, that's
22 correct.

23 Q. And for purposes of calculating expected
24 values, you need information regarding the
25 probabilities of who's going to win the patent case;

1 correct?

2 A. As I explained in my testimony and as I explain
3 in my report, in some instances you do and in some
4 instances you need not actually utilize probabilities,
5 which was the question that I was asked on direct about
6 does my opinion here depend upon the probabilities of
7 the patent litigation outcomes in any way, and my
8 answer was no, it does not. As it happens in this
9 case, we don't need to consider those.

10 Q. I'm not asking about your opinion in this case
11 yet.

12 A. Oh.

13 Q. I'm still just asking about the way that you
14 calculate expected values under this mathematical
15 formula. Okay?

16 A. When you need to evaluate an outcome that's
17 inherently probabilistic, then the best you can do, if
18 it's an inherently probabilistic outcome, is to assign
19 probabilities to the various possible outcomes and
20 calculate an expected value. That's correct.

21 Q. Okay. And as an economist, you would rely on
22 the expert opinions of others to get the probabilities
23 of who would win the patent case if you were going to
24 do an expected value calculation; correct?

25 A. Certainly I would have no opinion as an

1 economist about the probabilities involved in the
2 outcomes of a patent case, so I would be relying on
3 some other sources of information for that. It could
4 be other experts. I don't know that that exhausts the
5 other possibilities, but I certainly wouldn't have any
6 independent opinion about the probabilities of the
7 outcomes of a patent lawsuit.

8 Q. And you read Mr. Figg's opinion in this -- or
9 his report in this case; correct?

10 A. I did.

11 Q. And you saw Mr. Figg opine that it's not
12 possible to reduce the odds of winning a patent
13 litigation to a number that can be plugged into a
14 formula; correct?

15 A. I'm aware that he said that.

16 Q. And you didn't actually do an expected value
17 calculation in this case; correct?

18 A. I didn't need to.

19 Q. So that's a yes, you didn't do one?

20 A. I didn't do one. I didn't need to do one.

21 Q. And so you didn't do a calculation of expected
22 consumer benefits under the settlement; right?

23 A. Again, there was no need to evaluate any
24 probabilities because I could reach a definite
25 conclusion in my analysis without having the result of

1 probabilities.

2 JUDGE CHAPPELL: If that's a no, you need to
3 say "no."

4 THE WITNESS: And no, I did not, sir.

5 BY MR. LOUGHLIN:

6 Q. And you didn't determine an actual expected
7 entry date under litigation; correct?

8 A. I determined that it would be later than
9 January 1, 2013 but not by how much. That's correct.

10 Q. And you didn't look at consumer benefits from
11 continued litigation as of the time of the settlement;
12 correct?

13 A. I looked at -- I did not. I looked at it as of
14 today.

15 Q. Right.

16 You looked at consumer benefits under continued
17 litigation as of the time of your report, which was in
18 September of this year; correct?

19 A. That's correct.

20 Q. And as of September, your opinion was that the
21 expected entry date under continued litigation was
22 sometime later than January 1, 2013; correct?

23 A. That's correct.

24 Q. And so you did your analysis of expected
25 consumer benefits under continued litigation knowing

1 what actually happened in subsequent patent cases;
2 correct?

3 A. Yes.

4 Q. Now, if you were hired in June of 2010 to
5 assess the expected value of continued litigation, you
6 might come up with one number in June of 2010 that
7 would be -- might be different from the expected value
8 you got in September of 2017; right?

9 JUDGE CHAPPELL: Just so we're clear, are you
10 asking -- because of that magical date, June 2010, are
11 you wanting him to assume at the time of settlement,
12 after the settlement or before the settlement? Or does
13 that have nothing to do with your question?

14 MR. LOUGHLIN: At the time of settlement. And
15 thank you for that clarification.

16 BY MR. LOUGHLIN:

17 Q. So I'll restate the question. Okay?

18 If you were hired, at the time of the
19 settlement between Impax and Endo, to assess the
20 expected value of continued litigation, you might come
21 up with a different value than you did in September of
22 2017 knowing the outcome of what happened in the
23 subsequent patent cases; correct?

24 A. It's -- the answer is yes, but it's not just
25 having to do with what happened in subsequent patent

1 cases. It's yes, having to do with all of the things
2 that we know happened as events unfolded from 2010 to
3 now.

4 We take account of all of the information we
5 have at our disposal to come up with the best answer
6 that we can, so I would have come up -- I would have
7 used all of the information at my disposal in June of
8 2010 had I done the analysis at the time of the
9 settlement, and it may have been a different answer. I
10 don't know because I haven't done it.

11 Q. And if sometime later than today there were
12 reversals in the court of appeals on some of the patent
13 decisions that were rendered related to Endo's patents,
14 that could cause you to have a third calculation of
15 expected values under continued litigation, correct, as
16 of that time; right?

17 A. Well, again, as I haven't calculated any
18 expected values, I would not be calculating expected
19 values were I to do this analysis later than now,
20 because, as I've testified, my opinion does not depend
21 on expected values in this case. It doesn't need to.

22 And so my opinion would be the same even if I
23 were to do this analysis next year or the year after
24 next in a context in which, as you posited, Endo
25 patents had been found invalid or decisions had been

1 reversed.

2 Q. But if Endo patents sometime after today were
3 later found to be invalid or unenforceable for some
4 reason, reversing some of the district court rulings
5 that are pending right now, that would -- could cause
6 you to have a different view of consumer benefits under
7 the settlement; correct?

8 A. Because all I analyzed was the difference
9 between consumer benefit under the settlement and what
10 would happen but for the settlement, nothing that
11 happens henceforth from now forward is going to change
12 my conclusion that entry but for the settlement would
13 have been later than January 1, 2013, so I think the
14 answer is no.

15 Q. Well, let me ask it this way.

16 A. Okay.

17 Q. Okay?

18 If subsequent to today there were reversals by
19 the court of appeals on certain patent cases that
20 relate to Endo's patents, that could cause you to have
21 a third calculation of expected values of continued
22 litigation; correct?

23 A. The trouble with your question is I have not
24 calculated expect values. I've never needed to
25 calculate expected values.

1 So no, I haven't got a first one, I haven't got
2 a second one, I haven't got a third one.

3 Q. Okay. Well, can you take a look at the
4 deposition again at page 49 lines 20 -- and it carries
5 over to page 50 line 3.

6 A. Page 40 you said? 49.

7 Q. Page 49.

8 And I'm looking at line 20, and it continues
9 down to page 50.

10 Are you there, Dr. Addanki?

11 A. I am.

12 Q. And do you see I asked you, "And if subsequent
13 to today, there were reversals by the court of appeals
14 on certain patent cases that are between -- that relate
15 to Endo's patents, that could cause you, yet, to have a
16 third calculation of expected values of continued
17 litigation; correct?"

18 And your answer was: "If you have more
19 information than and you perform the analysis at a
20 later time for the benefit of more information, you may
21 have different conclusions."

22 That was -- that was the testimony at your
23 deposition; correct?

24 A. That was the testimony in my deposition.

25 The question you asked at line 10 on

1 page 49 set it up as a series of hypotheticals, were I
2 to be hired to calculate the expected value of
3 litigation in June 2010, were I to be hired to
4 calculate the expected value of litigation in
5 June 2017, and so on.

6 Were I to be hired to calculate expected
7 values, I would do it. I haven't done it in this
8 case.

9 Q. Sure.

10 And if you were hired to do it subsequent to
11 today and there were reversals in the court of appeals,
12 you may come up with yet a third calculation of
13 expected values of continued litigation; correct?

14 A. The expected value of continued litigation that
15 you calculate at any point in time, you would use all
16 of the information at your disposal when you do the
17 calculation. That's correct.

18 Q. Now, at the time of the settlement, Impax
19 didn't have the information you have today regarding
20 what has happened in subsequent patent cases; correct?

21 A. Impax did not.

22 Q. And at the time of the settlement, Endo didn't
23 have the information you have today regarding what has
24 happened in subsequent patent cases; correct?

25 A. It did not.

1 Q. And Endo didn't know if it was going to win at
2 the district court level in June of 2010; right?

3 A. It did not.

4 Q. And so that in June of 2010, Endo faced a risk
5 that Impax would be able to enter the market before
6 January 1, 2013; correct?

7 A. Yes.

8 Q. Now, Dr. Addanki, in your opinion, the only way
9 to measure whether a settlement is anticompetitive is
10 to see if the settlement entry date is later than the
11 expected entry date under continued litigation;
12 correct?

13 A. In the situation where your -- you have no
14 other information to go on, that can be correct.
15 That's right.

16 Q. Well, avoiding the risk of competition is not
17 an anticompetitive effect, in your opinion; correct?

18 A. So when there's no monopoly power, settlements
19 are in general going to be -- settlements of this
20 nature, settling patent litigation, are not going to be
21 anticompetitive.

22 If you find that there is monopoly power, then
23 you're still going to have to ask the question, are
24 consumers better off with the settlement or without.

25 The question isn't what motivated the parties.

1 The question is what were the effects of the
2 settlement.

3 So a settlement that was intended -- I'm
4 answering your question -- that was intended to
5 mitigate or obviate or avoid risk may or may not end up
6 being anticompetitive. You have to look.

7 Q. Okay. Well, then I'm going to ask my question
8 again slightly differently.

9 A. Okay.

10 Q. Okay?

11 Assuming there is monopoly power, avoiding the
12 risk of competition is not an anticompetitive effect,
13 in your opinion; correct, Dr. Addanki?

14 A. So, again, I'm not quite sure how to analyze
15 your -- interpret your question because a pure
16 term-split settlement avoids the risk of competition.

17 I'm not sure what you mean by "avoid the risk
18 of competition" beyond the fact that if you have a date
19 certain, you've ruled out entry dates before that date
20 certain. And that's true of any term-split settlement
21 with any terms.

22 Q. All right. Then let me ask it this way then.

23 If there is monopoly power, in your opinion, a
24 payment that allows the brand to avoid the risk of
25 competition does not create an anticompetitive effect;

1 correct?

2 A. Again, for me as an economist, I can't read
3 people's minds. I don't know what motivates either a
4 brand company or a generic company because I can't --
5 I'm not a mind reader. That's not my expertise.

6 I can evaluate effects. And it's a question of
7 the effects. And it's a question of the effects
8 relative to the but-for world without the settlement.

9 And so given what I've already told you about
10 any settlement has the effect of mitigating risk,
11 avoiding risk, if you ask me then, well, does the fact
12 that there was a payment make it anticompetitive, the
13 answer is no. That by itself doesn't make it
14 anticompetitive. You have to analyze the effects of it
15 to see if it's anticompetitive.

16 Q. And by "effects" you are not including the fact
17 that the brand has avoided the risk of competition
18 before a certain date in the future; correct?

19 A. Any settlement is going to mitigate some risk.
20 That's the reason companies do it.

21 So it's avoiding risk, yes. All settlements
22 avoid risk.

23 Q. So the answer to my question is yes, that's
24 correct; right?

25 A. It is correct that by itself the avoidance of

1 risk does not constitute an antitrust problem, in my
2 view, as an economist.

3 Q. Okay. And your opinion is that the entry of a
4 lower-priced generic competitor does not by itself
5 reveal anything useful about whether consumers are
6 better off as a result of that entry; correct?

7 A. It does not reveal anything useful about
8 whether monopoly power existed and is being dissipated.
9 I really haven't carried out the analysis of whether
10 the entry of a lower-priced product may or may not
11 benefit some consumers somewhere.

12 But the question we're about is, was there
13 monopoly power and was it -- is it going to be
14 dissipated. And certainly the entry of a lower-priced
15 generic, because that's exactly what generics do,
16 doesn't tell you anything about monopoly power.

17 Q. Can I ask you to turn to your report, which is
18 in your binder at RX 547.

19 A. 547?

20 Q. 547, yes.

21 And specifically to --

22 A. I'm sorry. I'm not there yet, so you're going
23 to have to give me a second here.

24 Right. Where?

25 Q. It's page 15 of your report.

1 A. 1-5?

2 Q. Correct.

3 A. I have it.

4 Q. It's -- on the bottom it should say

5 "RX 547.0019."

6 Do you see that?

7 A. I do.

8 Q. Okay. And do you see in paragraph 31?

9 A. Yes.

10 Q. In the very top, you're talking about the
11 restriction in output that causes a loss of consumer
12 welfare.

13 Do you see that?

14 A. Yes.

15 Q. And then the next clause says (as read) the
16 entry of a low-priced competitor does not, by itself,
17 reveal anything useful about whether consumers are
18 better off as a result of the entry, or whether the
19 incumbent firm had exercised market power or, indeed,
20 even possessed any market power to be exercised.

21 Do you see that?

22 A. I don't know if you deliberately misquoted
23 that. I used the words "monopoly power." Both times
24 you said "market power."

25 Q. Oh, did I? Oh, I apologize for that. I did

1 not deliberately misquote you.

2 A. Okay.

3 Q. That's what your sentence says; right?

4 A. Would you read it again because I think the
5 record is not --

6 Q. Sure.

7 I'm reading the clause that says "the entry of
8 a low-priced (sic) competitor does not by itself reveal
9 anything useful about whether consumers are better off
10 as a result of the entry."

11 Do you see that part?

12 A. Yes.

13 Q. That's the part I'm asking you to focus on.

14 A. Yes.

15 Q. Okay?

16 And you said that you agree with it; correct?

17 A. I wrote that. That's my opinion.

18 Q. And you agree with it.

19 A. Yes.

20 Q. As you're sitting here today.

21 A. Yes.

22 Q. Okay. In fact, Dr. Addanki, you think that
23 generic entry may cause consumer harm; correct?

24 A. I'm certainly aware of situations in which it
25 can and has, but I have no general opinion about what

1 generic entry does as far as consumer benefit is
2 concerned. It depends on the circumstances.

3 Q. Now, Dr. Addanki, if AB-rated generic entry
4 occurs and sales are shifted from the brand to a
5 lower-priced generic, your opinion is that you can't
6 tell if consumers are better off; correct?

7 A. As I've explained in the report, the brand and
8 the generic are different. The brand engages in
9 various activities that can have real value for
10 physicians and patients. Those values -- those
11 activities cease when there's an AB-rated generic or
12 get greatly curtailed when there's an AB-rated
13 generic.

14 Consumer benefit may go up or down depending
15 upon the value of those activities and the price that
16 you see in the marketplace. And as I've said before,
17 output is the best test of whether on net consumers are
18 better off or not, because if those activities have
19 real value, you will not see the lower price actually
20 producing more output.

21 So that's the complete answer. You can't tell
22 just by -- from -- just from the fact that there's a
23 generic coming in at a lower price, you cannot tell if
24 consumers are better off or worse off on that.

25 Q. So that's a yes to my question; right?

1 A. Yes. And that's a complete answer and a yes,
2 that's right.

3 Q. Well, a complete answer would have a yes or a
4 no, and then you can give whatever explanation you
5 want, but if you would please give me that, then I will
6 know that you've answered my question. Okay?

7 Now, Dr. Addanki, if AB-rated generic entry
8 occurs and sales are shifted from the brand to the
9 lower-priced generic, in your opinion, you can't tell
10 whether consumers who are now buying the lower-priced
11 generic are themselves better off; correct?

12 A. I've never done that analysis because to me
13 it's always a question of how consumers in the
14 aggregate are doing. But it's not clear to me
15 necessarily that consumers are better off. The point
16 is that consumers don't get to choose. They get the
17 generic because that's how the law works. That's how
18 the substitution laws work.

19 So it's not the case that consumers have chosen
20 and have voted with their feet, and Judge Chappell and
21 I talked about this a little bit yesterday. As a
22 patient, you don't get the choice. You will get the
23 generic. Now, you don't get the brand if you prefer
24 the brand. You get the generic.

25 And so it's not at all clear that any

1 customers in a specific situation are better off. But
2 I can't say I've analyzed whether any specific
3 consumers are better off. I view it as an aggregate
4 consumer benefit question.

5 Q. So, again, the answer to my question is yes,
6 that's correct?

7 A. The answer is yes, you cannot tell.

8 Q. And Dr. Addanki, if AB-rated generic entry
9 occurs and you know that substantial sales have been
10 moved from the branded product to the generic product
11 at a lower price, and you know that consumers are
12 generally paying lower copays under the way their
13 insurance works, in your opinion, you still don't know
14 whether those particular consumers are better off;
15 correct?

16 A. Again, I haven't analyzed it for segments of
17 consumers, so I couldn't give you an answer unless we
18 talked about a specific case. I don't think you can
19 make any generalization because it is pretty
20 fact-specific.

21 So in a general sense, you can't tell for sure
22 one way or the other.

23 Q. So then the answer to my question is yes,
24 that's correct?

25 A. That you cannot tell.

1 Q. Now, Dr. Addanki, in your report you discuss
2 the value of the no-AG and the Endo credit provisions
3 under the settlement; correct?

4 A. That's correct.

5 Q. And you spend three paragraphs discussing that;
6 correct?

7 A. I don't know. If you can point me to it, we
8 can look.

9 Q. Yes. It's paragraphs 125, 126 and 127 of your
10 report. It begins on page 62 of your report. That's
11 RX 547.

12 A. Yes.

13 Q. 547.0066.

14 A. Right.

15 Q. Okay. So my question is just, you spend three
16 paragraphs, right, 125, 126 and 127, discussing the
17 value of the no-AG and Endo credit provisions;
18 correct?

19 A. Yes.

20 Q. And if you look near the bottom of
21 paragraph 125, you say, "Dr. Noll claims to show a
22 range for the 'Approximate Value of No AG and Endo
23 Credit at Time of Settlement' under various
24 scenarios."

25 Do you see that?

1 A. I do.

2 Q. Now, your report doesn't offer any specific
3 criticisms of Dr. Noll's calculations of the ex ante
4 value of the no-AG and Endo credit provisions to Impax
5 at the time of the settlement; correct?

6 A. Well, no. I think -- I think in 126 what I
7 say is that there are absolutely reasonable scenarios
8 in which you get calculations that are different
9 because you have simultaneously valueless provisions,
10 and that's what I explain in 126 and 127, and that's a
11 criticism of his calculation.

12 Q. Let me maybe make my question clearer. Okay?

13 A. Okay.

14 Q. I understand that you criticize part of his
15 opinion, but you didn't offer any criticisms of the way
16 that Dr. Noll calculated the ex ante value --

17 A. You mean his formulas?

18 Q. Correct.

19 A. I did not.

20 Q. And what you say at the end of paragraph 125 is
21 that Dr. Noll provides an incomplete assessment of the
22 ex ante value of these provisions to Impax at the time
23 of the settlement; right?

24 A. Right.

25 Q. And then you explain in paragraph 126 why you

1 believe Professor Noll's analysis is incomplete;
2 right?

3 A. That's correct.

4 Q. And what you say is, in the first sentence of
5 126, "Contrary to Dr. Noll's assertion that 'if one
6 provision is valueless, the other has substantial
7 value,' it is possible that the 'No AG' and Endo Credit
8 provisions would have provided zero value to Impax";
9 right?

10 A. Yes. I wrote that.

11 Q. Now, in your report, you don't assess the
12 likelihood that both the no-AG provision and the Endo
13 credit provision would have provided zero value to
14 Impax; correct?

15 A. I do not assign a probability to it. That's
16 correct.

17 Q. You don't assess the likelihood in any other
18 way; correct?

19 A. Well, no. I do explain that knowing the
20 provision, the way it's written, that it would make
21 sense for Endo to have planned its migration of
22 patients from original to reformulated in a way that
23 minimized patient loss and minimized whatever
24 obligations might be payable under the Endo credit
25 provision.

1 And so that -- that's a statement about what I
2 would expect to see, which is intrinsically about
3 likelihoods, but I did not attach a probability to it.
4 That's correct.

5 Q. Well, in terms of likelihoods, what you said in
6 your report is that it is possible; correct? That's
7 the term you used?

8 You can look at the first sentence of 126 if
9 you like, Dr. Addanki.

10 A. Yes, I did.

11 But I've also said in footnote 207 that,
12 consistent with the discussion leading to that
13 footnote that discusses how the payment would be
14 minimized in the event of a reformulation, I note
15 that, that in fact consistent with that discussion,
16 Endo was obliged, had been obliged to move up the
17 launch date so that, again, ex ante it's more likely
18 that Endo would have managed that transition being
19 fully aware of what that provision read, how the
20 provision read and what its obligations would be under
21 the provision.

22 Q. Right. But what you wrote in your report was
23 it's possible. You wrote it in the first sentence.
24 Then down near the bottom of 126 on 63 beginning
25 "Therefore" you say it's possible again.

1 You don't say "likely," you say "possible";
2 correct?

3 A. Right. But if you read -- I mean, well,
4 certainly what I intend to say and what I've said in
5 this whole section is that the -- it would make
6 economic sense for Endo to have done that, and indeed,
7 it seems like that's what Endo had in mind, based on
8 the discussion in footnote 207. But I've certainly not
9 assigned probabilities. That's correct.

10 Q. And I just want you to listen to my question.
11 Okay?

12 A. Okay.

13 Q. My question is, the word you used was
14 "possible"; correct?

15 A. Yes.

16 Q. Now, did you see any documents or testimony
17 about what Impax' chief negotiator thought about the
18 likelihood of Impax getting no value from the no-AG or
19 Endo credit provisions?

20 A. I saw some documents suggesting that Impax
21 thought that the provisions provided some safety net.
22 There may have been other documents that I don't
23 recall.

24 Q. Now, in your report, you didn't calculate a
25 mathematical expected value of the sort you discussed

1 with respect to the continued value of litigation;
2 correct?

3 A. I did not.

4 You're asking if I calculated expected value of
5 continued litigation?

6 Q. No. I'm asking if you calculated a
7 mathematical expected value of the payment.

8 A. I did not.

9 Q. And you didn't assess the mathematical expected
10 value of the payment either as of the time of the
11 settlement in June of 2010 or in September 2017;
12 correct?

13 A. With -- in September 2017, we know the payment
14 with a probability of one. It was \$102 million.

15 So I'm not sure I understand your question.

16 Q. Well, with respect to continued litigation, you
17 assess expected values as of September 2017. Do you
18 recall that?

19 A. I think I've testified repeatedly that I have
20 not calculated expected values. I didn't need to
21 calculate expected values.

22 I've calculated that the consumer benefit would
23 be better under the settlement because entry would have
24 occurred later but for the settlement. I've not
25 calculated an expected value.

1 Q. Okay. But you did a calculation regarding
2 continued litigation as of September 2017; correct?

3 A. I made an assessment that consumers are better
4 off with the settlement as of September 2017.

5 Q. Right.

6 And you didn't do any sort of calculation or
7 assessment of the expected value as of September 2017;
8 correct?

9 A. The expected value of what?

10 Q. Of the payment.

11 A. Of the payment.

12 Q. Yes.

13 A. We know the payment with certainty. The
14 expected value is the same as the payment. It's
15 \$102 million.

16 Q. So if you looked at the mathematical expected
17 value of the payment as of September 2017, you would
18 take into account the fact that Endo actually paid
19 \$102 million under that provision; correct?

20 A. There's no mathematical expected value. It is
21 the number. There's no uncertainty about the number.
22 \$102 million was paid, for reasons that I explained at
23 length yesterday.

24 Q. Now, in principle, it is possible to determine
25 the expected value of the no-AG provision and Endo

1 credit; right?

2 A. To whom?

3 Q. To Impax.

4 A. So the expected value to Impax would depend
5 upon what was in Impax' or the negotiators for Impax'
6 minds. And if you knew what they were thinking about
7 probabilities looking forward, assuming they thought
8 about it in those terms, you could in principle
9 calculate an expected value.

10 Q. Right.

11 And to do that, in principle, you would have to
12 assign probabilities to all the potential outcomes
13 under the no-AG and Endo credit; right?

14 A. No. You would have to know what probabilities
15 they assigned to outcomes.

16 Q. You'd have to know that for each of the
17 possible outcomes; correct?

18 A. You would have to know however they were
19 thinking about it. Whether it was a question of
20 outcomes or they were thinking about it as a
21 probability distribution of some kind I don't know.
22 It's what was in Impax negotiators' or Impax
23 management's minds at the time.

24 Q. And you don't have that information.

25 A. I do not.

1 Q. As a practical sense, it's not really doable to
2 do an expected value of the payment; correct? A
3 mathematical expected value; correct?

4 A. I'm certainly not going to rule out being able
5 to do a calculation of that kind. I haven't done it
6 here and never went about trying to do it here.

7 Q. As a practical matter, is it doable to
8 determine expected values of the no-AG and Endo credit
9 as of the time of the settlement, using the expected
10 values of the sort we talked about earlier today?

11 A. I haven't tried doing it. I haven't undertaken
12 any such analysis. I'm not going to rule out that it's
13 possible. I haven't done it.

14 Q. Okay. Why don't you turn to your deposition
15 again.

16 A. Okay.

17 Q. And to page 114.

18 A. 114.

19 That's deposition page 114?

20 Q. It is.

21 A. I have it.

22 Q. And do you see up at the top I'm asking you
23 about whether it's -- are you there, Dr. Addanki?

24 A. Yes.

25 It's a carryover question; right?

1 Q. No. It's page 114 at --

2 A. 114. Pardon me. Okay.

3 Q. Are you with me?

4 A. Yes.

5 Q. Okay. And up at the top on line 1 I'm asking

6 you is it possible to determine expected values of the

7 no-AG and Endo credit.

8 Do you see that?

9 A. Yes.

10 Q. And you answer, and then in line 15 I say, "You

11 didn't do it here; correct?"

12 And your answer was: "No, I didn't do it at

13 all here.

14 "QUESTION: Okay.

15 "ANSWER: I don't think it's actually in any

16 practical sense doable."

17 A. Right.

18 Q. That was your answer; right?

19 A. It was the answer to the question is it

20 possible to determine the expected value, not the

21 expected value to Impax or the expected value to Endo,

22 but the actual expected value. And I took your

23 question there as I take it now, if you ask me the same

24 question, to mean an objective expected value, and I

25 say yeah, you cannot do that.

1 Q. And so rather than a mathematical expected
2 value, you're sort of talking about anticipated value
3 as of the time of the settlement; right?

4 A. I don't know what you're asking about. What do
5 you mean, I'm talking about?

6 Q. Well, rather than -- well, all right. Let me
7 start that over.

8 Let me ask you to look at paragraph 126 of your
9 report.

10 A. Oh, of my report. Okay.

11 Q. That's RX 547.0069. It's page 65 of your
12 report.

13 A. I have it.

14 Q. Are you there, Dr. Addanki?

15 The top of page 65?

16 A. Yes.

17 Q. Do you have it?

18 A. Yes.

19 Q. And it says, "Therefore, there were a wide
20 range of potential values for the 'No AG' and Endo
21 Credit provisions (including zero) and thus uncertainty
22 about the expected value of any payment represented by
23 the 'No AG' and Endo Credit provisions at the time of
24 the settlement."

25 Do you see that?

1 A. Right.

2 Q. And when you used "expected value" in that
3 paragraph, you didn't mean mathematical expected value;
4 correct?

5 A. No. I did.

6 Q. Oh, you did?

7 A. I did.

8 Q. Now, let me turn back to paragraph 126 --

9 A. Okay.

10 Q. -- Dr. Addanki, in your report.

11 And this is where you're offering your
12 criticism of Professor Noll and why his analysis was
13 incomplete. Do you recall that?

14 A. Yes.

15 Q. If you look down near the bottom of that
16 paragraph 126 on page 63, do you see the sentence that
17 begins "Therefore"?

18 A. Yes.

19 Q. And you say, "Therefore, it is possible that,
20 had Endo launched reformulated Opana ER and
21 discontinued original Opana ER shortly before
22 January 2013, its Prescription Sales (of original
23 Opana ER) in the last quarter of 2012 may not have
24 dropped below 50 percent of their quarterly peak."

25 Do you see that?

1 A. I do.

2 Q. And then you continue, "In this scenario, there
3 would have been no Endo Credit paid to Impax."

4 Do you see that?

5 A. I do.

6 Q. Did you look -- and -- let me start that over.

7 You said today I believe that you would expect
8 that Endo would have managed its launch to accomplish
9 the result that it didn't have to pay any Endo credit;
10 correct?

11 A. It would certainly have been in Endo's economic
12 interest to do so and within Endo's ability to do so,
13 because it was Endo that controlled -- would have
14 controlled the pace of the launch but for the Novartis
15 plant shutdown.

16 Q. And I believe your testimony was that you would
17 expect that to be Endo's plan. Correct?

18 A. I would certainly expect that to be the plan,
19 yes.

20 Q. Did you look at documents concerning Endo's
21 plans in 2010 regarding its launch of reformulated
22 Opana ER?

23 A. There were a range of plans. I do know that
24 there were at least some documents that I reviewed
25 which were contemplating a launch later in 2012 than

1 Endo actually ended up having to do. I don't remember
2 the full range of documents that I saw.

3 Q. Do you recall looking at documents in 2010?

4 A. Endo documents in 2010?

5 Q. Let me be clearer. Endo documents dated from
6 2010 that you were looking at during your analysis.

7 A. I don't remember.

8 Q. Okay. Can we put up CX 3038, Corinne.

9 I believe it's in your binder, Dr. Addanki. If
10 you prefer to look at it that way, you're welcome to.

11 A. 3038? Okay.

12 (Document review.)

13 Q. Do you have it, Dr. Addanki?

14 A. I have it.

15 Q. And do you see the subject line says

16 "EN3288 Core Commercial Launch Team Update"?

17 A. Yes.

18 Q. And do you know that EN3288 is the code at Endo
19 for the reformulated version of Opana ER?

20 A. I don't recall.

21 Q. You don't recall that?

22 A. Yeah.

23 Q. Okay. Assuming that's right, do you see in the
24 top e-mail where it says "Some key dates"?

25 A. Yes.

1 Q. And it says, "Product Launch - Schedule
2 indicates March 2011, but could range from
3 December 10 to June 11."

4 Do you see that?

5 A. I do.

6 Q. And you didn't consider this document in coming
7 up with your opinions; correct?

8 A. Well, a document that predates both the
9 settlement which put Impax off the market till
10 January 2013 and that contained the Endo credit
11 provision is not going to inform my analysis of what
12 Endo would have done, knowing what was in the
13 settlement, very much. I may have seen this, but no,
14 it doesn't, doesn't tell me a whole lot.

15 Q. My question was that you didn't consider it.
16 Correct?

17 A. I may have considered it. I don't recall.

18 Q. Well, let's look at your report then.

19 A. Okay.

20 Q. If you look in your report -- your report is
21 RX 547 in your binder.

22 A. Yes.

23 Q. Do you see that?

24 It's on page RX 547.0095 carrying over to
25 0096.

1 You'll see a list of Bates-stamped documents
2 that you considered?

3 A. Yes.

4 Q. Actually, let me ask you to turn to the prior
5 page, 547.0093.

6 A. Okay.

7 Q. Do you see it's entitled Exhibit 2 Documents
8 Considered?

9 A. Yes.

10 Q. This is the list that you put together of the
11 documents that you considered in forming your report;
12 correct?

13 A. That's correct.

14 Q. And you intended to include everything that you
15 considered in this list; right?

16 A. Yes.

17 Q. Okay. Now, if you look at your list, and if
18 you'd look at RX 3038, do you see that number there?

19 It's not there, is it, sir?

20 A. So wait, wait. You've asked me to look for
21 Bates numbers on this list.

22 This has two Bates numbers.

23 I'm not sure why it has two Bates numbers.

24 (Document review.)

25 I don't see it on this list.

1 Q. Corinne, can you put up CX 1108.

2 Dr. Addanki, we're going to put up CX 1108. It
3 should also be in your binder if you prefer to look at
4 it that way.

5 Are you there, Dr. Addanki?

6 A. I am.

7 Q. Okay. Do you see the cover page of CX 1108 --

8 A. Right.

9 Q. -- is an e-mail from a Mr. Bingol?

10 A. Yes.

11 Q. The subject is Revopan BOD slides.

12 Do you see that?

13 A. Yes.

14 Q. Are you aware that Revopan was the potential
15 name for reformulated Opana ER?

16 A. Yes, I am.

17 Q. Okay. And this is dated 11-16-2010; correct?

18 A. Yes.

19 Q. That's after the settlement in June of 2010;
20 correct?

21 A. Yes, it is.

22 Q. All right. Now, can you turn to CX 1108-004.

23 A. I have it.

24 Q. Do you see down at the bottom there's some --
25 there's the three bottom bullet points?

- 1 A. Yes.
- 2 Q. And the first one says "PDUFA date
3 January 7, 2011"?
- 4 A. Yes.
- 5 Q. Do you know what a PDUFA date is?
- 6 A. No.
- 7 Q. Do you see underneath it it says "Trade launch
8 February 8"?
- 9 A. I do.
- 10 Q. Do you know what a trade launch is?
- 11 A. A launch to the trade. Yes.
- 12 Q. And then it says "Sales force launch
13 February 28" as well?
- 14 A. Right.
- 15 Q. And do you interpret that to be 2011?
- 16 A. That would be my understanding from this
17 document. Yes.
- 18 Q. And you didn't consider this document in
19 forming your opinions; correct?
- 20 A. I don't know if I cited this document or not.
- 21 Q. Okay. Well, let's take a look.
- 22 A. Okay.
- 23 Q. Let's go back to your report, RX 547.0095.
- 24 A. Okay.
- 25 Q. And tell me if you see that listed amongst your

1 materials considered.

2 A. Okay. Now I've lost the Bates numbers, so hang
3 on.

4 Q. The Bates number is EPI000189454.

5 A. Nope, that doesn't seem to be on here.

6 Q. Okay. And could I ask you to turn back
7 briefly to CX 1108- now 0008.

8 And this is concerning the Opana ER switch to
9 Revopan.

10 Do you see that?

11 A. I'm not there yet. One moment.

12 Q. Oh, I apologize.

13 A. I have it.

14 Q. Okay. And do you see up at the top it says
15 "Opana ER Switch to Revopan"?

16 A. Right.

17 Q. And the third bullet says, "Current planning
18 assumption is to stop shipping all Opana ER by
19 October 1, 2011."

20 Do you see that?

21 A. I do.

22 Q. And you didn't consider that when you were
23 forming your opinions; correct?

24 A. Well, I certainly didn't cite this document in
25 my report.

1 Q. Let me ask you to turn to CX 3038,

2 Dr. Addanki.

3 A. Okay.

4 Q. And that should be in your binder as well.

5 Oh, I'm sorry. I've already shown you this
6 one. I meant CX 2738. I apologize for that.

7 A. I have it.

8 Q. And do you see this document says
9 "ELC 2012 Budget Review" for Endo Pharmaceuticals in
10 the first page?

11 A. Yes.

12 Q. And it's dated October 12, 2011?

13 A. Yes.

14 Q. And that's after the settlement; correct?

15 A. That's correct.

16 Q. Could you turn to CX 2738-008.

17 A. I have it.

18 Q. And do you see up at the top it says "Opana ER
19 TRF Supply and Conversion Scenarios"?

20 A. Yes.

21 Q. And do you understand that "TRF" refers to the
22 reformulated version of Opana ER?

23 A. I do.

24 Q. And do you see on the left-hand side there's
25 various scenarios?

1 A. Yes.

2 Q. The base scenario, wholesaler stocking begins
3 with Bio- -- Biconcave, do you see that?

4 Do you see that column?

5 A. Yes.

6 Q. Okay. Under the base scenario, the wholesaler
7 stocking would begin in August of 2012; correct?

8 A. That's correct.

9 Q. This is as of October 2011; right?

10 A. Right.

11 Q. The upside scenario wholesaler stocking would
12 begin July 5, 2012; correct?

13 A. Right.

14 Q. The downside scenario has various wholesaler
15 stocking dates between April 1, 2012 and September 10,
16 2012; is that right?

17 A. Right.

18 Q. And then down at the bottom you see there's
19 something called an emerging view.

20 Do you see that?

21 A. Right.

22 Q. And that lists the wholesaler stocking as
23 beginning in February of 2012; right?

24 A. Right.

25 Q. And you didn't consider this document in

1 forming your opinions, did you, Dr. Addanki?

2 A. I don't believe I cited this document. No.

3 Q. Do you want to check?

4 A. Sure.

5 Q. You can look back at RX 547.0095.

6 (Document review.)

7 A. No, this is not cited.

8 Q. Now, Dr. Addanki, turning back to your report,
9 paragraph 126 at RX 547.0067?

10 A. Right.

11 Q. Are you there?

12 A. I am.

13 Q. Okay. We were discussing this sentence that
14 begins "Therefore" --

15 A. Yes.

16 Q. -- near the bottom of page 63 --

17 A. Yes.

18 Q. -- where you're saying it's possible that had
19 Endo launched reformulated Opana ER and discontinued
20 original Opana ER shortly before January 2013, its
21 prescription sales of original Opana ER in the last
22 quarter of 2012 may not have dropped below 50 percent
23 of their quarterly peak.

24 Do you recall that sentence?

25 A. I do.

1 Q. It's also possible that if Endo launched
2 reformulated Opana ER and discontinued original
3 Opana ER just before January 1, 2013, sales of original
4 Opana ER would have dropped below 50 percent of their
5 quarterly peak; correct?

6 A. It's -- it's unlikely, because you're talking
7 about a transition of prescriptions from one product to
8 another. That takes some time to achieve. There's
9 product in the trade pipeline which will continue to
10 get dispensed against refill prescriptions.

11 So I'd say that would be unlikely. It's
12 possible but unlikely.

13 Q. It is possible; right?

14 A. Possible but unlikely. Yes.

15 Q. And your testimony just now that it's
16 unlikely, is that based on your expertise as an
17 economist?

18 A. Yes. As an economist who's studied the
19 pharmaceutical industry for many, many years, yes.

20 Q. And do you have expertise in how companies
21 reformulate and switch products, Dr. Addanki?

22 A. Not about how they reformulate but how they
23 transition from one product to a reformulated product
24 is in general in the marketplace, yes, a great deal.

25 Q. How many times in the past have you studied

1 situations where a company reformulated its product and
2 switched from the original to the reformulated?

3 A. How many times? I don't keep track, but
4 certainly more than half a dozen, probably more than
5 ten.

6 Q. Have you written on that topic?

7 A. I'm sure that my writings have touched on the
8 topic. I can't remember specifically any article
9 exclusively devoted to that topic.

10 Q. So you haven't written on this topic, and your
11 expertise is limited to looking at this scenario six to
12 ten times; is that right?

13 A. No. The point is that having been familiar
14 with about, say, ten or more times of studying it, in
15 each of those cases reference is typically made to what
16 can be expected in a transition of that kind, so I'm
17 generally familiar with that part of brand company
18 strategies.

19 Q. Did those scenarios have something like an Endo
20 credit in them?

21 A. I don't remember.

22 Q. Did you -- were you measuring how quickly sales
23 of the original product declined after the reformulated
24 launched?

25 A. That's what I'm talking about. I'm talking

1 about the transition in prescriptions being dispensed
2 from an original product to a reformulated product.

3 Q. And you were measuring whether they declined by
4 50 percent or more --

5 A. No.

6 Q. -- a certain time period?

7 A. Pardon me. Sorry. Go ahead.

8 Q. No. I -- you were measuring whether they
9 declined by 50 percent or more within a certain time
10 period; is that right?

11 A. No, I was not.

12 Q. If Endo launched its reformulated Opana ER and
13 discontinued original Opana ER just before January 1,
14 2013 and sales of original Opana ER dropped below
15 50 percent of their quarterly peak, Endo would have to
16 pay the Endo credit; correct?

17 A. It would have to pay a credit, the amount of
18 which would depend on by how much they fell below that
19 peak.

20 Q. Now, I think you mentioned earlier that it
21 takes some time for the reformulation -- let me start
22 that over.

23 I think a minute ago you testified that it
24 takes some time for the brand to switch prescriptions
25 from the original product to the reformulated product;

1 correct?

2 A. Yes.

3 Q. It takes months for that to happen; correct?

4 A. Typically, yes.

5 Q. So it's possible that if Endo launched
6 reformulated Opana ER and discontinued original
7 Opana ER just before January 1, 2013, Endo would not be
8 successful in switching patients to the reformulated
9 Opana ER before entry of generic versions of Opana ER
10 on January 1, 2013; correct?

11 A. Well, again, we need to be clear what we mean
12 by "just before." I wasn't suggesting that it would be
13 December 31.

14 But these are the moving parts that Endo had
15 under its control, was when it was going to introduce
16 reformulated and when it was going to discontinue
17 original. And my point is simply that knowing what
18 obligations it had under these terms and knowing that
19 transition takes time, I would have expected Endo to
20 have managed that transition.

21 I haven't studied exactly how many months it
22 would have taken or what specifically would have been
23 Endo's optimal plan. That wasn't part of my work.

24 Q. But what Endo doesn't have within its control
25 is how quickly doctors are going to start prescribing

1 the new product for the old product; correct?

2 A. That would be the part that Endo would be
3 field-testing were it to do it -- were it to do the
4 transition according to its own timetable as opposed to
5 being hurried to it by Novartis plant crisis. It would
6 be doing that testing and getting its ducks in a row to
7 make sure that that transition happened in a
8 predictable way.

9 Q. It would be doing that testing by talking to
10 doctors?

11 A. Yes. Exactly.

12 Q. But ultimately whether the doctors actually
13 prescribe the new product is not within Endo's control;
14 correct?

15 A. Well, I mean, to some extent, it is because
16 discontinuing the original product essentially makes
17 that happen. But the transition is something that I
18 would expect Endo would manage based on the best
19 research it could do on physicians' opinions and
20 physicians' behavior.

21 Q. But when Endo stops selling Opana ER, there's
22 still Opana ER -- original Opana ER is still in the
23 pipeline; correct?

24 A. Right.

25 Q. Wholesalers have it, retailers have it;

1 correct?

2 A. Yes.

3 Q. And doctors can still prescribe it; correct?

4 A. Yes.

5 JUDGE CHAPPELL: We're going to take a short
6 break. I'll be asking you for a time estimate when we
7 come back. We'll reconvene at 12:10.

8 We're in recess.

9 (Recess)

10 JUDGE CHAPPELL: Back on the record.

11 How much more time do you think you need for
12 your cross?

13 MR. LOUGHLIN: My prediction is about an hour,
14 Your Honor. I'm hoping for less, but that's where I am
15 right now.

16 JUDGE CHAPPELL: All right. Thanks.

17 Go ahead.

18 BY MR. LOUGHLIN:

19 Q. Welcome back, Dr. Addanki.

20 A. Thank you, sir.

21 Q. Now, as an economist, you would expect Endo to
22 try to maximize its overall profits as a company;
23 correct?

24 A. That's what we economists assume companies try
25 to do. Yes.

1 Q. And you would expect Endo to conduct the launch
2 of reformulated Opana ER to maximize its overall
3 profits as a company; correct?

4 A. Generally speaking, yes.

5 Q. And you would expect Endo to conduct the launch
6 of reformulated Opana ER to maximize its overall
7 profits as a company even if that meant they had to pay
8 the Endo credit; correct?

9 A. It would be the overall profit, and if they
10 could make more profit elsewhere by incurring the Endo
11 credit, they would, yes.

12 Q. And you haven't studied whether Endo would
13 maximize its overall profits by launching earlier --
14 launching its reformulated Opana ER earlier and paying
15 the Endo credit versus launching just before or shortly
16 before January 2013 and avoiding the Endo credit, as
17 you discuss in your report; correct?

18 A. I don't think those are -- I don't think those
19 are the -- it's not a choice between those two
20 possibilities. The point would be that I would expect
21 Endo to launch and manage its transition in such a way
22 as to maximize its profits. And if you hypothesize
23 that that optimal launch might include some payment
24 under the Endo credit, it may. Yes.

25 Q. But you haven't studied that.

1 A. I have not.

2 Q. Dr. Addanki, can I ask you to turn back to your
3 report, RX 547.

4 A. Okay.

5 Q. And specifically I'm going to ask you to look
6 at paragraph 127 that you will find on RX 547.0069.
7 It's page 65 of your report.

8 A. I have it.

9 Q. You say, in paragraph 127, "There were a wide
10 range of potential values for the 'No AG' and Endo
11 Credit provisions (including zero) and thus uncertainty
12 about the expected value of any payment represented by
13 the 'No AG' and Endo Credit provisions at the time of
14 the settlement."

15 Do you see that?

16 A. Yes.

17 Q. A wide range of potential values for the no-AG
18 and Endo credit provision included the \$102 million
19 that were actually paid by Endo; correct?

20 A. It's certainly difficult to argue that
21 something that actually happened was not a potential
22 value. As to whether it would have been a potential
23 value for either of the parties I have no idea.

24 Q. I can't tell if your answer is yes, that's
25 correct, or no, it's not correct, Dr. Addanki.

1 A. Well, it is clearly a potential value in the
2 objective sense because it happened, so one cannot say
3 something that didn't have the potential to happen
4 actually happened. But as to whether it was a
5 potential value either party contemplated, I have no
6 idea.

7 Q. Well, I'm just asking in the context of
8 paragraph 127 and what you wrote where you say, "There
9 were a wide range of potential values."

10 Do you see that language?

11 A. Yes.

12 Q. In that context, it's correct, isn't it, that
13 the wide range of potential values included the
14 \$102 million that Endo actually paid; correct?

15 A. If we're talking about the specific paragraph
16 here, yes, because I'm speaking of the objective
17 potential values here.

18 Q. And the range of potential values that you're
19 talking about in paragraph 127 could also include
20 payments greater than \$102 million; correct?

21 A. Potentially.

22 Q. Are you aware that in the summer of 2012 both
23 Endo and Impax projected payments under the Endo credit
24 to be \$110 million?

25 A. I don't recall specifically what documents I

1 saw, but that wouldn't surprise me.

2 Q. Now, Dr. Addanki, I believe you testified
3 earlier that parties posture in negotiations; is that
4 right?

5 A. They do.

6 Q. And because parties posture, you can't tell the
7 true reservation dates of either party in a settlement
8 negotiation; is that right?

9 A. No. You can't tell the true reservation dates
10 of either party in a negotiation for reasons that have
11 much more to do -- that have to do with much more than
12 just posturing. It's not possible to divine what's in
13 someone's head.

14 Q. So I think you and I are agreeing that you
15 cannot tell the true reservation dates that two
16 settlement parties actually held; is that right?

17 A. You cannot.

18 Q. Okay. So you don't know what Endo's true
19 reservation date was in its settlement negotiations
20 with Impax; correct?

21 A. I do not know what was in Endo's mind, so I do
22 not know what the true reservation date was for Endo or
23 anyone negotiating on behalf of Endo.

24 Q. Okay. So you don't know the earliest date of
25 generic entry that Endo was willing to allow in its

1 settlement negotiations with Impax; correct?

2 A. I have no knowledge of what was going on in
3 the minds of anyone at Endo with regard to that
4 question.

5 Q. And you don't know Impax' true reservation
6 date in its settlement negotiations with Endo;
7 correct?

8 A. Again, I don't know what was going on in anyone
9 at Impax' minds with regard to that.

10 Q. You don't know whether the parties might have
11 been able to reach settlement with entry dates that
12 Endo and Impax were willing to accept absent any
13 payments; correct?

14 A. I don't know of any alternative agreement that
15 I can be sure Endo and Impax would have entered into.
16 That's correct.

17 Q. But you don't know if there weren't any either;
18 correct?

19 A. That's correct.

20 Q. Now, I want to change subjects a bit,
21 Dr. Addanki, and talk about market definition --

22 A. Okay.

23 Q. -- and market power. Okay?

24 Now, Dr. Addanki, you agree that the general
25 question for defining a relevant product market is to

1 determine whether buyers switch products in response to
2 a change in relative prices to make the change -- the
3 price change unprofitable?

4 A. So the general idea is that we're trying to
5 get a good handle on the set of economic substitutes
6 that constrain the behavior, the competitive behavior,
7 of any particular product or products. And when we say
8 "competitively constrain," we mean prevent them from
9 trying to exercise monopoly power.

10 And what that means, in turn, is that we are
11 looking to alternatives to which customers would turn
12 in the event of a price increase.

13 Q. Now, products can compete with each other but
14 not be in the same relevant product market; correct?

15 A. It's certainly true that you could have some
16 low level of competition with products outside of a
17 relevant market and products within a relevant market.
18 That's true. But you wouldn't think of them as being
19 competitive constraints, the products outside the
20 relevant market.

21 Q. Because you're looking at the closeness of
22 competition with respect to products being in or
23 outside the relevant product market; is that right?

24 A. You're looking at the effectiveness of the
25 competition in constraining any attempted exercise of

1 monopoly power.

2 Q. Right.

3 And products can actually take sales from each
4 other and still not be in the same relevant market;
5 correct?

6 A. If products take sales from each other in
7 response to relative price changes, unless there was
8 some sort of de minimis competition you're talking
9 about, you would expect that those products would be
10 constraining each other.

11 Q. But it's possible that products could take
12 sales from each other and still not be in the same
13 relevant product market; correct?

14 A. Again, when you say "take sales from each
15 other," do you mean in response to relative price
16 changes?

17 Q. Yes.

18 A. I would say that if products actually compete
19 with one another on price, and market outcomes depend
20 on the relative prices, and you can measure that,
21 typically you would see they were in the same market,
22 but maybe I'm missing something in your hypothetical.

23 Q. No. I'm just trying -- I'm not giving you a
24 hypothetical. I'm asking you a question, and I'm
25 trying to understand your opinion, so maybe the answer

1 is no, you don't agree that products can be in the
2 same -- let me start that over -- so maybe the answer
3 is -- let me start that over.

4 Am I correct that your opinion is that
5 products cannot take sales from each other and not be
6 in the same relevant market?

7 Is that too many negatives?

8 A. That's too many negatives.

9 JUDGE CHAPPELL: Too many negatives.

10 BY MR. LOUGHLIN:

11 Q. I'll start over. Perhaps -- let me ask you
12 this question.

13 Do you agree that products can take sales from
14 each other and not be in the same relevant product
15 market?

16 A. I suppose it's hypothetically possible that
17 there's products taking sales from one another in
18 response to relative price changes and yet the
19 products don't serve as any kind of competitive
20 constraints. I wouldn't rule it out, but I don't think
21 of it as a common occurrence.

22 Q. Okay. Now, you agree, I believe, Dr. Addanki,
23 that when you are determining the candidate set for
24 your relevant product market, you start with the
25 narrowest competitive set and then you expand, correct,

1 if necessary; correct?

2 A. I'm not sure what you mean by the narrowest
3 set. You consider the products that are the
4 meaningful competitive constraints on the product or
5 products at issue.

6 Q. Okay. Well, let me -- I'll re-ask it.

7 A. Okay.

8 Q. Do you agree, when you're looking at your
9 candidate relevant market or when you're trying to look
10 at the competitive set, that you start with the
11 narrowest set and then expand? Do you agree with that
12 principle?

13 A. Certainly you would be looking for products
14 that were more powerful competitive constraints, and
15 you would look to those before you started looking to
16 less powerful competitive constraints. And if that's
17 what you mean by "narrow," then yes. It depends on the
18 strength of their competitive constraining effect.

19 Q. You're looking with the set that -- you start
20 with the set that represents the closest competitive
21 interactions for the products at issue; correct?

22 A. You're starting with the set that provides the
23 most powerful competitive constraints. That's what
24 you're doing.

25 So -- and then you go outward from there.

1 Q. You go outward from there if necessary.

2 A. Right.

3 Q. And here, you started with oral -- excuse me.

4 Let me start that over -- you started with long-acting
5 opioids as your candidate set; correct?

6 A. No. I started with Opana ER and then looked to
7 what was closely constraining Opana ER and found that
8 it was the set of long-acting opioids that was
9 constraining Opana ER.

10 Q. When you say you started with Opana ER, what do
11 you mean?

12 A. I mean the nucleus for the analysis is
13 Opana ER.

14 Q. The branded Opana ER?

15 A. Well, the product whose monopoly power I'm
16 evaluating.

17 Q. And then you took Opana ER and then you
18 included in your set other long-acting opioid products;
19 correct?

20 A. Those were the other products that were
21 constraining Opana ER. That's correct.

22 Q. So you started with Opana ER and other
23 long-acting opioids, and that's where you ended up with
24 your product market definition; correct?

25 A. No. I started with Opana ER, and I ended up

1 with a set of long-acting opioids.

2 Q. What did you do to evaluate Opana ER as a
3 relevant product market? And where is that in the
4 report?

5 A. So the question of whether Opana ER is a
6 product market unto itself was quickly disposed of the
7 moment you start looking at what these products are,
8 how they're used, what they do and how they compete, so
9 there was never really any meaningful question of
10 Opana ER being a relevant market by itself.

11 Q. Okay. So let me just ask, what candidate set
12 did you start with here?

13 A. I started with Opana ER.

14 Q. Okay. Can I ask you to turn to your
15 deposition.

16 A. Okay.

17 Q. Specifically paragraph 138 --

18 A. 138.

19 Q. -- page 138.

20 A. Okay.

21 Q. Do you see at line 2 I'm asking you a question
22 about the candidate relevant market?

23 Do you see that?

24 A. Yes.

25 Q. And then at line 11, I ask you, "What set did

1 you start with here?"

2 And you answered, "So, I would say the
3 starting point here was oral long-acting opioids, but
4 frankly, there was a fair amount of information about
5 the transdermal, as well. So, it wasn't clear whether,
6 in fact, oral was a particularly appropriate sort of
7 closest set even though, to a layperson, it might have
8 seemed that way."

9 That was your testimony in the deposition,
10 wasn't it, Dr. Addanki?

11 A. Yes, it was.

12 Q. And you chose your candidate set of long-acting
13 opioid drugs by looking at Endo's business documents;
14 right?

15 A. Not only. I've described all of the things
16 that I looked at. But certainly Endo's business
17 documents played a significant role.

18 Q. And Endo's business documents discuss other
19 products that you did not include in your competitive
20 set; correct?

21 A. They may have.

22 Q. Now, in general, when looking at relative
23 changes in price for purposes of defining a market,
24 economists look at small price changes; right?

25 A. So there is a particular thought experiment

1 that's contained in the Horizontal Merger Guidelines
2 put out by the FTC and the DOJ which invites the
3 analyst to think about what would happen in the event
4 of a small, significant, nontransitory increase in
5 price and proceeds down that road. And there are
6 certainly circumstances in which that is possible to
7 implement in practice. There's plenty of other
8 situations where it's just not possible to implement in
9 practice.

10 And so you take whatever evidence you can find
11 that informs your question about economic
12 substitutability, so the answer to your question, the
13 complete answer to your question, is no. You take
14 whatever you can find. If you can actually conduct an
15 experiment with a small, significant, nontransitory
16 price increase, you do. But sometimes you can't.
17 Often you can't.

18 Q. Okay. And here, you were not able to
19 determine whether the price changes that affected
20 changes in formulary status that you discuss in your
21 report, whether those were small price changes;
22 correct?

23 A. I did not go about doing that analysis. But
24 certainly a 30 percent to 38 percent change in rebate
25 would probably translate into a net price that fell

1 within a SSNIP category, a net price change that fell
2 into a SSNIP category.

3 Q. But you don't know that because you don't know
4 what the price was before the discount was offered;
5 correct?

6 A. It certainly seems susceptible to knowing and
7 one could go back and look. I didn't do the analysis,
8 but one could go back and look.

9 Q. That's my point.

10 You didn't look at whether or not any of the
11 price changes that you discuss relating to formulary
12 changes constituted a small price change; right?

13 A. I didn't carry out a SSNIP analysis. I think
14 your economist and I agree that calculating
15 cross-elasticities is actually in practice very hard to
16 do in pharmaceuticals for a bunch of reasons I think we
17 all agree upon.

18 But I'm just responding to your question that,
19 no, some of those price changes were in fact small
20 price changes, nontransitory price changes, and I
21 wouldn't think that the 30 to 38 percent change in
22 rebate would actually be anything other than a SSNIP,
23 frankly.

24 Q. But you don't know whether getting to the
25 30 percent that you just discussed amounted to a change

1 about in the range of a SSNIP; correct?

2 A. Well, I don't know where it went to 30 from.

3 If it had gone to 30 from 25, that would have been a

4 SSNIP, too. I just haven't done that analysis. But

5 certainly these changes don't seem out of the realm of

6 a SSNIP.

7 Q. But you don't know that because you haven't

8 done the analysis; correct?

9 A. Well, I haven't done a SSNIP analysis, that's

10 correct. But the difference between a 30 and 38

11 percent rebate I can tell you is a SSNIP.

12 Q. Okay. I'm going to ask you again. Okay?

13 You don't know whether getting to that

14 30 percent amounted to a price change in a window or a

15 range of a SSNIP; correct?

16 A. So not the 30 to 38 but wherever it was to 30?

17 Is that what you're asking?

18 Q. Yeah, that's my --

19 A. I don't know because I don't know what it was

20 before.

21 Q. Now, yesterday do you recall that you discussed

22 Exhibits 9I and J in your report?

23 A. Yes, I do.

24 Q. Let's take a look at Exhibit 9I.

25 A. I have it.

1 Q. And this is your chart showing changes in
2 formulary status for Opana ER relative to other branded
3 long-acting opioid products; right?

4 A. Right.

5 Q. And this one is for commercial plans.

6 A. That's correct.

7 Q. Now, you don't know what caused the changes in
8 formulary status that you represent in Exhibit 9I;
9 correct?

10 A. I do not. In other words, I don't know for
11 each formulary that changed all the factors that
12 prompted the change. I do not.

13 Q. Right.

14 And you don't know if there were -- let me
15 start that over.

16 Assuming that the formulary status changes were
17 the result of price changes, you don't know what those
18 differences in prices were; correct?

19 A. I do not.

20 Q. You don't know what the differences in any
21 rebates were; correct?

22 A. Well, I know some of them, but I don't know all
23 of them.

24 Q. For purposes of this chart you know what the
25 rebates were?

1 A. Well, on commercial plans, I don't recall
2 actually if I've seen rebate terms specifically for
3 commercial plans, so I don't remember.

4 Q. And you don't know what differences in copays
5 there were that are referenced in this chart; correct,
6 if any?

7 A. No. I have the data on the formulary
8 treatment, so I believe I do have that information.

9 Q. Well, can you tell us then what the changes
10 were in the --

11 A. Not from that bar chart, no.

12 Q. Oh, okay.

13 You don't know what the effects on quantities
14 of Opana ER sold were as a result of any of these
15 formulary changes; correct?

16 A. Again, when you say any of them, I'm not sure
17 what I've reviewed in the documents. I certainly
18 wouldn't know what the changes were for all of them
19 because I don't have the data.

20 Q. Do you know what the quantities -- the
21 difference -- what the effects on quantities of
22 Opana ER sold were as a result of any of the formulary
23 changes that you reflect in Exhibit 9I?

24 A. That's what I don't recall. I recall seeing
25 some information on the changes in volumes associated

1 with formulary changes, but beyond that general
2 recollection, I don't remember anything specific.

3 Q. And the same is true -- I could ask all those
4 same questions about Exhibit 9J about Medicare plans
5 and I'd get the same answers; correct?

6 A. With the Medicare plans I actually have
7 specific information about plans that I've cited in my
8 report. As to whether there were volume changes
9 associated with that that I've seen, I don't recall.

10 Q. Now, Dr. Addanki, in connection with doing your
11 market definition analysis, you didn't consider the
12 conduct being alleged in this case; correct?

13 A. My question was, was there monopoly power
14 possessed by and being exercised by Opana ER at the
15 time of the settlement, so -- and that was a question
16 that I could address independently of anything else.

17 Q. So the answer to my question is yes, I'm
18 correct?

19 A. That's correct.

20 Q. And you don't think the alleged conduct is
21 relevant to relevant product market definition;
22 correct?

23 A. Well, it's -- it's -- it sets the predicate
24 for why you're doing this in the first place. But
25 beyond that, the question of whether a particular

1 product enjoyed monopoly power or not stands on its
2 own. We can address that question and answer it.

3 Q. In fact, when you are assessing monopoly power,
4 it doesn't matter what the market is; right?

5 A. Well, ultimately you're assessing monopoly
6 power in the context of a market, so I don't know that
7 I'd agree with that.

8 Q. Okay. Well, let's turn to your deposition.

9 A. Okay.

10 Q. Page 146.

11 And looking down at the bottom, line 21.

12 Do you have it, Dr. Addanki?

13 A. Yes.

14 Q. My question was: "So, when you're assessing
15 monopoly power, it doesn't matter what the market is?"

16 And you said, "No. If you want to assess
17 whether Opana ER had monopoly power in 2010 at the time
18 of the agreement, you can do that exercise and market
19 definition as one step in that."

20 Do you see that?

21 A. Yes.

22 Q. That was your testimony?

23 A. My testimony was that I was disagreeing, that
24 if you want to assess whether Opana ER had monopoly
25 power at the time of the agreement, you can do that

1 exercise combined with a market definition exercise as
2 one thing.

3 Q. Now, yesterday, when you were discussing market
4 definition, one of the pieces of evidence you relied
5 upon was CX 1106.

6 Do you recall that?

7 A. I haven't memorized exhibit numbers. I'm
8 sorry.

9 Q. Okay. Well, let's put CX 1106 up on the
10 screen.

11 I think you'll find it in your black binder
12 that you got from respondent's counsel. I don't have
13 it in my binder, Dr. Addanki. You're welcome to look
14 at it on the screen or in the binder if you prefer.

15 A. Do you know what tab it is in the black
16 binder?

17 Q. I'd have to look that up.

18 It's tab 4.

19 A. 4. Thank you.

20 I have it.

21 Q. And CX 1106 is an e-mail from Demir Bingol of
22 Endo along with a PowerPoint presentation.

23 Do you see that?

24 A. Right.

25 Q. And it's from July 2009.

1 Do you see that?

2 A. Yes.

3 Q. Could I ask you to turn to page CX 1106-005.

4 A. 005. I have it.

5 Q. Do you see that there's a column labeled
6 Event?

7 A. Right.

8 Q. And the third row under that column says,
9 "Generic Opana ER may not be available until early to
10 mid-2011."

11 Do you see that?

12 A. Yes.

13 Q. And then if you go over to the next column in
14 that same row, the column headed Key
15 Learning/Implication, do you see that?

16 A. Yes.

17 Q. The key learning/implication of generic
18 Opana ER may not be available until early to mid-2011
19 says -- the first bullet says, "Each month that
20 generics are delayed beyond June 2010 is worth about
21 \$20 million in net sales per month."

22 Do you see that?

23 A. I do.

24 Q. Now, you didn't discuss that portion of
25 CX 1106 in your market definition section of your

1 report; correct, sir?

2 A. I did not, no.

3 Q. Dr. Addanki, when you're assessing the relevant
4 market, the time period that is relevant is the time of
5 settlement; right?

6 A. For a case of this nature, when you're
7 assessing the relevant market, that's correct.

8 Q. Dr. Addanki, do you recall yesterday
9 testifying that you relied on Dr. Michna's and
10 Dr. Savage's testimony in forming your opinion on
11 market definition?

12 A. I certainly considered their opinions as
13 clinicians for the clinical part of my opinions, as
14 well as when they discussed switching for the reaction
15 to the idea that switching costs were prohibitive.
16 Other than that, I relied on them for very little that
17 I can remember.

18 Q. And you're aware that Dr. Michna is an expert
19 that was hired by respondent; correct?

20 A. That's correct.

21 Q. And you're aware that Dr. Savage is an expert
22 that was hired by complaint counsel; correct?

23 A. Yes.

24 Q. Could I ask you to turn to your report,
25 RX 547.94 -- excuse me -- 0094.

1 A. I have it.

2 Q. And this is a page from your materials
3 considered list?

4 A. Yes.

5 Q. You can turn to the first page if you want
6 to -- prior page if you want to verify that?

7 A. I have it.

8 Q. Under Expert Reports, you don't list
9 Dr. Savage's report, do you?

10 A. I did not, no.

11 Q. Dr. Addanki, now, you believe that there are
12 two ways that the settlement benefited consumers in
13 this case; right?

14 A. I'm not sure I would express it that way.
15 Unless you're referring to some specific sentence, I
16 think it benefited customers -- consumers by having
17 entry occur before it might have but for the
18 settlement, entry by Impax.

19 Q. Right.

20 I think you expressed, at least in your
21 deposition, that one way that you believe the
22 settlement benefited consumers was that it allowed
23 entry earlier than you believe would have occurred
24 under continued litigation; correct?

25 A. That's correct.

1 Q. And the other is that Impax got a license to
2 patents that came later in time that covered Opana ER;
3 is that right?

4 A. No. I think my opinion is that -- and I think
5 this is what I've expressed -- that was part of the
6 reason that Impax was able to enter notwithstanding
7 the subsequent patent litigation filed by Endo.

8 I think I've expressed the opinion in my
9 deposition that it's possible that the resolutions
10 that have occurred to date of patent litigation
11 following on the original patent litigation here that
12 resulted in Actavis, the other generic, being
13 enjoined, leaving Impax the only supplier of original
14 Opana ER, actually oxymorphone ER, that may be viewed
15 as a benefit as well, and that's over and above the
16 entry date issue I talked about.

17 Q. But there aren't any others that you've
18 expressed in your report; correct?

19 A. I believe not. That's right.

20 Q. Okay. Now, Dr. Addanki, if you're right that
21 patent litigation, had it continued between Endo and
22 Impax, would not have concluded until sometime after
23 January 1, 2013, there was no reason for Endo to settle
24 at all; right?

25 A. Somewhat like the lottery ticket I bought that

1 didn't win, I should never have bought it, Endo did not
2 know at the time of the settlement what Endo knew --
3 knows now. Impax didn't know at the time of the
4 settlement what Impax knows now.

5 Q. Okay. And similarly, you don't know what would
6 have happened in the patent litigation between Impax
7 and Endo if they didn't settle; correct?

8 A. Do you mean who would have won?

9 Q. Yes.

10 A. I don't know.

11 Q. You don't know, for example, if Endo's patents
12 would have been found invalid; correct?

13 A. We're talking about the patents at issue in the
14 original lawsuit.

15 Q. Yes.

16 A. Which subsequently expired.

17 Q. Correct.

18 A. I don't know.

19 Q. And for example, if the Endo patents at issue
20 in the Impax-Endo patent litigation were found
21 invalid, you don't know whether that would have
22 affected courts' views of other patents that Endo got
23 later, do you?

24 A. I do not.

25 Q. So what actually happened in the real world may

1 be different what would have happened in a but-for
2 world with no settlement; correct?

3 A. What happened -- the events that took place in
4 the real world give us the best possible information
5 that we have at our disposal about what would have
6 happened in a but-for world, which was different only
7 in some respects from that real world.

8 So yes, there's things we don't know about the
9 but-for world, but our best guide to it is still the
10 real world.

11 Q. Sure.

12 But things could have been different in the
13 but-for world had they not settled; correct?

14 A. That's -- that's sort of a tautological
15 question. I suppose it's possible.

16 Q. Now, Dr. Addanki, you discussed this morning
17 your opinions on launching at risk. Do you recall
18 that?

19 A. I do.

20 Q. In your report, you did not assess how often
21 generics that launch at risk are found liable for
22 patent infringement later, did you?

23 A. I did not.

24 Q. And you did not assess in your report how often
25 generics that launch at risk that are found liable

1 actually end up having to pay infringement damages, did
2 you?

3 A. I did not.

4 Q. And you didn't assess the likelihood that
5 Impax would have launched at risk in this case;
6 correct?

7 A. I did not come up with a probability, no.

8 Q. You understood that Impax' position in this
9 lawsuit was that it would not launch at risk; correct?

10 A. That's my understanding, yes.

11 Q. And you took that assumption and you assumed
12 the truth of it; correct?

13 A. Well, I examined whether it made economic
14 sense for a company in Impax' position to have that
15 view, and it did, but yes, I assumed that it would
16 not.

17 Q. And you didn't consider the interrogatory
18 response that Impax provided in this case listing the
19 launches-at-risk decisions that it has made; correct?

20 A. I'm certainly aware of those launches and have
21 understood the circumstances of those launches, so they
22 were not germane to the particular situation here
23 because those launches took place in different
24 circumstances.

25 Q. Where did you get the understanding about

1 Impax' launches or its launch decisions at risk that
2 you just referred to, Dr. Addanki?

3 A. From -- I don't recall the specifics, but from
4 review of Impax' activities in the past.

5 Q. Okay. Let's take a look at your report again.

6 A. Okay.

7 Q. Let's go back to RX 547.

8 A. Okay.

9 Q. .0093.

10 A. Okay.

11 Q. Again, this is your documents considered list?

12 A. Yes.

13 Q. Do you see anywhere on this list anything
14 indicating that you looked at the interrogatory
15 response that Impax provided in this case listing the
16 launch-at-risk decisions that it's made?

17 A. If it would be called out as an interrogatory
18 response and not take some other form, that's easy
19 enough to check. But I wasn't suggesting that I was
20 familiar with the interrogatory response. I just mean
21 that I was aware of Impax' handful of or couple of
22 launches at risk. I knew what the circumstances were
23 at the time that I looked. That's what I testified to
24 just now.

25 I don't know if I ever looked at an

1 interrogatory response or not.

2 Q. That's my question.

3 Did you look at it in forming your opinions in
4 this case?

5 A. I just don't recall.

6 Q. And you don't see it in your materials
7 considered list; right?

8 A. Again, if it would be titled an interrogatory
9 response, I would assume it will be in court documents,
10 and I don't see it.

11 Q. Well, I don't know how it would be titled.
12 This is your report, sir.

13 Can you look at it and tell me whether it's in
14 there or not?

15 A. Not beyond what I just testified to, which is,
16 if it is listed under that title, it would be in court
17 documents, and I don't see it there.

18 Q. Okay. And you don't recall looking at the
19 letters of intent that Impax was getting from customers
20 to purchase generic Opana ER from Impax upon launch in
21 June of 2010; correct?

22 A. Again, I don't recall if I've seen those or
23 not.

24 Q. Now, can I ask you to turn to page 69 of your
25 report.

1 A. Okay.

2 Q. That is -- begins at RX 547.0036.

3 A. I have it.

4 Q. Oh, I'm sorry. No. I have that wrong. I
5 apologize.

6 Page 69, paragraph 137, RX 547.0073. I
7 apologize, Dr. Addanki.

8 A. I have it.

9 Q. Do you see you say, in paragraph 137, "I
10 understand that Impax personnel have stated that Impax
11 would not have launched its generic versions of
12 original Opana ER before final adjudication of the
13 patent litigation"?

14 Do you see that?

15 A. I do.

16 Q. And then you refer to Dr. Larry Hsu.

17 Do you see that?

18 A. Yes.

19 Q. You say, "For example, Dr. Larry Hsu, former
20 CEO of Impax, testified that Impax had not made a
21 decision to launch its generic versions of original
22 Opana ER at risk."

23 Do you see that?

24 A. Yes.

25 Q. That doesn't tell you whether or not Impax

1 would have launched at risk; correct?

2 A. Well, I'm not in the position to make any
3 factual determination about what would have happened.
4 That's not my job. I'm just pointing out that -- the
5 information that I was aware of pertinent to that
6 question.

7 Q. Let me ask it this way then. Okay?

8 You state, in the first sentence of
9 paragraph 137, "that Impax personnel have stated that
10 Impax would not have launched its generic versions of
11 original Opana ER before final adjudication of the
12 patent litigation."

13 Do you see that?

14 A. Right.

15 Q. And then you state Dr. Hsu and you would say
16 that he testified that Impax had not made a decision to
17 launch its generic versions of original Opana ER at
18 risk; right?

19 A. Right.

20 Q. That is not a statement that they would not
21 have launched.

22 A. No, it's not.

23 Q. And then you refer to
24 Dr. Carole Sue Ben-Maimon.

25 Do you see that?

1 A. Yes.

2 Q. And you say she's the former president of the
3 generic division at Impax and she testified that Impax
4 was incredibly conservative and at-risk launches
5 associated with any potential liability would have gone
6 to the board of directors for approval; correct?

7 A. Yes.

8 Q. That's not a statement that Impax would not
9 have launched, is it?

10 A. It's not.

11 Q. And then you cite or you refer to
12 Margaret Snowden.

13 Do you see that?

14 A. Yes.

15 Q. Vice president of intellectual property
16 litigation and licensing at Impax. And you say she
17 testified that, to her knowledge, Impax' management
18 team had not recommended to the board of directors to
19 launch its generic versions of original Opana ER at
20 risk.

21 Do you see that?

22 A. Right.

23 Q. That's not a statement that Impax would not
24 have launched at risk either, is it?

25 A. No.

1 Q. And then you refer to Theodore Smolenski.

2 Do you see that?

3 A. I do.

4 Q. The former senior director of portfolio
5 management and strategy at Impax. And you say he
6 recalled that, at the time of the settlement, Impax had
7 not made any decision to launch that product -- the
8 product on a certain date.

9 Do you see that?

10 A. I do.

11 Q. That's not a statement that Impax would not
12 have launched at risk, is it?

13 A. That's correct.

14 Q. And then you say Todd Engle, vice president of
15 sales and marketing at generics -- at Impax' generic
16 division, testified that he did not think Impax would
17 have launched at risk upon the FDA approval because
18 Impax is pretty risk-averse.

19 Do you see that?

20 A. I do.

21 Q. That's not a statement that Impax would not
22 have launched at risk either, is it?

23 A. It's not.

24 MR. LOUGHLIN: I have no further questions,
25 Your Honor.

1 JUDGE CHAPPELL: Will there be any redirect?

2 MR. McINTYRE: Yes, Your Honor. Probably about
3 20 minutes or so.

4 JUDGE CHAPPELL: Let's go.

5 - - - - -

6 REDIRECT EXAMINATION

7 BY MR. McINTYRE:

8 Q. Dr. Addanki, at the beginning of Mr. Loughlin's
9 cross-examination, do you recall that he posed a number
10 of hypotheticals to you in which he asked you to assume
11 that we knew the brand company's and the generic
12 company's reservation dates?

13 A. Yes.

14 Q. And as I believe you testified later, we don't
15 know what Impax' reservation date here was, do we?

16 A. We do not.

17 Q. And do we know Endo's?

18 A. No, we do not.

19 Q. Dr. Addanki, did you review the reports and
20 testimony that have been offered by Dr. Bazerman, the
21 FTC's negotiation expert?

22 A. Yes.

23 Q. And do you recall whether he identified Impax'
24 reservation date?

25 A. I don't think he knew what Impax' reservation

1 dates per se were.

2 Q. And do you recall whether he identified what
3 Endo's reservation date was?

4 A. Again, I don't believe he could identify a
5 specific date.

6 Q. Dr. Addanki, you testified a moment ago that
7 you did not calculate an expected value of consumer
8 benefits under the but-for world of continued
9 litigation here because you didn't have to.

10 Can you explain why that was not necessary in
11 this case?

12 A. I didn't have to, Your Honor, because of
13 exactly as I testified when response to the question in
14 my direct testimony about whether my opinion depended
15 at all upon the probabilities of the outcomes of
16 litigation. It didn't because, regardless of who
17 would have won the litigation ultimately, it was the
18 process of being involved in the litigation and having
19 to consider launching at risk that informed my opinion.
20 And had Impax been unwilling to launch at risk, it
21 would not have launched before January 1, 2013.

22 Regardless of what the probabilities were in
23 the litigation.

24 Q. And so is your opinion that the Impax-Endo
25 settlement agreement was not anticompetitive -- is that

1 opinion dependent on recent patent court rulings from
2 2016 or 2017?

3 A. It is not.

4 Q. Now, counsel for the FTC reviewed with you an
5 exhibit that was marked as CX 3038. If you want to
6 look at it, it's in your white binder.

7 A. I have it.

8 Q. And the date of this e-mail was April 2, 2010;
9 correct?

10 A. That's correct.

11 Q. That was before the settlement was entered?

12 A. Yes.

13 Q. Do you recall at this point in time whether
14 Endo had yet submitted its NDA for reformulated
15 Opana ER?

16 A. It had not.

17 Q. And this e-mail, it discusses various dates;
18 correct?

19 A. Yes.

20 Q. And the first line says, "Product Launch -
21 Schedule indicates March 2011, but could range from
22 December 10 to June 11."

23 Do you see that?

24 A. I do.

25 Q. Do you recall in the real world when Endo

1 received NDA approval for reformulated Opana ER?

2 A. I believe it was late in 2011.

3 Q. And before Endo received NDA approval, was
4 there any -- did it have the ability to launch
5 reformulated Opana ER?

6 A. No, it did not.

7 Q. And counsel for the FTC also reviewed with you
8 a document that's been marked as CX 2738, and this is
9 also in your white binder.

10 A. I have it.

11 Q. And for example, if you look at slide 9, it
12 talks about -- I believe you went over this with
13 Mr. Loughlin -- it talks about various dates
14 associated -- various potential dates associated with
15 when wholesale stocking might begin?

16 A. Yes.

17 Q. Do you recall whether the Endo credit formula
18 was premised in any way on wholesale stocking?

19 A. No, it was not.

20 Q. Was the Endo credit based on actual
21 prescription sales?

22 A. Yes. On dispensed prescriptions.

23 Q. And so even if Endo had begun stocking,
24 wholesale stocking of a reformulated product, is it
25 possible that prescriptions for the original drug would

1 still be being dispensed?

2 A. Yes.

3 Q. We talked a bit about a SSNIP analysis.

4 To your knowledge, did Dr. Noll calculate any
5 cross-elasticities between Opana ER and any other
6 long-acting opioids?

7 A. He did not. Not to my knowledge.

8 Q. And did Dr. Noll perform a mathematical SSNIP
9 test?

10 A. To my knowledge, he did not.

11 Q. And I believe you may have covered this during
12 your cross-examination, but you mentioned that the
13 change in rebate year over year from 30 percent to
14 38 percent that was offered to an insurance company,
15 it -- did I get this right, that you testified that
16 that change in rebate would be a SSNIP?

17 A. It would.

18 Q. And so what does that tell you?

19 A. By itself, it doesn't tell you anything. It
20 does tell you that there was a change in rebate terms
21 which was a small enough price increase that it was
22 something that was entered into, it was proposed and
23 accepted, which tells me that even small price changes
24 were competitively potentially significant.

25 Q. And when we discussed the UPMC study yesterday,

1 does that formula change described in that study --
2 would that represent a change in the relative price
3 between various long-acting opioids?

4 MR. LOUGHLIN: Objection. Beyond the scope of
5 cross, Your Honor. I didn't discuss the UPMC study.

6 MR. McINTYRE: You discussed extensively on
7 cross SSNIP analysis, changes in relative price. The
8 UPMC study that we did discuss yesterday is directly
9 probative of changes in relative -- consumer responses
10 to changes in relative price.

11 JUDGE CHAPPELL: I heard plenty on cross about
12 SSNIP, but I didn't hear Mr. Loughlin relate it to this
13 insurance study.

14 MR. McINTYRE: That's true, Your Honor.
15 Mr. Loughlin did ask, as I recall, a number of
16 questions to Dr. Addanki about responses to changes in
17 the relative price, and I just want to confirm with the
18 witness whether he has seen evidence of changes --
19 consumer responses to changes in relative price in this
20 case.

21 JUDGE CHAPPELL: You can ask him that question.
22 That's more foundational.

23 MR. McINTYRE: Okay.

24 JUDGE CHAPPELL: The current question, the
25 objection is sustained.

1 MR. McINTYRE: Okay. Understood, Your Honor.

2 BY MR. McINTYRE:

3 Q. Dr. Addanki, in your review of the record, did
4 you see any evidence that there were changes in --
5 consumer changes in the purchasing decisions in
6 response to changes in relative price?

7 A. As I testified earlier, I did see that there
8 were plenty of changes in relative prices through the
9 formulary changes. I would not expect that you would
10 see that activity unless there were going to be volume
11 changes, perceptible volume changes, in response to
12 those price changes, because that's just the way firms
13 operate.

14 And I testified that I wasn't aware of -- I
15 wasn't able to track through or I don't recall
16 tracking through, other than the UPMC example of a
17 formulary change, what happened to actual volumes.
18 But the UPMC example does tell us, because UPMC
19 studied it, what happened to volumes in the wake of a
20 formulary change.

21 Q. And can you remind us what happened?

22 A. Well, when OxyContin was taken off the
23 formulary, OxyContin patients were switched,
24 80 percent or so, to a different product, either
25 opioid or otherwise, so -- and it resulted in a cost

1 saving, but there was substantial volume change in
2 response to a formulary change. And the formulary
3 changes we're talking about more generally are in
4 response to price changes, so UPMC tells us that indeed
5 price changes lead to formulary changes -- pardon me --
6 lead to volume changes. Excuse me.

7 Q. Thank you.

8 Now, if you could please turn to your report.
9 This is RX 547. And we're going to be looking
10 specifically at RX 547.0094.

11 A. Yes.

12 Q. And this again is from the documents considered
13 list that is attached to your report; correct?

14 A. Yes.

15 Q. And looking under the heading that says
16 "Testimony," do you see that?

17 A. Yes.

18 Q. And it says here that you reviewed the
19 testimony of Carole Sue Ben-Maimon and the accompanying
20 exhibits?

21 A. Yes.

22 Q. And that you also reviewed the deposition of
23 Margaret Snowden and the accompanying exhibits?

24 A. Yes.

25 MR. McINTYRE: Your Honor, may I briefly confer

1 with counsel?

2 JUDGE CHAPPELL: Go ahead.

3 (Pause in the proceedings.)

4 BY MR. McINTYRE:

5 Q. Dr. Addanki, do you recall whether
6 Ms. Ben-Maimon testified about Impax' practices with
7 respect to launches at risk?

8 A. Yes. She did.

9 Q. And do you recall whether Ms. Snowden testified
10 about Impax' practices with respect to launching at
11 risk?

12 A. Yes, she did.

13 Q. Do you recall whether she was testified -- I'm
14 sorry -- whether she was questioned extensively about
15 the interrogatory responses that Impax offered in this
16 case?

17 A. That's what I don't recall specifically, and
18 that may have well been where I came across the
19 information about the launches at risk.

20 Q. But you did in fact review her testimony and
21 the exhibits to it.

22 A. Yes, I did.

23 MR. McINTYRE: No further questions,
24 Your Honor.

25 JUDGE CHAPPELL: Recross?

1 MR. LOUGHLIN: Yes, Your Honor.

2 - - - - -

3 RE-CROSS-EXAMINATION

4 BY MR. LOUGHLIN:

5 Q. Dr. Addanki, what was the price change at issue
6 in the UPMC study that you talked about in your direct
7 examination and with Mr. McIntyre just now?

8 A. The price change we're talking about there, I
9 don't know what the price change was. I don't know if
10 there were any change in rebate terms associated with
11 that price change. What I see is the effects of the
12 formulary change.

13 But as I testified earlier, we see a lot of
14 formulary changes happening in response to price
15 changes, and so we can, just by the chain of causation,
16 satisfy ourselves that, indeed, for all the reasons I
17 mentioned, that price changes will in fact lead to
18 volume changes.

19 Q. Right.

20 But you don't know, in the UPMC example,
21 whether the price change was large or small, correct,
22 because you don't know what the price change was;
23 right?

24 A. I don't.

25 JUDGE CHAPPELL: Hold on.

1 Have your next witness standing by.

2 MR. HASSI: Your Honor, candidly, when we went
3 to the last break, they were asking about timing, and I
4 conferred with counsel, and given the timing, I
5 suggested they take lunch.

6 JUDGE CHAPPELL: You did. You suggested
7 that.

8 MR. HASSI: I -- when they asked, I suggested
9 it might be safe to take lunch, yes, Your Honor.

10 JUDGE CHAPPELL: You thought it was going to be
11 safe.

12 MR. HASSI: I did think it might be safe,
13 Your Honor. I apologize.

14 JUDGE CHAPPELL: Well, that doesn't tell me
15 anything. When are they available?

16 MR. HASSI: They should be -- they should be
17 available sometime within the next hour or 45 minutes
18 or so. They left the building for lunch a little over
19 an hour ago. I told them I would call them when we
20 broke.

21 JUDGE CHAPPELL: Well, stand by.

22 Did you have any further questions?

23 MR. LOUGHLIN: No, Your Honor. I'm done.

24 JUDGE CHAPPELL: Anything further with this
25 witness?

1 MR. McINTYRE: No, Your Honor.

2 JUDGE CHAPPELL: Thank you. You may stand
3 down.

4 THE WITNESS: Thank you, sir.

5 JUDGE CHAPPELL: How much time to you need for
6 this fact witness?

7 MR. HASSI: For the fact witness? I would
8 guess about an hour on direct. I've never met him
9 before, so I don't know how verbose he will be, but I
10 would say probably about an hour.

11 JUDGE CHAPPELL: You have one fact witness,
12 and then you're through for the day with your
13 witnesses?

14 MR. HASSI: Yes, Your Honor.

15 JUDGE CHAPPELL: What's your level of
16 confidence on Tuesday next week that you will finish?

17 MR. HASSI: Very high, Your Honor.

18 JUDGE CHAPPELL: How many witnesses?

19 MR. HASSI: Two fact witnesses, Your Honor, and
20 both should be relatively -- relatively brief, subject
21 to again the cross-examination.

22 JUDGE CHAPPELL: All right. We'll take our
23 lunch break now.

24 MR. HASSI: Thank you, Your Honor.

25 JUDGE CHAPPELL: And we will reconvene at

1 2:15.

2 We're in recess.

3 (Whereupon, at 1:18 p.m., a lunch recess was
4 taken.)

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1 A. Endo Ventures is the Irish subsidiary of
2 Endo International. We're specifically responsible for
3 management of the global supply chain for Endo.

4 Q. And what is your position with Endo Ventures?

5 A. I'm the president of Endo Ventures.

6 Q. And in that position, who do you report to?

7 A. I report to the chief operating officer of the
8 company.

9 Q. When did you begin working at Endo?

10 A. May 2, 2005.

11 Q. And what was your title when you began working
12 at Endo?

13 A. I was director of I believe it was scientific
14 licensing at that point.

15 Q. And how long did you hold that position?

16 A. Several years. I don't remember the specifics.

17 Q. Do you recall what your position was in 2010?

18 A. 2010. I would have been the senior
19 vice president of corporate development at that point.

20 Q. And can you briefly tell us what your
21 responsibilities were as senior vice president of
22 corporate development?

23 A. Sure. I would have been responsible for
24 managing the team that evaluated deal opportunities, be
25 they individual product licenses or company

1 acquisitions that we were looking at.

2 Q. And how long were you in that position as
3 senior vice president of corporate development?

4 A. Approximately six years. I don't remember the
5 start and end dates.

6 Q. When did you go to Endo Ventures?

7 A. I started formally there in March of 2015.

8 Q. Did you hold any positions at Endo between
9 being SVP of corporate development and your current
10 role as president of Endo Ventures?

11 A. Yes. I was the senior vice president of R&D
12 strategy and operations, so I was basically the head of
13 U.S. R&D for Endo.

14 Q. I'd like to back up a second and ask you to
15 describe for us your educational background, please.

16 A. So I have a bachelor's degree in biochemistry
17 and art history from Colby College in Maine.

18 I hold a Ph.D. in biochemistry and biophysics.
19 It was changed to molecular and cellular biochemistry
20 at the time that I graduated from the program.

21 I completed a postdoctoral fellowship in
22 experimental therapeutics at Roswell Park Cancer
23 Institute in Buffalo, New York.

24 Q. And you mentioned a Ph.D.

25 What was the topic of your Ph.D. dissertation?

1 A. It was in the area of Parkinson's disease,
2 looking at putative toxins that could have been
3 causative agents within the disease, at least as far as
4 it was understood at that time.

5 Q. And on a high level -- you mentioned
6 postdoctoral work -- could you describe what that work
7 entailed.

8 A. Sure. We were looking at specifically trying
9 to identify agents that would break DNA as therapeutic
10 agents for oncology. I was in a laboratory in the
11 Department of Experimental Therapeutics, as I said, and
12 we were trying to identify drugs that could be useful
13 chemotherapeutics.

14 Q. And after your postdoctoral studies, what did
15 you do next?

16 A. I went to work for what was Merck, Astra Merck,
17 as a clinical program scientist at that time.

18 Q. When you were at Endo -- well, strike that.

19 So it sounds like from your Ph.D. dissertation
20 you have a background in Parkinson's disease; is that
21 right?

22 A. That would have been the area, yes, in which I
23 did my research.

24 Q. Did any of your colleagues likewise have a
25 background in Parkinson's disease treatments?

1 A. Yes. My recollection is Dr. Kevin Pong, who
2 reported to me, also had a significant amount of
3 experience in that area.

4 Q. And you said he reported to you.

5 What was his position at Endo in 2010?

6 A. I don't remember his title specifically, but he
7 would have been responsible for scientific license
8 evaluation similar to what I did at the time when I
9 joined the company in 2005.

10 Q. Sir, you may be aware that this case is about a
11 settlement agreement between Impax and Endo.

12 Were you involved at all in negotiating or
13 drafting the settlement agreement in 2010 related to a
14 patent litigation between Impax and Endo?

15 A. No, I wasn't involved.

16 Q. Were you aware that such a settlement was
17 reached?

18 A. Yes.

19 Q. Are you familiar with any of the terms of the
20 settlement?

21 A. Vaguely. But I don't remember the details and
22 I wouldn't have been party, as I said, to the
23 negotiation of it.

24 Q. Now, during your time at Endo and specifically
25 when you were SVP of corporate development, did Endo

1 enter into any pharmaceutical collaborations with other
2 pharmaceutical companies?

3 A. Yes.

4 Q. On a high level, could you describe what kind
5 of collaborations you entered into.

6 A. Goodness. Sorry. Could you be a bit more
7 clear. Are you looking for acquisitions or what types
8 of deals?

9 Q. Well, we're going to be talking about a
10 co-promotion and development agreement in this case
11 that I suspect you're familiar with.

12 Were there other deals like that that you
13 entered into when you were at Endo?

14 A. There were some. There was a large variety of
15 different deals. I wouldn't say there's any
16 one-size-fits-all solution. We did many deals.

17 Q. And in your role as senior vice president of
18 corporate development, what role would you have played
19 in developing those deals?

20 A. So as indicated, I was responsible for
21 managing the team that would have conducted the
22 evaluation both on the scientific side, the commercial
23 side, the financial side for the models, and for then
24 working with the CEO and the board of directors to go
25 through the approval process.

1 Q. When you were in that role, did in-licensing
2 collaborations play any specific role at Endo?

3 A. Yes.

4 Q. And could you describe what role they played
5 for Endo.

6 A. Endo historically has not had a research
7 function. There is no molecule discovery per se, so
8 anything that we brought into the company had to be
9 acquired from the outside, so that would have been the
10 purpose of the in-licensing.

11 Q. And do you do that -- well, strike that.

12 When you talk about in-licensing, can you
13 describe what you mean by "in-licensing"?

14 A. So in-licensing specifically, in particular
15 what we were trying to doing with it, would be to
16 bring in a molecule or a technology that another
17 company or individual or an institution would have had
18 that hopefully was going to solve a problem that we
19 were looking to solve, be it a gap in the portfolio or
20 a particular type of product we were looking for.

21 Q. When you in-licensed a product or a molecule,
22 was there any one stage of development that at which
23 the in-licensing happened?

24 A. Could you be a bit more specific.

25 Q. Sure. I apologize.

1 We've heard in this trial that pharmaceutical
2 products go through a development stage and different
3 trials with the FDA, for example.

4 Is there any one stage where those deals take
5 place or do they cut across the spectrum?

6 A. The latter. I would say for Endo in particular
7 they were across the spectrum.

8 Q. Were there any -- can you give us some examples
9 of products that Endo has in-licensed?

10 A. Sure.

11 I think one of the more notable ones was a
12 product called Belbuca that ultimately we brought in,
13 we developed, we licensed it from a company, got it
14 approved, commercialized it, so that would be one.

15 We've also done early-stage development deals
16 as well where we've identified companies themselves
17 that had molecules that were of interest to us because
18 of the therapeutic area, but we had, as I said, no
19 discovery pipeline ourselves in place, and so these
20 were very early, very speculative agreements that we'd
21 enter into.

22 Q. Let me ask you about a couple of products in
23 particular.

24 How did -- Endo in 2010 was selling Lidoderm;
25 is that right?

1 A. Yes.

2 Q. How did Endo acquire the rights to sell
3 Lido- -- or how did Endo develop Lidoderm?

4 A. So Endo actually licensed Lidoderm from a
5 Japanese company called Teikoku, and this was in
6 conjunction with the Hind family. Dr. Hind would have
7 been the developer of this product, so my recollection
8 is that in the late '90s is the time that Endo licensed
9 this in. It was before I joined the company.

10 Q. This case centers around Opana ER.

11 Was Opana ER an in-licensing candidate?

12 A. So it's a bit more complicated answer.

13 So Endo had a previous -- had previously been
14 responsible for making and selling oxymorphone, which
15 is the underlying active ingredient in Opana ER. Endo
16 had licensed a technology from a company called
17 Penwest Pharmaceuticals and made what was the original
18 version, if you will, of Opana ER and then subsequently
19 did a license with Grünenthal in Germany to bring on a
20 technology that was used to create a new formulation of
21 Opana that became Opana ER and the one that was most
22 recently in the market.

23 Q. I want to shift now to when you first joined
24 the company in 2005.

25 And when you first joined Endo, were there any

1 particular therapeutic areas or types of products that
2 Endo was focused on seeking pharmaceutical partners
3 for?

4 A. I think, first of all, I have to caveat it by
5 saying that it's never been that focused. There's
6 been areas in general.

7 But in 2005, the areas of significant interest
8 would have been pain, in particular, neurology, areas
9 of movement disorders, Parkinson's disease being one
10 of those, gastroenterology, and other areas where
11 there are either compatible markets for the
12 pharmaceutical sales force to sell products that would
13 be complementary or where there was therapeutic
14 overlap with the other products that we were
15 developing.

16 Q. And you just described something as "compatible
17 markets for the pharmaceutical sales force to sell
18 products."

19 Can you explain what you mean by that?

20 A. Sure.

21 I'm prefaced by saying I'm not the commercial
22 person, but as my commercial colleagues would have
23 told me, there's call points that they go out to,
24 certain physician populations that they go out to, and
25 if they could have similar products in the bag that

1 might be of interest to those physicians, that would
2 be, quote, a compatible call point.

3 Q. When you were in your role as senior
4 vice president of corporate development, would those
5 areas, pain, neurology, be relevant to the work you
6 were doing in seeking out pharmaceutical collaboration
7 partners?

8 A. Yes.

9 Q. By 2010, had the therapeutic areas that we were
10 just talking about, pain, neurology -- had the
11 company's focus shifted away from those areas?

12 A. Yes. There was a new CEO by that time, and his
13 primary interest would have been the areas of urology,
14 endocrinology and oncology. It's a bit more
15 complicated than that, but that would have been the
16 principal focus.

17 Q. Does that mean that Endo and its sales force
18 had abandoned things like pain and its adjacencies,
19 neurology?

20 A. No.

21 Q. Did you still have a -- to your knowledge, a
22 sales force out there selling pain products?

23 A. Yes.

24 Q. Are you familiar with the product Frova?

25 A. I am.

1 Q. And can you just tell us briefly what Frova
2 was.

3 A. Frova is a molecule named -- frovatriptan is
4 the actual chemical. And it's a treatment for
5 migraine.

6 Q. And did Endo bring Frova to market?

7 A. Yes.

8 Q. Do you recall when Endo brought Frova to
9 market?

10 A. I don't specifically. It was I believe before
11 the time I joined the company.

12 Q. So was Endo selling Frova in the 2010 time
13 frame?

14 A. Yes.

15 Q. And who would be the prescriber audience for
16 Frova?

17 A. I'm sorry. You said who would then or now?

18 Q. Then, in the 2010 time frame, who would, if
19 Endo were -- were detailing Frova, who would be the
20 audience to whom Endo would detail that product?

21 A. So according to the label of the product,
22 there's a specific set of patients with migraine that
23 would have been appropriate, and so it would have been
24 neurologists, primary care physicians, anyone who
25 would typically see a migraineur. Unfortunately, it's

1 not just a single population of physicians who see
2 migraineurs.

3 Q. You mentioned primary care physicians.

4 Do they prescribe Frova, to your knowledge?

5 A. To my knowledge.

6 Q. And do you recall whether -- well, strike that.

7 What's the relationship between central nervous
8 system diseases and neurology?

9 A. Neurology is a subset of central nervous system
10 diseases.

11 Q. During the time that you were looking at
12 collaborations, did Endo look at doing collaborations
13 in the central nervous system area generally?

14 A. It's unfortunately a bit more complicated than
15 that, but I would say not generally, no.

16 Q. What area -- what therapeutic area did
17 Parkinson's disease treatments fall into?

18 A. Broadly speaking, movement disorders.

19 Q. And is movement disorders related to either
20 neurology or CNS?

21 A. Yes. It's a neurologic condition, and that's,
22 broadly speaking, part of the central nervous system.

23 Q. Did Endo ever pursue any investments or
24 collaborations in the Parkinson's disease space?

25 A. I'm sorry. Could you define "pursue."

1 Q. Did you, when you were in corporate
2 development, look into any opportunities -- I'm
3 setting aside for a minute the one with Impax -- but
4 other opportunities related to Parkinson's disease?

5 A. Yes. We looked at multiple.

6 Q. Do you recall any in particular that you looked
7 at?

8 A. Yes.

9 Q. Can you describe ones you looked at?

10 A. Sure.

11 We looked at -- there was a series of
12 compounds -- and I'll apologize up front. I don't
13 remember all the names of these. It's been a while.

14 But we looked at -- from an Italian company
15 called Newron, we looked at a couple of products they
16 had.

17 We diligenced a Finnish company that actually
18 had a product with a totally novel mechanism of
19 action.

20 And there were a couple of others that we
21 looked at as well. I just don't remember all the
22 details and names.

23 Q. Now, did there come a point in time where Endo
24 negotiated a collaboration agreement with Impax related
25 to a Parkinson's disease treatment?

1 A. Yes.

2 Q. And were you involved in that?

3 A. I was.

4 Q. What was your role in the negotiations or
5 development of the co-promotion agreement with Impax?

6 A. So I was the head of corporate development, and
7 so it was my team that did the evaluation, and we had
8 responsibility at least in part -- no one ever fully
9 has singular responsibility -- but for negotiating the
10 deal with Impax.

11 Q. And you mentioned a team.

12 What was your role on that team?

13 A. I was the leader of the team and effectively
14 the lead scientist.

15 Q. And what was the subject product of the
16 collaboration between Impax and Endo?

17 A. The deal was done for IPX-203.

18 Q. Did Endo suggest there be any other products,
19 that any other products be the subject of a
20 collaboration between Endo and Impax?

21 A. I'm sorry. Could you state that again.

22 Q. Did Endo suggest that Impax and Endo
23 collaborate on any other products in addition to or
24 instead of IPX-203?

25 A. Yeah. I'm just -- sorry. I'm just responding

1 to the way the question was phrased, but IPX-066 was
2 another product that was discussed.

3 Q. Can you describe for us what IPX-066 was?

4 A. It was a well-known combination of drugs,
5 carbidopa and levodopa, that had been formulated to
6 extend the release profile or change the kinetic
7 parameters of the drug.

8 Q. And why was Endo interested in IPX-066?

9 A. It was a drug, as we talked about, that had
10 possible utility or compatibility with the existing
11 sales force at the time. It was an area in which the
12 company had looked for a number of years to find
13 products.

14 We actually sold as Endo in the past an
15 immediate-release form of the drug Sinemet, which was
16 the original formulation of carbidopa and levodopa. It
17 was in the marketplace. And I personally have comfort
18 with the area just because I'm quite familiar with
19 Parkinson's disease.

20 Q. And your familiarity with Parkinson's goes back
21 to your Ph.D. thesis, if not earlier?

22 A. Yes.

23 Q. Was IPX-066 ultimately part of the agreement
24 that Impax and Endo entered into?

25 A. No.

1 Q. I want to ask you some questions about
2 IPX-203, and I want to do them on sort of a high
3 level. When we get to the specifics about the drug
4 and the development, we're going to do an in camera
5 session so that that information can be kept
6 confidential.

7 But on a general level, can you describe why
8 Endo was interested in IPX-203?

9 A. Yeah. Similar to what was mentioned a moment
10 ago, it would have been the perceived compatibility
11 with the sales call points we had with the pain sales
12 force.

13 The two underlying molecules, albeit there was
14 some modification, you know, get too deep into the
15 technicalities, but carbidopa and levodopa were known
16 molecules. The data from IPX-066 that we had seen
17 indicated that the extended-release formulation
18 conferred a benefit to the product, and so the totality
19 of it was there was enough reason to believe that there
20 was potentially a product there.

21 Q. Did you receive information from Impax about
22 the IPX-203 product concept?

23 A. Yes.

24 Q. Do you recall what format you received that
25 information in?

1 (The following proceedings were held in
2 in camera session.)
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(End of in camera session.)

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1 (The following proceedings continued in
2 public session.)

3 JUDGE CHAPPELL: Lawman, let them in.

4 THE BAILIFF: Will do.

5 MR. HASSI: Shall I wait, Your Honor?

6 JUDGE CHAPPELL: Wait on the crowds to file
7 in.

8 MR. HASSI: Okay.

9 (Pause in the proceedings.)

10 JUDGE CHAPPELL: Go ahead.

11 BY MR. HASSI:

12 Q. Sir, in addition to the PowerPoint that we just
13 looked at, did you receive other -- did Endo receive
14 other information from Impax about IPX-203?

15 A. I don't remember specifically.

16 Q. Do you recall whether you -- whether Endo
17 received information about IPX-066?

18 A. Yes. I believe there was a slide deck that we
19 received for that as well.

20 Q. And was the information relating to
21 IPX-066 relevant to assessing IPX-203?

22 A. I believe so.

23 Q. And can you explain why?

24 A. Well, IPX-066 and IPX-203 were both to use the
25 same formulation, that is, the -- the delivery

1 chemistry that was used in 066 was to be used for
2 IPX-203. Both products contained carbidopa, and so the
3 only difference would have been, again, as we talked
4 about, the modification of the levodopa, which we
5 viewed as being relatively simple, although it does
6 change the chemistry.

7 Q. I'd like you to look at CX 2772. It's -- if
8 you want to look at it in paper copy, it's in your
9 binder at tab 2.

10 And Robert, if you could bring it up on the
11 screen and if you could blow up the topmost e-mail.

12 Looking at CX 2772, do you recognize this as an
13 e-mail that you were cc'd on in 2010?

14 A. Yes. My name is on the CC line.

15 Q. And does this e-mail relate to the Endo-Impax
16 collaboration?

17 A. Yes.

18 Q. And in the body of the -- in the body of the
19 e-mail, it talks about coordinating with Bob Cobuzzi.

20 That's you; right, sir?

21 A. Yes.

22 Q. And it says, "I believe he is working up an OEW
23 for IPX-203."

24 Stopping for a second there, what was an OEW at
25 Endo at this point in time?

1 A. "OEW" stands for opportunity evaluation
2 worksheet. It was basically a written explanation of
3 the opportunity that included an assessment of the
4 science, the potential commercial opportunity and any
5 financial analyses that were done around it.

6 Q. It goes on to talk about -- it says, again a
7 reference to you, "will be looking for the valuation
8 work re financial forecasts."

9 What was the relationship of valuation work and
10 financial forecasts to the OEW?

11 A. So part of the analysis of any opportunity we
12 look at is to understand its value to Endo and
13 specifically the financial value based upon all the
14 various inputs, the scientific, medical and commercial
15 inputs, and so this valuation was, if you will, a
16 mathematical or a financial assessment of that.

17 Q. The next sentence refers to someone named
18 Julie McHugh, and it says she came back over the
19 weekend and confirmed that the work that has been done
20 on IPX-066 would be an appropriate proxy from a
21 commercial perspective for the economics on IPX-203.

22 Starting with Ms. McHugh, what was her position
23 at Endo at this point in time?

24 A. She was at that point the chief operating
25 officer and effectively the head of the commercial

1 business.

2 Q. And how would Ms. McHugh as the head of the
3 commercial business help you evaluate the
4 IPX-203 opportunity?

5 A. She would have been ultimately responsible for
6 the commercial assessment of the product, any product
7 that we looked at.

8 Q. And what do you understand the reference to
9 "the work that has been done on IPX-066 would be an
10 appropriate proxy from a commercial perspective for the
11 economics on IPX-203"?

12 A. So anytime we do a commercial assessment we
13 look for a comparable model to use -- in this case it
14 gets referred to as a proxy -- so that we can make some
15 estimation as to what we think the performance might
16 look like in the marketplace from a sales revenue
17 standpoint.

18 Q. Do you recall how long Endo spent reviewing
19 information regarding IPX-203?

20 A. Not specifically.

21 Q. Does the time frame that you spent working on
22 IPX-203 stand out in your mind in any way as being
23 unusually long, unusually short, anything like that?

24 A. It was short.

25 Q. Was it -- was it unusually short?

1 A. Sorry, but "unusually" is a qualitative
2 statement.

3 Q. And I apologize.

4 Is there a usual in terms of, when you're doing
5 a business development deal, how long one of those
6 deals takes from start to finish?

7 A. No. There's -- there's no usual.

8 Q. In any event, did you feel like Endo had
9 sufficient time to assess the information it needed
10 before entering into the development and co-promotion
11 agreement with Impax?

12 A. Given the availability of the IPX-066 data,
13 yes.

14 Q. And did you feel like you had sufficient
15 information to enter into that agreement with Impax?

16 A. Sorry. "Sufficient" is fairly subjective, but
17 I think we had enough to come to the conclusion and do
18 the deal given the deal construct that we came up with
19 in the end.

20 Q. And you just mentioned the deal construct.

21 What do you mean by "the deal construct"?

22 A. So the deal construct in this instance was one
23 that effectively left the responsibility for developing
24 the product with Impax, and it was done on the basis of
25 an upfront payment, and so by the time there was an

1 additional payment that Endo would have to make,
2 essentially the risk associated with proving the
3 concept would have been retired at that time, so we
4 would have been relatively comfortable with the way
5 that we were able to mitigate our risk just given the
6 deal construction.

7 Q. Did you come to a conclusion about whether or
8 not Endo should enter into the development and
9 co-promotion agreement with Impax?

10 A. Sorry. What do you mean by "you"?

11 Q. You and your -- did you and your team that was
12 evaluating the opportunity with Impax -- did you
13 collectively reach a conclusion about whether or not to
14 enter into the deal?

15 A. We did. We went forward.

16 Q. Let's look at -- did you share that with --
17 view with anybody at Endo?

18 A. I would have had to have shared it with the
19 CEO, the CFO and the board of directors.

20 Q. Okay. Let's take a look -- if you could look
21 at tab 3, it's CX 2748, which is in evidence. There
22 are portions of this that are in camera. We're only
23 going to look at the public version, the public
24 information.

25 And so if you could bring up just the cover

1 e-mail, Robert.

2 And blow up the e-mail on the bottom of the
3 page.

4 And sir, looking at Exhibit CX 2748, is this an
5 e-mail you sent to others at Endo?

6 A. Yes.

7 Q. Okay. And what's the subject of your e-mail?

8 A. So the people on this page would have been the
9 members of the executive team on the To row, and the
10 subject is to explain that we were providing a copy of
11 the OEW, the opportunity evaluation worksheet, that we
12 talked about a moment ago and asking if there were any
13 feedback from any of these people with regard to the
14 opportunity and the -- essentially the evaluation of
15 the opportunity itself.

16 Q. And it refers in here to a Project Imperial.

17 Was that a code name that Endo used for the
18 development and co-promotion agreement opportunity with
19 Impax?

20 A. Yes.

21 Q. Was it normal to use code names when you were
22 working on a development deal?

23 A. Yes.

24 Q. And in your e-mail, on the last sentence of the
25 first paragraph, you write, "I believe this OEW

1 provides adequate and fair representation of what I
2 would define as a good deal for Endo."

3 What were you telling the executive team at
4 Endo by -- in that sentence?

5 A. I was providing my opinion on what I thought
6 was the outcome of the evaluation.

7 Q. And what was your -- what was your team's
8 collective opinion on the outcome of the evaluation of
9 entering into a development and co-promotion agreement
10 with Impax?

11 A. That it would be a good deal for Endo.

12 Q. Can you describe briefly what the -- what the
13 OEW is?

14 A. I think similar to what we talked about
15 before, the OEW is the opportunity evaluation
16 worksheet. It is a summation of all of the analyses
17 that have been conducted by the various functions that
18 have the opportunity to look at whatever it is that's
19 being looked at. Sorry that sounds vague, but in this
20 case it would have been IPX-203 and the information
21 from 066 would have been compiled together, and those
22 analyses and conclusions are included in the OEW
23 itself.

24 Q. Was the OEW itself a standard form for
25 evaluating opportunities?

1 A. At that time, yes.

2 Q. Did Endo prepare an OEW for 066 as well as
3 203?

4 A. I don't remember specifically.

5 Q. Let's -- let's look at tab 4 in your binder.
6 This is CX 1007.

7 And it's in evidence. And there are portions
8 in camera. We're only going to be looking at the cover
9 e-mail, which is not in camera.

10 And if you could, Robert, blow up the --
11 thank you.

12 Sir, is this an e-mail that you sent to a group
13 of individuals at Endo?

14 A. Yes.

15 Q. And can you identify who the people are in the
16 To line and the CC line? Who are you sending this to?

17 A. So these would be the people that were actually
18 going to perform the due diligence.

19 Ernest Kopecky was the clinical representative
20 of the team.

21 Paula Clark would have been the regulatory
22 representative.

23 Frank Diana was the person with expertise in
24 formulation, how the drug is put together.

25 And Stephen Bai would have been the person who

1 was responsible for doing what we would call
2 pharmacokinetic analysis, looking to determine how
3 readily the product is taken into the blood.

4 Q. How about the individuals on the CC line?
5 Could you identify them as well.

6 A. So Ivan Gergel would have been the head of R&D
7 at that time.

8 Kevin Pong -- we spoke of him -- he was the
9 lead evaluator. He reported to me.

10 And Charles Gombar was the head of project
11 management for Endo.

12 Q. At the end of the first paragraph of your
13 e-mail, the last sentence, you write, "As this is an
14 area we know well as a company both in terms of past
15 evaluations and by virtue of the fact that we
16 previously held the rights to IR Sinemet, this should
17 not be a difficult evaluation."

18 Can you explain what you were telling your team
19 in that sentence?

20 A. I was telling the team that from my
21 perspective, I didn't think this was going to be
22 difficult to evaluate.

23 Q. And why wasn't it going to be difficult to
24 evaluate?

25 A. We knew the space, we knew the underlying

1 molecules, the carbidopa and levodopa, and we looked
2 at a number of Parkinson's opportunities in the past,
3 so we knew the general landscape or the area in which
4 we were looking at this as a commercial opportunity.

5 Q. Now, you mentioned earlier that ultimately you
6 would go to the board of Endo with this -- with the OEW
7 and the information about the deal?

8 A. Yes.

9 Q. Okay. If you'd look at tab 5 of your binder,
10 it's CX 1209.

11 And this document is in evidence, also
12 partially in camera. We're only going to work with the
13 public sections of it.

14 And if we could start by blowing up the e-mail.

15 And Dr. Cobuzzi, is this an e-mail you sent
16 while at Endo?

17 A. Yes.

18 Q. And who were you sending the e-mail to?

19 A. The people in the To line would have been the
20 members of the board of directors at that time.

21 Q. And what were you sending to the board of
22 directors?

23 A. This e-mail indicating that we had completed
24 the development and co-promote agreement, as it said,
25 early that morning, which would have been on the

1 8th of June, and there's also included with this an
2 OEW, the opportunity evaluation worksheet, the summary
3 of the opportunity of what we looked at.

4 Q. Okay. I want to look at some specific sections
5 of the OEW.

6 Let's go first to page -3.

7 And the information that's -- the information
8 that's redacted is the in camera information, so this
9 is the public version.

10 But if you could take a look at item 3 on this
11 page, there's a reference to Endo as a company is quite
12 familiar with Parkinson's disease -- excuse me -- with
13 the Parkinson's disease area.

14 Can you tell us what you meant by including
15 that in the OEW?

16 A. It was just to provide context for the
17 reviewers of this document as to how we would go about
18 looking at this and the fact that we'd experience in
19 the past of looking at products within the Parkinson's
20 disease space.

21 Q. If you would turn to page -7. And I'm using
22 the -- there are page numbers at the very bottom. I
23 think in this case they're one off the page numbers of
24 the document.

25 And I apologize. It actually -- actually

1 starting on page -6, there's a section 7, Scientific
2 Opportunity Summary. The questions I want to ask you
3 are on page -7.

4 A. Okay.

5 Q. And do you see at the top of page 7 -- if,
6 Robert, if you could pull up directly beneath the
7 redaction -- it says, "Although IPX-203 has not yet
8 been formulated, Impax has developed and performed
9 clinical studies on a similar CD-LD formulation which
10 they have named IPX-066."

11 What were you telling your board there?

12 A. So these words weren't written by me directly;
13 they were written by the team. But my reading of this
14 is that it was indicating that even though IPX-203 --
15 and the word "formulated" isn't quite correct.
16 Sorry -- but even though it's slightly different, it's
17 similar to this other product, IPX-066, which contains
18 carbidopa-levodopa, CD-LD as it says here, in a
19 formulation which had been developed and for which some
20 clinical studies had been performed at that time.

21 Q. Just below that there's a section that says
22 "Path to Approval."

23 What does that section analyze? At a high
24 level.

25 A. The section itself is supposed to describe the

1 steps that would be required on a standard or
2 nonstandard development pathway to take it all the way
3 through the approval process to get the marketing
4 authorization.

5 Q. And did you believe at this point in time in
6 presenting this information to your board that there
7 was a path to approval for IPX-203?

8 A. Yes.

9 Q. And what role does the path to approval play in
10 Endo's overall assessment of a drug candidate?

11 A. Sorry. It's a broad question.

12 Q. It is.

13 What I'm trying to specifically get at is, is
14 there regulatory risk in the path to approval?

15 A. Absolutely.

16 Q. Is that any -- is it any different for
17 IPX-203 than it is for most drug candidates you looked
18 at?

19 A. That's a --

20 Q. I know it's a broad question.

21 A. Yeah.

22 Q. Did you view the regulatory risk with respect
23 to -- did you and your team view the regulatory risk
24 for IPX-203 to present any insurmountable hurdles?

25 MR. LOUGHLIN: Objection, Your Honor. Lack of

1 foundation.

2 We haven't established that this witness was
3 involved in the regulatory risk or assessing regulatory
4 risk.

5 MR. HASSI: And Your Honor, this witness has
6 already testified that he led a team and he identified
7 the regulatory person on that team.

8 JUDGE CHAPPELL: Do you understand the
9 question?

10 THE WITNESS: Yes, sir.

11 JUDGE CHAPPELL: Overruled.

12 THE WITNESS: So every drug that is developed
13 has inherent risk in the development program. Even
14 drugs that ultimately get commercialized still have
15 risks.

16 This had a risk profile that we understood,
17 which I think is the best that we could ask for a drug
18 in development.

19 BY MR. HASSI:

20 Q. If you could look at the section -- it starts
21 on page -10 and carries over to the next two pages --
22 Commercial Opportunity.

23 My specific questions are going to relate to
24 starting at the bottom of page -11.

25 And if you could bring up the last paragraph on

1 page -11, please, Robert.

2 Do you see here there's a reference to "Market
3 research provided by Impax is similar to work done
4 several years ago by Endo in evaluating other
5 PD-related opportunities"?

6 Had Endo evaluated other Parkinson's disease
7 opportunities by this point in time in 2010?

8 A. Yes.

9 Q. And did that assist you in your evaluation of
10 IPX-203 as a candidate?

11 A. Yes.

12 Q. It goes on to say, "This work indicates that
13 most physicians who treat PD patients" -- and I -- PD,
14 do you understand that to be Parkinson's disease?

15 A. I do.

16 Q. -- "are generally satisfied by existing
17 treatment options with two exceptions: 1) existing
18 treatments do not modify the course of the disease,
19 they only" -- is it "palliate symptoms"?

20 A. Yes.

21 Q. -- "and 2) existing drugs begin to lose
22 effectiveness within 10 to 15 years after initiation of
23 therapy due to the development of feedback inhibition
24 and other biochemical mechanisms that can be
25 classified loosely as 'resistance.' Other unmet needs

1 include a need for better control of efficacy over
2 time."

3 Was IPX -- was the hope that IPX-203 address
4 any of those specific unmet needs?

5 A. The hope is that it would address what's listed
6 as exception number 2.

7 Q. And can you briefly describe how it would
8 address exception number 2?

9 A. The biology of the disease isn't extremely
10 well-characterized. But given experience with
11 carbidopa and levodopa in the past, the belief was
12 that if you could improve absorption and extend the
13 period of time within the body the drug could be
14 absorbed that you might get more of the drug into the
15 system and thereby be able to have a more effective
16 treatment for the product. And the hope is, by doing
17 that, you could lower the dose. And the more that
18 you're able to lower the dose or at least maintain a
19 person on a steady dose over time, the hope was that
20 that would reduce this loss of effectiveness.

21 Q. If we could go to the next page, -12.

22 And if you could blow up the section Estimation
23 of Market Opportunity and beneath that.

24 I'm sorry. Actually, if we could go up the
25 paragraph above that first. Sorry, Robert.

1 It says here, in the second sentence,
2 "IPX-066 has been developed by Impax to address
3 physician's desire for a superior long-acting
4 carbidopa-levodopa product, and IPX-203 represents a
5 still greater improvement in pharmaceutical profile
6 with a value proposition that includes faster onset of
7 action, superior management of motor fluctuations and
8 convenient oral dosing in a simplified regimen that
9 could require no more than twice-daily administration,
10 and in some cases even once-daily administration."

11 Can we start -- can you just explain what
12 "faster onset of action" means?

13 A. So it's the time from when the drug is
14 effectively placed in the mouth by the patient to the
15 time when the effects are realized.

16 Q. Is that sometimes referred to as time to on?

17 A. Time to onset, yes.

18 Q. And superior management of motor fluctuations,
19 what does that mean?

20 A. Parkinson's disease is a movement disorder, so
21 the fluctuations would be the choreic or sort of
22 spastic movements or the inability to move, akinesia,
23 or unintended movements, dyskinesias, so it was an
24 attempt to try and control some of that.

25 Q. And then the reference to oral dosing in a

1 simplified regimen, what was the advantage that
2 IPX-203 could present in that area?

3 A. So some patients who take Parkinson's --
4 treatments for Parkinson's disease, as their disease
5 progresses, they have to take the drugs more and more
6 frequently. The hope was here and what was being
7 posited by Impax is that the formulation would improve
8 the duration of time the drug was active in the body,
9 and so the hope was that they would have to take the
10 drug less frequently.

11 Q. Is that an advantage if you have to take the
12 drug less frequently?

13 A. Yes. These are patients who have a difficult
14 time when the drug is not working even picking up the
15 pill, so the less frequently you have to go through
16 that activity, yes, it would be an advantage.

17 Q. If we could move down the page, Robert, to the
18 Estimation of Market Opportunity.

19 And if you could just summarize for us in a few
20 words, sir, what this -- what in this section of the
21 OEW you and your team were telling the board of
22 directors of Endo.

23 A. This piece that we're looking at here and with
24 what -- I'm looking at both pages simultaneously -- but
25 it's an attempt to express to the reader what we saw

1 quantitatively as the opportunity or commercial
2 opportunity for the product, including giving some of
3 the high-level assumptions that would have factored
4 into establishing what we saw as that quantitative
5 opportunity.

6 Q. I want to go back to page -3.

7 And you mentioned earlier or you described the
8 deal structure as mitigating the risk to Endo.

9 And if you look at note 6 on page -3, it reads,
10 "The deal structure acceptably mitigates Endo's
11 exposure despite the early development stage."

12 Can you explain what you meant by that?

13 A. So the way it's described here is that the
14 \$10 million upfront to access the technology and
15 support is one piece of it, but further payment is
16 contingent upon completion of defined clinical
17 milestones, which in this case was Phase II studies, so
18 proof of concept would have been established before
19 further payments were made.

20 Q. And how does that mitigate the risk to Endo?

21 A. So we know what the cost is up front. Drug
22 development is extremely expensive.

23 And so we could quantify how much money we
24 were paying and we weren't having to place any internal
25 resources. Frankly, in this particular instance, we

1 were using cash as opposed to from an accounting
2 standpoint using our P&L, our profit and loss
3 statement, as a way of financing the development to
4 establishing proof of concept, completion of Phase II.

5 Q. And in terms of that, the cash you were using,
6 was \$10 million a lot of money to buy into this
7 opportunity?

8 A. For me it's a lot of money. For the company, I
9 would say no.

10 Q. And can you explain why it's not, \$10 million
11 for this opportunity is not a lot of money to Endo,
12 even if it might be a lot for you or me?

13 A. I think unfortunately it's a relative
14 statement because it's both how much we pay, which is
15 reflective of the development cost of the product, but
16 there's also what gets negotiated with the other side
17 because in the end it's still a deal, it's not simply
18 paying for development of the product.

19 Q. So the \$10 million is part of a larger
20 arrangement between Impax and Endo; is that what you're
21 saying?

22 A. I'm saying it's negotiated as a deal for
23 IPX-203, and then as part of that deal, as for any
24 other in-licensing deal that we would do, it's not an
25 uncharacteristically large amount of money, no.

1 Q. As you evaluated IPX-203 and in your
2 preparation with your team of this OEW, did you and
3 your team reach a reasonable belief that IPX-203 would
4 accomplish the goals that Impax had set for that drug?

5 A. Sorry. When you say when the -- reach the
6 goals that Impax had set for the drug, can you --

7 Q. Did you expect the investment that you were
8 making in this development and co-promotion agreement
9 to be a successful investment?

10 A. Yes.

11 Q. And what did you conclude about the investment
12 that you were making? Did it justify this deal?

13 A. Well, within the OEW we would have looked at
14 the net present value of all the cash paid up front,
15 the presumed revenues that we would see from this net
16 any of our costs, and my recollection is it had a very
17 reasonable rate of return, the IRR for the product.

18 Q. Where would we find that in this OEW?

19 A. Typically it's at the back.

20 Q. If we go to the last page of the document,
21 -18, at the top of the page, what does that represent?

22 A. So there's a -- there's a verbal explanation of
23 the table that follows, and the table itself shows the
24 analyzed DCF, is the discounted cash flow, which would
25 have been a financial model that was put together. It

1 compares the base, optimistic and conservative cases or
2 at least components of those cases. It weights them.

3 And then it goes through and it looks at the
4 co-promote components, so we're not looking at the
5 totality of all expected sales for the product but just
6 those components that we would have realized as the
7 co-promotion partner.

8 And then NPV is the net present value or the
9 value for the cash spent today and relative to what we
10 would spend in the future and receive in the future.

11 And then the IRR or the anticipated internal
12 rate of return, we had a hurdle rate of 10 percent for
13 the company, so this exceeded the internal hurdle rate
14 for the company.

15 Q. Is that a good thing to exceed the internal
16 hurdle rate?

17 A. Yes.

18 Q. Let's go back to the cover e-mail of this, your
19 e-mail to the board of directors.

20 Is it fair to say that in this e-mail and with
21 the attached OEW you were recommending that
22 development and co-promotion agreement as an exciting
23 opportunity for Endo to your board of directors?

24 A. Yes.

25 Q. And you go on to say -- and this is in the

1 second to last paragraph -- you say "it further builds
2 out our product pipeline for the future with a drug
3 candidate that fits with our commercial footprint."

4 What did you mean by that?

5 A. So this was at a time for Endo that there
6 wasn't a lot in the pipeline itself, meaning there
7 weren't products that were going to come to market in
8 the future, and so this provided us something with
9 future commercial potential, accepting all of the risk
10 associated with developing any drug, and also that it
11 was consistent with what we talked about were the
12 compatible sales footprint with the pain sales force as
13 it existed at the time.

14 Q. Would you have sent this e-mail to your board
15 of directors if you didn't believe that the opportunity
16 of entering into the development and co-promotion
17 agreement with Impax was justified?

18 A. No.

19 Q. Do you know who Dr. John Geltosky is?

20 A. I know of him. I've had some passing contact
21 in the past, but I don't know him, no.

22 Q. If I told you he was hired to evaluate the work
23 that you and your team did on this development and
24 co-promotion agreement, and let me summarize it by
25 saying he gave you a failing grade, do you have any

1 reaction to that?

2 A. It's his opinion.

3 Q. Do you agree with him?

4 A. No.

5 Q. Did you feel like you had sufficient
6 information to evaluate the opportunity with Impax at
7 the time you evaluated it?

8 A. I'm a scientist. I don't feel as though
9 there's ever sufficient information, but I think we had
10 the information we needed or were going in all
11 likelihood to get at that point.

12 Q. And he described you and your team as flying
13 blind in conducting any aspect of your diligence on the
14 DCA.

15 Do you agree with that?

16 A. I think that's his opinion.

17 Q. Since you entered into this development, since
18 Endo entered into this development and co-promotion
19 agreement, have you learned of any information that
20 would have changed your mind about the conclusion that
21 you made at the time?

22 A. I honestly haven't followed the development
23 that closely, I moved on, and even in the capacity of
24 corporate development we weren't responsible for
25 alliance management or for monitoring the ongoing

1 development of products that we licensed.

2 Q. Does that mean you don't know what the status
3 of the deal is, the development and co-promotion deal
4 is today?

5 A. I honestly don't know.

6 Q. And sir, when you analyzed the development and
7 co-promotion agreement in 2010, did you conclude that
8 the profit-sharing rights justified the payments Endo
9 agreed to make under the agreement?

10 A. At that time, given the analysis conducted by
11 the various parties from Endo that participated in the
12 analysis, yes.

13 MR. HASSI: Thank you, sir. I have no further
14 questions at this time.

15 JUDGE CHAPPELL: Any cross?

16 MR. LOUGHLIN: Yes, Your Honor.

17 JUDGE CHAPPELL: Go ahead.

18 MR. LOUGHLIN: Your Honor, I have a binder to
19 provide the witness. May I approach?

20 JUDGE CHAPPELL: Go ahead.

21 - - - - -

22 CROSS-EXAMINATION

23 BY MR. LOUGHLIN:

24 Q. Good afternoon, Dr. Cobuzzi.

25 A. Good afternoon.

1 Q. Dr. Cobuzzi, there are no other development and
2 co-promotion agreements in which Endo has made an
3 upfront payment of \$10 million for a preclinical
4 product other than IPX-203; correct?

5 A. I don't remember all the details of all the
6 deals.

7 Q. Do you recall any development and co-promotion
8 agreement that Endo has entered into and made an
9 upfront payment of \$10 million other than IPX-203 for a
10 preclinical product?

11 A. No.

12 Q. Other than IPX-203, you can't think of any deal
13 where Endo completed due diligence in a matter of days
14 and made any upfront payment; correct?

15 A. Sorry. Any deal that Endo completed?

16 Q. Yes.

17 A. Completed, no.

18 Q. Now, Dr. Cobuzzi, a large number of deals come
19 to Endo in any given year; correct?

20 A. Yes.

21 Q. And Endo -- of those potential deals, Endo
22 enters into a confidentiality agreement with only a
23 fraction of them; correct?

24 JUDGE CHAPPELL: Hold on a second.

25 I want to make sure that we have the correct

1 testimony. One of his responses doesn't seem to jibe
2 with what I heard him say earlier today.

3 Can you repeat the question where you started
4 with "Other than IPX-203"?

5 MR. LOUGHLIN: Sure.

6 JUDGE CHAPPELL: Or do you want Josett to read
7 it?

8 MR. LOUGHLIN: I'm happy to read it.

9 JUDGE CHAPPELL: Go ahead.

10 BY MR. LOUGHLIN:

11 Q. Other than IPX-203, you can't think of any deal
12 where Endo completed due diligence in a matter of days
13 and also made any upfront payment; correct?

14 A. And I answered no, completed. We hadn't
15 completed any deals in a matter of days and made an
16 upfront payment. We looked at other deals in very,
17 very short periods of time, but I don't remember any
18 being completed.

19 Q. Now, Dr. Cobuzzi, we were talking about the
20 fact that there are several deals that come to Endo
21 every year; correct?

22 A. Yes.

23 Q. And of those potential deals, Endo enters into
24 a confidentiality agreement with only a fraction of
25 them; correct?

1 A. Of the potential deals, yes.

2 Q. And then of the deals on which Endo enters into
3 some confidentiality agreement, it conducts further
4 due diligence on only a fraction of those products;
5 correct?

6 A. Typically. Yes.

7 Q. And then from there, Endo executes deals on an
8 even smaller fraction; correct?

9 A. Yes.

10 Q. In other words, Endo doesn't sign a deal on
11 every opportunity that comes to Endo; correct?

12 A. That's correct.

13 Q. And part of your responsibility when you were
14 senior vice president for corporate development was to
15 evaluate potential deals; correct?

16 A. Myself and my team. Yes.

17 Q. And one of your responsibilities was to screen
18 out those opportunities that came to Endo; correct?

19 A. Correct.

20 Q. And you were trying to determine which deals
21 fit Endo's strategic objectives, in part; correct?

22 A. In part, correct.

23 Q. And you were trying to figure out which of
24 those opportunities presented good deal opportunities
25 for Endo; right?

1 A. Yes.

2 Q. And you didn't -- let me start that over.

3 Endo didn't have unlimited resources to enter
4 into deals; correct?

5 A. No.

6 Q. And so part of your job was to make choices
7 about which deals Endo should make; correct?

8 A. Myself and the team. Yes.

9 Q. And if you spent \$10 million on a development
10 deal, that had to come out of your budget; correct?

11 A. It came out of the company's cash.

12 Q. Do you recall testifying about sort of the
13 general process of evaluating business development
14 deals in your direct examination just now?

15 A. The general process, yes.

16 Q. Can I ask you to take a look at CX 1701. It
17 should be in your binder. And it will also be on the
18 screen, Dr. Geltosky (sic), if you prefer to look at it
19 that way.

20 I called you Dr. Geltosky. I meant
21 Dr. Cobuzzi. I apologize, Dr. Cobuzzi.

22 A. That's okay.

23 I'll read off the screen.

24 MR. LOUGHLIN: Your Honor, I'll just note for
25 the record that CX 1701 has been admitted as part of

1 JX 2. It is not in camera.

2 BY MR. LOUGHLIN:

3 Q. Now, Dr. Cobuzzi, this is an e-mail from you.

4 Do you see that?

5 A. Yes.

6 Q. And it's dated July 30, 2010.

7 Do you see that?

8 A. I do.

9 Q. So that's a few weeks after the entry of the
10 development and co-promotion deal with Impax in early
11 June of 2010; correct?

12 A. The date, yes.

13 Q. And this is a presentation -- well, let me
14 start that over.

15 If you'd turn to the next page, this is a
16 presentation by the corporate development group that
17 you headed; correct?

18 A. I don't have -- it looks familiar, but I don't
19 have enough context to specifically answer yes.

20 Q. All right. Well, let's turn back to the e-mail
21 then.

22 A. Sorry. Is this an attachment to the e-mail? I
23 don't know what tab we're looking at here.

24 Q. We're still looking at the same tab. It should
25 say "CX 1701."

1 A. Okay.

2 Q. Okay. Do you see in the top e-mail that you
3 sent on July 30, 2010, you say, "There have been a lot
4 of questions regarding the Corporate Dev/BD process, so
5 I have attached the slides I shared again with my
6 department yesterday regarding organization, alignment,
7 and roles and responsibilities."

8 Do you see that?

9 A. I do.

10 Q. And Corp Dev/BD, that's corporate
11 development/business development?

12 A. That's correct.

13 Q. So the next page I believe is the set of slides
14 that you attached; is that right?

15 A. Okay. Yes.

16 Q. And could I ask you to turn to CX 1701-011.

17 Are you there, Dr. Cobuzzi?

18 A. I am.

19 Q. And up at the top it says "Corporate
20 Development Process."

21 Do you see that?

22 A. I do.

23 Q. And the first step in the corporate development
24 process, there's a box that says "Asset
25 Identification."

1 Do you see that?

2 A. I do.

3 Q. And the objectives there are to establish
4 metrics and screening criteria based on BU/R&D-defined
5 strategy.

6 Do you see that?

7 A. Yes.

8 Q. And "BU" stands for business unit?

9 A. That's correct.

10 Q. And asset identification then leads to initial
11 screening.

12 Do you see that?

13 A. I do.

14 Q. And part of that is to identify, screen and
15 prioritize assets, according to your key objectives.

16 Do you see that?

17 A. That was the objective.

18 Q. And if you get past the initial screening,
19 there's a go/no go decision; correct?

20 A. In an ideal state, yes.

21 Q. And if you pass that go/no go decision, you get
22 to the stage called evaluation; right?

23 A. That was the ideal state. Yes.

24 Q. And next to Evaluation -- and that phase, under
25 the Key Objectives, it says, "Perform initial

1 evaluation - including high-level market opportunity
2 assessment."

3 Do you see that?

4 A. Yes.

5 Q. And then it says, underneath it in the next
6 bullet point, "Work with BU/R&D to gain internal
7 alignment on strategic fit."

8 Do you see that?

9 A. I do.

10 Q. And after the initial evaluation, there's
11 another go/no go decision; correct?

12 A. Yes.

13 Q. And presumably if you get past that stage,
14 then you get to the stage that you entitled
15 Due Diligence.

16 Do you see that?

17 A. Yes.

18 Q. And next to Due Diligence it describes the key
19 objectives in the first bullet point as "Complete full
20 opportunity evaluation - validate evaluation
21 assumptions."

22 Do you see that?

23 A. I do.

24 Q. And underneath that, it says, "Develop
25 commercial forecast and R&D plan, costs and timings

1 (including LCM)" and "Identify issues to be addressed
2 by terms and contract."

3 Are those all objectives of the business
4 development group in the due diligence phase?

5 A. They are in an ideal state.

6 Q. And then under due Diligence, there's another
7 Go/No Go box.

8 Do you see that?

9 A. I do.

10 Q. And if you get past that go/no go decision,
11 you get to negotiation and deal closure, according to
12 this process that you presented to your team; correct?

13 A. Yes.

14 JUDGE CHAPPELL: Did this document apply in
15 2010?

16 MR. LOUGHLIN: Yes. This document is dated
17 July of 2010.

18 BY MR. LOUGHLIN:

19 Q. And next to Negotiation and Deal Closure, the
20 key objectives are: Define optimal tax, legal and
21 operating structures.

22 Do you see that?

23 A. I do.

24 Q. Is that something that the corporate
25 development group would do?

1 A. In conjunction with the tax, legal and
2 operating teams. Yes.

3 Q. What do you mean by "operating teams"?

4 A. So where it says "operating structure" on
5 there, we would have worked with the
6 supply/manufacturing team, we would have worked with
7 the clinical or other what we would term operating
8 functions within the business to determine what the
9 appropriate structure would be.

10 Q. Okay. And then underneath the first bullet
11 point, the second one says, "Update valuation model."
12 And then it says, "Negotiate structure, terms and
13 conditions" and then finally "Obtain deal approval and
14 communicate closure."

15 Do you see that?

16 Would the corporate development group typically
17 be the one that's negotiating structure, terms and
18 conditions?

19 A. In conjunction with the legal team negotiate,
20 yes, but all the input to structure, terms and
21 conditions was a broader team of people within the
22 business.

23 Q. Dr. Cobuzzi, I believe under your examination
24 with Mr. Hassi you mentioned that the corporate
25 strategy for Endo was determined by the CEO. Is that

1 correct?

2 A. That's correct.

3 Q. And in 2010, I believe you said that the CEO's
4 focus was urology, endocrinology and oncology. Is that
5 right?

6 A. That was his primary focus. Yes.

7 Q. And I want to -- when you say "urology," you
8 mean U-R-O-L-O-G-Y?

9 A. That's correct.

10 Q. Urology has to do with the urinary tract.

11 A. It does.

12 Q. Okay. Dr. Cobuzzi, you discussed with
13 Mr. Hassi a few minutes ago some potential
14 acquisitions or deals that Endo was looking at with
15 respect to Parkinson's disease drugs. Do you recall
16 that?

17 A. I do.

18 Q. And you mentioned an Italian company called
19 Newron; is that right?

20 A. Yes.

21 Q. And I think you said there was a Finnish
22 company; is that also right?

23 A. That's correct.

24 Q. Endo didn't do either deal with those two
25 companies, did it?

1 A. No.

2 Q. Do you recall testifying in general about the
3 strategic fit of IPX-203 to Endo with Mr. Hassi?

4 A. I remember being asked questions. Yes.

5 Q. Could I ask you to look in your binder at
6 CX 1005.

7 And again, Your Honor, this document has been
8 admitted as part of JX 2, and it is not in camera.

9 Are you there, Dr. Cobuzzi?

10 A. I am.

11 Q. Now, do you see there is -- up at the top of
12 CX 1005-001 there's an e-mail from someone named
13 Vik Seoni to a number of people, including you? Do you
14 see that?

15 A. Yes.

16 Q. And this e-mail is dated May 30, 2008;
17 correct?

18 A. Yes.

19 Q. And the message says, "Attached is the final
20 deck of the Late Stage Opportunities project that LEK
21 will be discussing with us at noon on Monday."

22 Do you see that?

23 A. I do.

24 Q. LEK was a market and analytics research group;
25 correct?

1 A. They are.

2 Q. And Endo had used LEK frequently in the past.

3 A. Yes. We have.

4 Q. And you attended this presentation by LEK;
5 correct?

6 A. I don't remember if I attended.

7 Q. Could I refresh your recollection by showing
8 you your transcript from 2014?

9 A. Sure.

10 Q. Take a look in your binder. You should see a
11 tab that says "IH" near the back of the binder.

12 A. Okay.

13 Q. And specifically page 149.

14 A. Okay.

15 Q. And do you see line 6 says, "And what was your
16 role in this presentation?"

17 And your answer was: "I was one of the people
18 to whom the presentation was made."

19 Do you see that?

20 A. I do.

21 Q. Does that refresh your recollection that you
22 attended this presentation?

23 A. It's another three years on. I just don't
24 remember. Sorry.

25 Q. Okay. Now, Dr. Cobuzzi, Endo paid a couple

1 hundred thousand dollars for this presentation;

2 correct?

3 A. I don't remember how much was paid.

4 Q. Could I refresh your recollection by having you
5 look at some of your testimony from before?

6 A. Of course.

7 Q. On the same page, the bottom of 149, line 20,
8 do you see that?

9 It says, "Do you know how much it cost to have
10 LEK do this sort of research and presentation?

11 "ANSWER: Vaguely.

12 "QUESTION: How much vaguely? I'm just looking
13 for a ballpark number."

14 And then over on the top of 150, it says, "A
15 couple hundred thousand dollars."

16 Does that refresh your recollection?

17 A. It does of what's written here. I said it was
18 vaguely at that time three years ago, yes.

19 Q. Okay. Could I ask you to turn to page
20 CX 1005-064.

21 A. Sorry. 064?

22 Q. Yes.

23 A. Okay.

24 Q. Do you see at the top it says "Excluded
25 Pre-Reg/Reg Products: Endo's products, Generics, OTC,

1 and co-promotes"?

2 A. I do.

3 Q. This was a list of products at the
4 preregistration or registration stage that LEK was
5 excluding as a product that it was recommending Endo
6 might be interested in pursuing; right?

7 A. From what's on the page, it's what LEK
8 recommended, yes.

9 Q. What it recommended in terms of products that
10 Endo should not bother pursuing; correct?

11 A. Based upon what's here, I don't remember the
12 context, sorry, no.

13 Q. That's what you understand by "excluded"?

14 A. That's what I understand it was saying, yes.

15 Q. And if you look down, the sixth row under
16 Generic Name says "carbidopa plus levodopa, Impax."

17 Do you see that?

18 A. I do.

19 Q. And the company with U.S. rights is
20 Impax Laboratories; correct?

21 A. That's what it says. Yes.

22 Q. And IPX-066 was a carbidopa plus levodopa
23 product from Impax Laboratories; correct?

24 A. That's correct.

25 Q. And IPX-203 was also a carbidopa plus levodopa

1 product, with the exception of the esterified version
2 of levodopa; correct?

3 A. With that exception. And a change in
4 formulation.

5 Q. Now, in CX 105-0064 in that sixth row, do you
6 see where it says in the final column "LEK Exclusion
7 Rationale"?

8 Do you see that?

9 A. I do.

10 Q. And it says "Generic."

11 Do you see it?

12 A. I do.

13 Q. In 2010, there were generic versions of
14 carbidopa plus levodopa on the market; correct?

15 A. Yes.

16 Q. Dr. Cobuzzi, could I ask you to turn in your
17 binder to CX 1001.

18 And Your Honor, I'll note for the record that
19 CX 1001 has been admitted as part of JX 2 and it is not
20 in camera.

21 Dr. Cobuzzi, do you see on the first page of
22 CX 1001 it says "Corporate Development Update, Endo
23 Board of Directors Meeting, 24 February 2010"?

24 A. Yes.

25 Q. Are you on the right tab?

1 A. I was on 1011. Sorry. Yes. Fine.

2 Q. Do you have it?

3 A. I do.

4 Q. So this is a presentation to Endo's board of
5 directors; correct?

6 A. Yes.

7 Q. And that presentation was given on
8 February 24, 2010; correct?

9 A. That's the date. Yes.

10 Q. And you were involved in making this
11 presentation to the board of directors as part of the
12 corporate development group; correct?

13 A. In all likelihood. I don't remember, but
14 probably, yes.

15 Q. Could I ask you to turn to CX 1001-015 of this
16 document.

17 A. Okay.

18 Q. And do you see the title is String-of-Pearls
19 Strategy, Portfolio Build Opportunities?

20 A. Yes.

21 Q. And then pages CX 1001-016 through 25 list a
22 number of potential products that Endo could acquire to
23 increase its portfolio of products; correct?

24 A. Correct.

25 Q. And these products were all within Endo's

1 acceptance criteria; is that correct?

2 A. Based upon publicly available information at
3 that time, yes.

4 Q. And none of the products listed from
5 CX 1001 through -- 0016 through 25 is a Parkinson's
6 disease drug; correct?

7 A. I'd have to look through the list.

8 Q. Well, take your time, do that.

9 (Document review.)

10 A. No. You're correct.

11 Q. So in February of 2010 there were no
12 Parkinson's disease drugs that Endo was actively
13 pursuing; correct?

14 A. Not that we were actively pursuing, correct.

15 Q. Dr. Cobuzzi, could I ask you to turn to
16 CX 1002.

17 A. Okay.

18 MR. LOUGHLIN: And Your Honor, I'll note for
19 the record that CX 1002 has been admitted as part of
20 JX 2 and is not in camera.

21 BY MR. LOUGHLIN:

22 Q. Dr. Cobuzzi, the first page of CX 1002 says
23 Corporate Development and Strategy Departmental
24 Off-Site 7 March 2010."

25 Do you see that?

1 A. I do.

2 Q. This was prepared for an off-site meeting you
3 had for your corporate development department;
4 correct?

5 A. That's correct.

6 Q. In March of 2010.

7 A. Yes.

8 Q. Could I ask you to turn to CX 1002-0016.

9 A. Okay.

10 Q. Do you see up at the top it says "TAT Focus
11 Areas"?

12 A. I do.

13 Q. And "TAT" means therapeutic area team?

14 A. That's correct.

15 Q. And so this lists the therapeutic areas that
16 were the primary interest for looking for opportunities
17 for Endo as of March 2010; correct?

18 A. That's correct. The primary areas.

19 Q. And Parkinson's disease is not listed on this
20 page, is it?

21 A. Not as a primary area. No.

22 Q. Now, Dr. Cobuzzi, you testified earlier today
23 that with respect to Impax, Endo was initially
24 discussing a product called IPX-066; correct?

25 A. Yes.

1 Q. And that was a Phase III product; correct?

2 A. Approximately, yes.

3 Q. Now, you personally did not seek out the
4 opportunity for IPX-066; right?

5 A. I didn't personally seek it out, no.

6 Q. And nobody in the corporate development group
7 sought out IPX-066; correct?

8 A. No.

9 Q. By "no" you mean correct?

10 A. I do mean yes --

11 Q. Thank you.

12 A. -- you're correct.

13 Q. You were told about IPX-066 by Endo's CFO;
14 right?

15 A. You're right.

16 Q. And the CFO is the chief financial officer;
17 correct?

18 A. Yes.

19 Q. And the CFO was not in the commercial group;
20 correct?

21 A. No. That's correct.

22 Q. And Mr. Levin, who was -- was the CFO at the
23 time; correct?

24 A. Yes.

25 Q. And he gave you a week to assess IPX-066;

1 correct?

2 A. I don't remember specifically, but it sounds
3 about right.

4 Q. Now, with respect to IPX-066, Endo hired a
5 company called Equinox to conduct a sales forecast.

6 Do you recall that?

7 A. I do.

8 Q. Could I ask you to turn to CX 1008 in your
9 binder.

10 A. Okay.

11 MR. LOUGHLIN: And Your Honor, I'll note for
12 the record that CX 1008 has been admitted as part of
13 JX 2 and is not in camera.

14 BY MR. LOUGHLIN:

15 Q. So, now, CX 1008, Dr. Cobuzzi, is a series of
16 e-mails regarding Project Imperial.

17 Do you see that?

18 A. I do.

19 Q. And I believe you testified on direct
20 examination that Project Imperial was an internal name
21 for the Impax projects; correct?

22 A. That's correct.

23 Q. Could I ask you to turn to CX 1008-008. It's
24 the last page in this exhibit.

25 A. Okay.

1 Q. Now, do you see the top e-mail or the only
2 e-mail on this page is from someone named Sam Rasty?

3 Do you see that?

4 A. I do.

5 Q. Now, Mr. Rasty -- or is it Dr. Rasty?

6 A. It's Dr. Rasty, yes.

7 Q. Dr. Rasty worked for you in the corporate
8 development group; correct?

9 A. That's correct.

10 Q. And he says -- and he's e-mailing someone named
11 David Godolphin, who appears to be at the
12 Equinox Group; is that right?

13 A. Yes. Correct.

14 Q. And he says, in the second sentence, "We have
15 an urgent forecasting need for a 505(b)(2) neurology
16 in-licensing candidate currently in Phase III
17 development and I'm writing to see if you have any
18 capacity to provide guidance about the value potential
19 of the asset based on your prior experience in the area
20 and some rough market sizing."

21 Do you see that?

22 A. I do.

23 Q. And the in-licensing candidate currently in
24 Phase III development was a reference to IPX-066;
25 correct?

1 A. I'd have to find the context, but that sounds
2 about correct.

3 Q. Well, IPX-203 was not a Phase III product;
4 right?

5 A. No, it wasn't.

6 Q. In the next sentence, he says, "There is no
7 time for market research on this as we need the
8 forecast by Wednesday of next week (that's right, it's
9 not a typo!!), so this would basically be a guidance
10 about the range of the value potential as opposed to a
11 fully vetted sales forecast."

12 Do you see that?

13 A. I do.

14 Q. And Mr. Rasty was relaying to Equinox the
15 timeline that you were given by Mr. Levin; correct?

16 A. That appears to be the case.

17 Q. Now, you never got a fully vetted sales
18 forecast for IPX-066; correct?

19 A. I don't remember if we got, but from this it
20 looks like we didn't even ask for fully vetted sales
21 forecasts.

22 Q. And Equinox didn't do any work for IPX-203;
23 correct?

24 A. I don't remember specifically, but that sounds
25 about correct. I think we relied upon the work that

1 they did for 066.

2 Q. Could I ask you to turn forward in this
3 document to CX 1008-003.

4 A. Sorry. It's CX 1008?

5 Q. Yeah. -003. It's in the same document. It's
6 just a few pages earlier than we were looking at.

7 A. Okay.

8 Q. And specifically to the middle e-mail from --
9 that says "From: Robert Cobuzzi."

10 Do you see that?

11 A. I do.

12 Q. And this is you e-mailing Mr. Godolphin at the
13 Equinox Group; correct?

14 A. Yes.

15 Q. And that was on Monday, May 24, 2010.

16 Do you see that?

17 A. I do.

18 Q. And in the second sentence, you say, "One
19 question - do you think it would be possible to provide
20 an early view as to what the peak sales could be by
21 tomorrow?"

22 Do you see that?

23 A. I do.

24 Q. And again, you're asking for IPX-066; right?

25 A. Yes.

1 Q. And if you go to the prior -- to the e-mail
2 that's just above it on CX 1008-002, do you see
3 Mr. Godolphin's response to you?

4 A. I do.

5 Q. And Mr. Godolphin says to you, "Our best point
6 estimate of peak U.S. revenue at this time is
7 \$107 million."

8 Do you see that?

9 A. Yes.

10 Q. That means the highest annual sales amount is
11 \$107 million; right?

12 A. Yes.

13 Q. And that's Equinox' estimate of the peak sales
14 of IPX-066 itself, not what Endo's revenues from the --
15 a co-promotion deal would be; correct?

16 A. I believe that's correct. Yes.

17 Q. And so Endo presumably would have earned some
18 fraction of that \$107 million, assuming that estimate
19 was right; correct?

20 A. If it were co-promote.

21 Q. Right.

22 And then do you see Mr. Godolphin makes a few
23 observations on -- looking back at CX --

24 A. I do.

25 Q. -- 1008-002?

1 Do you see?

2 A. Yes.

3 Q. And the last bullet point says, "The current
4 market is heavily genericized."

5 Do you see that?

6 A. I do.

7 Q. Do you agree that the Parkinson's disease
8 market was heavily genericized in 2010?

9 A. I'm not the commercial expert. I would rely
10 upon what they were telling me.

11 Q. Could I ask you to turn to CX 1007.

12 And Your Honor, I'll note for the record that
13 CX 1007 has been admitted as part of JX 2. It is
14 partially in camera, but we are using a redacted
15 version, and I don't intend to ask about any of the
16 in camera material.

17 Now, this is a document that you saw when you
18 were being questioned by Mr. Hassi. Do you recall
19 that?

20 A. I do.

21 Q. And I believe you identified the To line as
22 being the individuals that were being designated to
23 help with the assessment of IPX-066. Is that right?

24 A. It is.

25 Q. And the e-mail is dated May 25, 2010.

1 Do you see that?

2 A. Yes.

3 Q. At 7:39 p.m.?

4 A. Yes.

5 Q. And May 25, 2010 was a Tuesday. Do you recall
6 that?

7 A. I don't recall what day of the week it was.

8 Q. Okay. Well, let's look -- let's look back at
9 CX 1008, which we just looked at.

10 Do you have CX 1008 there?

11 A. I do.

12 Q. Do you see the second e-mail from you to
13 Mark Bradley?

14 A. I do.

15 Q. It says it was sent on Thursday, May 27?

16 A. I see.

17 Q. So that means that May 25 would have been a
18 Tuesday; correct?

19 A. That's fine. You asked me if I remembered the
20 day, and I didn't remember the day it was. That's
21 all.

22 Q. No. I understand. And now I'm asking if
23 you -- do you agree with me that May 25 would have been
24 a Tuesday.

25 A. I agree with you, yes.

1 Q. Okay. And in the -- do you see the sentence --
2 it's the third line that says, "We have very little
3 time for this evaluation"?

4 A. I do.

5 Q. You say, "We have very little time for this
6 evaluation - i.e., we need to have a perspective by EOB
7 this Thursday"; correct?

8 A. That's what it says, yes.

9 Q. So you're giving them two days to do the
10 evaluation; right?

11 A. That's correct.

12 Q. And "EOB" means end of business on Thursday?

13 A. Correct.

14 Q. That would have been Thursday, May 27;
15 correct?

16 A. Yes.

17 Q. And in the next paragraph, you say, "Before you
18 start sending me a lot of disparaging e-mails or
19 slandering me personally for the condensed timeline for
20 this review I ask that you speak directly with Ivan for
21 additional color on what we need."

22 Do you see that?

23 A. I do.

24 Q. You were expecting that the individuals in
25 your To line would believe they needed more time;

1 correct?

2 A. I believe that they're all scientists and I
3 believe that as scientists they always want as much
4 time as they can get, so it's tongue in cheek, yes.

5 Q. Now, Dr. Cobuzzi, could I ask you to turn in
6 your binder to CX 1208.

7 And Your Honor, I'll note for the record that
8 CX 1208 has been admitted as part of JX 2 and it is not
9 in camera.

10 So this is an e-mail from you, dated June 1,
11 2010.

12 Do you see that?

13 A. I do.

14 Q. And the subject is Imperial OEW.

15 Do you see that?

16 A. I do.

17 Q. And this -- and you're attaching the most
18 recent version of the Imperial OEW that reflects all
19 changes received as of last night; correct?

20 A. That's correct.

21 Q. And one of the first people you're sending this
22 to is Dave Holveck.

23 Mr. Holveck was the CEO at the time; correct?

24 A. That's correct.

25 Q. And then the next person you're sending it to

1 is Alan Levin?

2 A. That's correct.

3 Q. Mr. Levin was the CFO at the time; correct?

4 A. Yes.

5 Q. And if you turn to the second page,

6 CX 1208-002, this is the OEW for IPX-066; correct?

7 A. Yes.

8 Q. As of June 1, 2010, you believed that Endo and

9 Impax were still discussing a deal on IPX-066; right?

10 A. That's correct.

11 Q. You wouldn't have circulated an OEW related to

12 IPX-066 if you knew that the product was no longer

13 under discussion; correct?

14 A. That's correct.

15 Q. Now, looking at CX 1208-002, do you see that

16 this says "Evaluation: Kevin Pong"?

17 A. Yes.

18 Q. Does that mean Dr. Pong prepared the OEW?

19 A. It means he was the primary author. Yes.

20 Q. And you would have reviewed it and edited it;

21 is that right?

22 A. Typically. Yes.

23 Q. Was Dr. Pong the lead evaluator for IPX-066?

24 A. He was, yes.

25 Q. Now, when you're reviewing an OEW, you rely on

1 your colleagues, who are experts in their specific
2 areas, to make assessments and determine the
3 appropriate information to go into the OEW; right?

4 A. Where there's time and we don't have that
5 expertise ourselves, yes.

6 Q. So, for example, you don't consider yourself an
7 expert in forecasting; correct?

8 A. No, I do not.

9 Q. So you don't generally make an assessment of
10 forecasting in the OEW.

11 A. No, I do not.

12 Q. Could I ask you to turn to CX 1208-013.

13 A. Okay.

14 Q. Do you see the page is entitled Deal Terms and
15 Valuation?

16 A. I do.

17 Q. And under Deal Terms do you see it says "Option
18 fee (upon signing of option agreement): \$10 million"?

19 A. Yes.

20 Q. And then there's a \$5 million milestone
21 payment?

22 A. I see that.

23 Q. And this again is for IPX-066; right?

24 A. That's correct.

25 Q. Now, you weren't involved in coming up with

1 those deal terms; correct, Dr. Cobuzzi?

2 A. We talked about the valuation before. I would
3 have had a discussion around these deal terms.

4 Q. Were you helping to develop these particular
5 deal terms for IPX-066?

6 A. The deal terms, yes.

7 Q. Are you the one who came up with the
8 \$10 million upfront payment for IPX-066?

9 A. I don't remember who came up with the exact
10 payment structure for this, no.

11 Q. Now, Dr. Cobuzzi, you're aware that at some
12 point the discussions between Endo and Impax changed
13 from IPX-066 to IPX-203; correct?

14 A. That's correct.

15 Q. And I believe as you testified that IPX-203 was
16 carbidopa plus an esterified version of levodopa.
17 Right?

18 A. That's correct.

19 Q. So it's a chemically modified version of
20 levodopa; correct?

21 A. Correct.

22 Q. It's technically a different substance than
23 levodopa?

24 A. Technically, yes.

25 Q. And that makes it a new chemical entity;

1 right?

2 A. That's correct.

3 Q. And there are a number of different
4 permutations of ester structures; correct?

5 A. Yes, correct.

6 Q. And Endo, at the time of doing the deal with
7 Impax, didn't know what ester form Impax would settle
8 on; correct?

9 A. We didn't, correct.

10 Q. And Endo didn't know whether an ester form of
11 levodopa would work; correct?

12 A. We didn't have precise data to support that.
13 No. We had assumptions based upon what was available.

14 Q. And I believe you testified earlier that it's
15 generally important for a new product to provide some
16 improvement over existing products. Do you recall
17 that?

18 A. Yes.

19 Q. You didn't evaluate whether IPX-203 was
20 actually going to be an improvement over existing
21 products, did you?

22 A. What do you mean by "evaluate"? That would
23 imply that we conducted a clinical study and/or some
24 other study to determine whether it was better.

25 Q. Were you asking me a question? Or was that an

1 answer? I couldn't tell.

2 A. It was a question back to you about your
3 question to me.

4 Q. Yeah. Okay. Let's answer your question.

5 A. I'm not sure I follow you. I was asking a
6 question to clarify what you were asking me.

7 Q. Okay. All right. That's fair.

8 You didn't evaluate in terms of conducting a
9 clinical study or some other study to determine whether
10 IPX was better or going to be an improvement over
11 existing products; correct?

12 A. We had to make an assumption it was going to
13 be better. That was the premise behind doing the deal
14 and based upon the, call it, target product profile
15 that was set forth for the product. But there's no way
16 to evaluate whether it was better until an actual
17 clinical trial was conducted.

18 Q. And you're aware that Impax never successfully
19 formulated an esterified version of levodopa plus
20 carbidopa, aren't you?

21 A. No, I'm not aware. That was a question that
22 was asked earlier, and I don't stay with these
23 programs after they're moved forward, so I don't have
24 any firsthand knowledge of what actually happened.

25 Q. Could I ask you to turn to RX 282 in your

1 binder, sir.

2 Your Honor, this document, RX 282, has been
3 admitted as part of JX 2. It is partially in camera,
4 but I'm using a redacted version, and I don't intend to
5 ask anything about in camera material.

6 Do you have it there, Dr. Cobuzzi?

7 A. I do.

8 Q. Could I ask you to turn to the second page of
9 this document, RX 282.0002.

10 A. Okay.

11 Q. And do you see the bottom e-mail from
12 Alan Levin to Chris Mengler, copied to you, dated
13 June 3, 2010?

14 Do you see that?

15 A. I do.

16 Q. And it says, "Just a quick reminder that
17 Bob Cobuzzi, Endo's head of business development, is
18 still looking to speak with one of your R&D colleagues
19 in order to progress our due diligence efforts on
20 IPX-066a."

21 Do you see that?

22 A. I do.

23 Q. IPX-066a is what was later called IPX-203;
24 correct?

25 A. That's correct.

1 Q. Can I ask you to turn back to the first page of
2 RX 282.

3 A. Okay.

4 Q. Do you see the second e-mail from the bottom,
5 it's from Michael Nestor to you and others, dated
6 Friday, June 4 at 9:42?

7 A. I do.

8 Q. And it says, "Bob, Can you send me your contact
9 information and Suneel Gupta, our CSO on the brand
10 side, and I will give you a call."

11 Do you see that?

12 A. I do.

13 Q. Did you have a call with Mr. Gupta and
14 Mr. Nestor on Friday, June 4, 2010?

15 A. I don't remember.

16 Q. Now, the top e-mail on RX 282.0001 is from
17 Mr. Nestor to you.

18 Do you see that?

19 A. I do.

20 Q. And it's dated June 4, 2010 at 4:41 p.m.?

21 Do you see that?

22 A. Yes.

23 Q. And he is sending you a slide deck on IPX-203;
24 correct?

25 A. That's correct.

1 Q. Now, June 4, 2010 was the first day that Endo
2 was able to do due diligence specifically on IPX-203;
3 right?

4 A. On 203 specifically, yes.

5 Q. Can I ask you to turn to CX 1011.

6 And Your Honor, I'll note for the record that
7 CX 1011 has been admitted as part of JX 2 and it is not
8 in camera.

9 Are you ready?

10 A. I am.

11 Q. Okay. This e-mail is from Alan Levin, the CFO
12 of Endo, to Chris Mengler.

13 Do you see that?

14 A. I do.

15 Q. Do you recall that Mr. Mengler was somebody at
16 Impax?

17 A. I do.

18 Q. And you're copied on this e-mail.

19 Do you see that?

20 A. Yes, I do.

21 Q. And the e-mail is dated June 2, 2010.

22 A. That's correct.

23 Q. The second paragraph of Mr. Levin's e-mail
24 says, "As part of the development of the IPX-066a
25 compound, we would agree to an upfront milestone of

1 \$10 million upon signing and a \$5 million milestone
2 payment upon successful completion of Phase II."

3 Do you see that?

4 A. I do.

5 Q. Now, again, IPX-066a is what became IPX-203;
6 correct?

7 A. That's correct.

8 Q. And this deal structure of \$10 million upon
9 signing and then a \$5 million milestone is the same
10 that we saw a day earlier in your OEW on IPX-066;
11 correct?

12 A. That's correct.

13 Q. And this was two days before June 4 when you
14 got information from Impax on IPX-203; correct?

15 A. That's correct.

16 Q. Do you recall that the final development and
17 co-promotion agreement between Endo and Impax for
18 IPX-203 was signed on June 7, 2010?

19 A. Vaguely.

20 Q. Well, do you want to look at it? Would that
21 help?

22 A. Sure.

23 Q. Okay. Can you look at RX 365 in your binder.

24 A. Okay.

25 MR. LOUGHLIN: And Your Honor, I'll note for

1 the record that RX 365 has been admitted as part of
2 JX 2 and it is not in camera.

3 BY MR. LOUGHLIN:

4 Q. Dr. Cobuzzi, you're welcome to look at this.
5 You'll see that this is a final version of the
6 development and co-promotion agreement, and you can see
7 the signatures at the back. If you want to take a look
8 at that, you're welcome to.

9 A. Okay. Yeah, I see it. Thank you.

10 Q. And do you see at the front it says
11 "Development and Co-Promotion Agreement dated as of
12 June 7, 2010"?

13 A. I do.

14 Q. And this is three days after Endo first got
15 materials from Impax on IPX-203; correct?

16 A. That's correct.

17 Q. Dr. Cobuzzi, could I ask you to turn to
18 CX 3339 in your binder, please.

19 And Your Honor, I'll note for the record that
20 CX 3339 has been admitted as part of JX 2 and it is not
21 in camera.

22 And do you see the second e-mail on
23 CX 3339-001 that's from you, dated Friday,
24 June 4, 2010, at 11:04 p.m.?

25 A. Yes.

1 Q. And in the second paragraph of your e-mail, you
2 say, "I will review the information tomorrow afternoon
3 and begin working on the OEW tomorrow, but given some
4 of the potential complexities of the ester both in
5 terms of pharmaceutical development as well as clin
6 pharm, I really would like to have Frank Diana and
7 Steve Bai, respectively, review the information and
8 opine for R&D. We would need opinions by midday
9 Monday, if possible."

10 Do you see that?

11 A. I do.

12 Q. What is pharmaceutical development?

13 A. It's the ability to take and make a chemical
14 effectively into a drug, a medicinal, in this case a
15 pharmaceutical.

16 Q. And what is clin pharm?

17 A. Clinical pharmacology. It's the evaluation of
18 how the drug behaves when it's taken up in the body and
19 the evaluation of how the body behaves when it's
20 exposed to the drug.

21 Q. And then the e-mail is forwarded by Ivan Gergel
22 to Stephen Bai and Frank Diana.

23 Do you see that?

24 A. I do.

25 Q. And it was forwarded on June 5, 2010 at

1 12:54 p.m.?

2 A. Yes.

3 Q. That would be Saturday, June 5; correct?

4 A. Yes.

5 Q. And the message is: "This is the follow-on to
6 066. As you can see from Bob's note, there is a very
7 rapid turnaround (Monday midday)."

8 Do you see that?

9 A. I do.

10 Q. And Monday was June 7; correct?

11 A. That's correct.

12 Q. That was the day the DCA -- excuse me -- the
13 development and co-promotion agreement was signed;
14 correct?

15 A. It is.

16 Q. Did you ever get opinions on pharmaceutical
17 development and clinical pharmacology from Mr. Diana
18 and Mr. Bai?

19 A. I don't remember.

20 Q. Do you recall discussing with Mr. Hassi
21 information about risk mitigation that you decided to
22 undertake with respect to IPX-203?

23 A. I do.

24 Q. Could I ask you to turn to CX 2534 in your
25 binder.

1 A. Okay.

2 MR. LOUGHLIN: And Your Honor, I'll note for
3 the record that CX 2534 has been admitted as part of
4 JX 2 and is not in camera.

5 BY MR. LOUGHLIN:

6 Q. Are you there?

7 A. I am.

8 Q. Okay. Do you see in the bottom e-mail on
9 CX 2534-001 there's an e-mail from Alan Levin to you?

10 A. I do.

11 Q. Sunday, June 6, do you see that?

12 A. Yes.

13 Q. And he's asking you for input on a potential
14 argument from Impax, which is that Endo should pay
15 \$2.5 million if Endo terminates the co-promotion
16 agreement after NDA acceptance but before FDA approval;
17 correct?

18 A. That's what it says.

19 Q. In your response in the e-mail above it,
20 Sunday, June, 6, 2010, the first line says, Alan: I
21 think your term 'piggy' applies here."

22 Do you see that?

23 A. I do.

24 Q. And in the next paragraph, you say, "Given the
25 porcine nature of the requests thus far, however, I

1 believe you are correct and they will ask again."

2 And what you propose is that, in return for
3 this agreement that Impax is asking for, you say,
4 "Specifically, I would ask them to refund a portion of
5 our upfront (e.g., 2.5 million) if they cannot develop
6 a clinically viable product that passes Phase 1 PK
7 assessment."

8 Do you see that?

9 A. I do.

10 Q. Endo didn't get any sort of term in the
11 contract allowing for any kind of refund of any portion
12 of the \$10 million; correct?

13 A. It's a negotiation. I don't believe we got
14 that, no.

15 MR. LOUGHLIN: Your Honor, at this point I have
16 one more segment to go and I need to go in camera for
17 it.

18 JUDGE CHAPPELL: How long do you think this
19 segment will be?

20 MR. LOUGHLIN: Ten minutes. Maybe less.

21 JUDGE CHAPPELL: Let's take a break before we
22 do that. We'll come back, finish this witness and
23 start the next one.

24 We'll reconvene at 4:55.

25 We're in recess.

1 (Recess)

2 JUDGE CHAPPELL: We're back on the record.

3 Do you need an in camera session?

4 MR. LOUGHLIN: Yes, Your Honor.

5 JUDGE CHAPPELL: At this time we're going to go
6 into in camera session. I need to ask those that are
7 not subject to the protective order to leave the
8 courtroom.

9 (Whereupon, the proceedings were held in
10 in camera session.)

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1 (The following proceedings were held in
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(End of in camera session.)

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1 (The following proceedings continued in
2 public session.)

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4 REDIRECT EXAMINATION (continued)

5 BY MR. HASSI:

6 Q. Sir, you were asked some questions a moment ago
7 about the OEW evaluating information from Endo's
8 evaluation of IPX-066 when you moved on to considering
9 IPX-203. Do you recall those questions?

10 A. I do.

11 Q. Is it unusual, in your experience, to assess
12 one pharmaceutical aspect -- asset based on information
13 from another pharmaceutical asset?

14 A. No. It's done all the time.

15 Q. Can you think of an example of a time where
16 you've done it before?

17 A. Sure.

18 The example I cited earlier was a product
19 called Belbuca, which is a buprenorphine-containing
20 product, and buprenorphine has been an approved
21 product for an extremely long period of time. Whether
22 it was the clinical pharmacology of the drug or
23 otherwise, we used that as the basis for both analyzing
24 whether there would be a market and how it might work
25 medically, clinically, commercially. Yes.

1 Q. And does having an existing compound like
2 Belbuca give you an opportunity to assess the product
3 that you're considering developing?

4 A. Sorry. Can you rephrase the question.

5 Q. Does it provide a -- does the information on an
6 existing compound provide a benchmark of sorts for you
7 to use?

8 A. Sure. We would use it as a predicate.

9 Q. And when you use it as a predicate, is that
10 better than, for example, a new chemical entity where
11 you don't have a predicate compound to work from?

12 A. It's much easier. Yes.

13 Q. Did having the work that you and your team had
14 done on IPX-066 here help you evaluate IPX-203?

15 A. Tremendously. Yes.

16 Q. And you evaluated IPX-203 in a couple of days.
17 Had you spent additional time before that
18 evaluating -- you and your team spent time evaluating
19 IPX-066?

20 A. Yes. And we knew Sinemet from all of our prior
21 evaluations.

22 Q. And with respect to the team that evaluated it,
23 we've heard a number of names: Stephen Bai,
24 Frank Diana, Ivan Gergel, Ernest Kopecky, Paula Clark,
25 Kevin Pong, Charles Gombar, yourself.

1 Were there a number of people evaluating this
2 product for Endo?

3 A. There were.

4 Q. Did you put significant resources into the
5 evaluation of this product?

6 A. We put what we would typically put against any
7 deal that has a short time frame.

8 Q. You were shown an e-mail in which you referred
9 to Impax as being piggy and the porcine nature of their
10 requests.

11 Have you ever been in a negotiation before
12 where you felt the other side was maybe asking for too
13 much?

14 A. Pretty much every negotiation.

15 Q. You were asked some questions from a slide from
16 July 2010, so after the deal, but it showed a chart of
17 the corporate development process. Do you recall that
18 chart?

19 A. I do.

20 Q. Okay. You mentioned in response to several of
21 Mr. Loughlin's questions about whether you would take
22 those steps, and you said, We would do so in an ideal
23 state.

24 Can you describe what you mean by that?

25 A. Yeah. Unfortunately, there is no ideal state

1 for a deal.

2 Big pharma company might have that opportunity
3 where everything occurs sequentially. Unfortunately,
4 the reality of any given deal, which is, environmental
5 factors, internal factors, there's just so many
6 different variables that affect a deal that almost
7 never do you get to follow the perfect sequence for it.
8 I can't honestly think of any instance where we
9 followed the perfect sequence.

10 Q. Do you always have enough time to evaluate a
11 deal?

12 A. Again, you're asking a scientist if they have
13 enough time and enough information. No, I don't think
14 there is, but we make the most of what's available to
15 us.

16 Q. You were asked some questions about the
17 structure of the deal and the \$10 million upfront
18 payment. Do you recall those questions?

19 A. I do.

20 Q. How is the risk in the development and
21 co-promotion agreement allocated as between Impax and
22 Endo?

23 A. So a couple things.

24 I made reference previously to the fact that we
25 were using cash and not our P&L. For a company the

1 size of Endo, we're a big company, but we're not so big
2 that we can loosely use the P&L from an accounting
3 standpoint. That's in some instances much more
4 meaningful than the cash, so that's point one.

5 Point two in that is, we weren't responsible
6 for development and though we did have the ability
7 through this joint development committee that was
8 contemplated in the actual agreement to set forth and
9 agree with Impax the criteria, given the caveats that
10 were in there.

11 So we weren't going to have to use our P&L, we
12 did have the ability for input, and basically it wasn't
13 going to come to further monies having to be spent
14 until proof of concept was established at the end of
15 Phase II.

16 Q. And so when you say "proof of concept was
17 established at the end of Phase II," if Impax failed to
18 meet proof of concept, would Endo have to make any
19 further payments?

20 A. There was a possibility it could happen, given
21 the terms of the agreement, but it was a lower
22 likelihood, and at the same time, our comfort level
23 would have come from the fact that Impax themselves
24 would have had to expend more money.

25 Q. Mr. Loughlin asked you some questions about

1 other deals and the upfronts -- upfront payments made
2 in those deals.

3 What was different about those deals than this
4 deal and the upfront payments made in those deals?

5 A. So the other early-discovery deals that we had
6 done, there were a number of them, but they were in
7 most instances for either novel targets or they were
8 what we would have termed at that time to be fast
9 followers, meaning, either a product had gotten to the
10 market just recently with a novel target or one was in
11 development and we knew of it.

12 But the point of the statement is that there
13 was still a lot of risk inherent in the biology, the
14 chemistry and other pieces, and we looked at this as
15 again being carbidopa and levodopa.

16 Q. And with those other deals did Endo take on
17 some of the development risk?

18 A. We did. We would have had to. Going back to
19 that notion of expending our P&L, we would have had to
20 have spent the money ourselves to actually conduct the
21 development, so that hurt us from an accounting
22 standpoint as well as from a risk standpoint.

23 Q. And in the deal with Impax, you didn't have any
24 development risk; is that right?

25 A. Well, the development risk was there, but we

1 paid for it through upfront at least to the point
2 where Phase II was complete and the milestones were
3 realized.

4 MR. HASSI: Thank you, Dr. Cobuzzi. I have no
5 further questions.

6 JUDGE CHAPPELL: Recross?

7 MR. LOUGHLIN: I have a few questions,
8 Your Honor.

9 JUDGE CHAPPELL: Go ahead.

10 - - - - -

11 RE-CROSS-EXAMINATION

12 BY MR. LOUGHLIN:

13 Q. Dr. Cobuzzi, you were just discussing with
14 Mr. Hassi situations where, with other products, Endo
15 made upfront payments for early-stage products. Do you
16 recall that?

17 A. That's correct.

18 Q. In those situations, Endo took more than a few
19 days to conduct due diligence; correct?

20 A. It depended on the circumstances.

21 Q. Well, I thought earlier, under my questioning,
22 you told me that there were no deals where Endo spent
23 just a few days doing due diligence and paid -- and
24 made an upfront payment, other than IPX-203; correct?

25 A. No. That's incorrect. You asked me

1 specifically if -- about completed deals, which is very
2 different from deals that we looked at.

3 Q. Okay. Oh, I see.

4 So there are deals that you looked at but
5 didn't complete, and so you didn't make any upfront
6 payments; correct?

7 A. That's correct.

8 Q. Now, you mentioned in your discussion with
9 Mr. Hassi that there was a short time frame with
10 respect to IPX-203. Do you recall that?

11 A. I do.

12 Q. The reason there was a short time frame was
13 that that's what you were given by Mr. Levin; correct?

14 A. That's correct.

15 Q. You're not aware of any reason for that
16 particularly short time frame, are you?

17 A. I was told there was other work being done,
18 but I didn't have all the details around it. But
19 that's typical for a deal. There's a lot of
20 circumstances.

21 Q. And there were no other competing bidders for
22 IPX-203, were there?

23 A. I don't know the answer to that.

24 Q. And --

25 MR. HASSI: I think we're beyond the scope

1 here, Your Honor.

2 MR. LOUGHLIN: We're not beyond the scope,
3 Your Honor. Talked about -- he asked about -- all
4 about the short time frame for doing this deal. I'm
5 asking this witness about the reasons for the short
6 time frame.

7 JUDGE CHAPPELL: I thought you asked him about
8 the short time frame on direct.

9 MR. LOUGHLIN: I didn't ask him. I did not ask
10 him about the short time frame on direct, no.
11 Mr. Hassi just asked about that in his redirect and I'm
12 following up on it.

13 JUDGE CHAPPELL: The last question was whether
14 there were competing bidders. He said, "I don't know,"
15 so that objection has passed.

16 MR. HASSI: Yes, Your Honor.

17 BY MR. LOUGHLIN:

18 Q. The reason there was a short time frame was
19 that this deal was being done in connection with
20 settlement negotiations; correct?

21 A. As I understood it, yeah. There was a package
22 of deals that were being done.

23 Q. And the package was the development and
24 co-promotion and a settlement agreement; correct?

25 A. I know about the co-promotion agreement. I

1 knew of the settlement agreement. I wasn't privy to
2 all the reasons why we were doing it. I was given the
3 time frame.

4 Q. But you know they were being done together;
5 correct?

6 A. I do.

7 Q. Now, you also mentioned Sinemet in your
8 discussions with Mr. Hassi a few minutes ago?

9 A. I did.

10 Q. Endo marketed a generic version of Sinemet;
11 correct?

12 A. My memory is incomplete, but I think actually
13 Endo, DuPont Endo, which was the predecessor company to
14 Endo, actually marketed the branded Sinemet when it
15 first came out and then also sold generic Sinemet
16 thereafter.

17 Q. But Endo as its own company only sold generic
18 versions of Sinemet; correct?

19 A. I don't believe so. I believe it was a branded
20 generic. It still maintained the brand name.

21 Q. What is a branded generic?

22 A. "Branded generic" is a bit of a euphemism, but
23 it would be a product that would otherwise be
24 genericized in the marketplace but which still
25 utilizes the brand name for the product itself, so a

1 typical generic doesn't have a brand name associated
2 with it.

3 Q. So you believe that Endo was selling Sinemet
4 under the name Sinemet and not under a generic name?

5 A. Sorry. That's my recollection.

6 Q. Okay. And you discussed with Mr. Hassi a
7 minute ago the need for IPX-203 to be superior to
8 Sinemet. Do you recall that?

9 A. I do.

10 Q. If IPX-203 was not superior to IPX-066 or
11 Sinemet, would that affect the market opportunity for
12 IPX-203?

13 A. I'm not a commercial expert, but I believe so.

14 Q. Did information about IPX-066 or Sinemet
15 indicate whether 203 would be better than 066 or
16 Sinemet?

17 A. I'm sorry. Could you -- you mixed a couple of
18 things there. Could you repeat the question, please.

19 Q. Sure.

20 Did the information that Endo had about
21 IPX-066 and about Sinemet -- did that information
22 indicate to Endo whether IPX-203 would be better than
23 066 or Sinemet?

24 A. It suggested it should be. 066 was a modified
25 formulation, so it would change the time frame for

1 absorption of the product itself versus the
2 immediate-release Sinemet. And then 203 would have --
3 if all things continued to move forward as planned,
4 given the modification of the L-dopa component of the
5 molecule, should have been better again than that was
6 066, so each should have been incrementally better than
7 the other.

8 Q. And when you say "should," you mean in theory
9 based upon what you expected IPX-203 to be; correct?

10 A. That's correct. We had no empiric data.

11 MR. LOUGHLIN: Okay. No further questions,
12 Your Honor?

13 JUDGE CHAPPELL: Anything further?

14 MR. HASSI: No, Your Honor.

15 JUDGE CHAPPELL: Thank you, sir. You may stand
16 down.

17 THE WITNESS: Thank you.

18 JUDGE CHAPPELL: Next witness.

19 MR. LOUGHLIN: Your Honor, at this time
20 complaint counsel will have its rebuttal expert
21 witness Mr. Hoxie. Do you want him -- you want him to
22 start now at 5:30?

23 JUDGE CHAPPELL: Yes. That's why I said call
24 your next witness.

25 MR. LOUGHLIN: All right. I just wanted to

1 make sure.

2 JUDGE CHAPPELL: Do you have a time estimate
3 for the length of direct you're going to have?

4 MR. LOUGHLIN: About two hours, Your Honor.

5 So at this time, Your Honor, complaint counsel
6 calls Thomas Hoxie, and my colleague, Lauren Peay, will
7 handle the examination for complaint counsel.

8 - - - - -

9 Whereupon --

10 THOMAS HOXIE

11 a witness, called for examination, having been first
12 duly sworn, was examined and testified as follows:

13 MS. PEAY: Good afternoon, Your Honor.

14 And may it please the court.

15 - - - - -

16 DIRECT EXAMINATION

17 BY MS. PEAY:

18 Q. Good afternoon, Mr. Hoxie.

19 Can you please introduce yourself to the court
20 by stating your full name.

21 A. Yes. My name is Thomas Hoxie, H-O-X-I-E.

22 Q. Mr. Hoxie, as you know, I'm Lauren Peay. I'm
23 an attorney with -- for complaint counsel.

24 I'm going to be asking you questions about
25 facts and evidence giving rise to complaint counsel's

1 lawsuit against Impax.

2 Do you understand?

3 A. Yes.

4 Q. Would you please introduce yourself and briefly
5 explain your background.

6 A. Okay. I'm a patent attorney. My background is
7 I started off as a scientist. Then I went to law
8 school. I worked for a while in Baltimore as a
9 litigator.

10 I then went in-house in the pharmaceutical
11 industry at Sandoz in Basel, Switzerland, which Sandoz
12 eventually merged, became Novartis. I was -- came back
13 to the United States. I was head of Sandoz'
14 intellectual property for North America and global head
15 of IP litigation for Novartis, for the Novartis group.

16 I left Novartis in 2004, and since then I've
17 been working -- I started a firm and I've been working
18 at my own firm since then. And the firm specializes in
19 patents in the area of pharmaceuticals, chemicals and
20 biotechnology.

21 Q. Without getting into the details of your
22 opinions, please tell us what you're here to testify
23 about today.

24 A. I'm here to respond to Mr. Figg's report.

25 Q. And Mr. Hoxie, there's a binder of exhibits and

1 a bottle of water on the table next to you. No need to
2 refer to the binder now, but we may -- I may refer you
3 to exhibits in the binder during your testimony this
4 afternoon.

5 A. Okay.

6 Q. Before we get to your opinions, Mr. Hoxie, I'd
7 like to ask you some more details about your
8 professional experience, education and training that
9 qualifies you to reach your opinions in this case.

10 Mr. Hoxie, where are you currently employed?

11 A. Hoxie & Associates LLC.

12 Q. And what is Hoxie & Associates LLC?

13 A. Hoxie & Associates is a boutique law firm. We
14 do patent preparation, prosecution, opinions,
15 licensing, some litigation support, all in the area of
16 patents relating to chemicals and pharmaceuticals.

17 Q. Did Hoxie & Associates LLC go by a different
18 name in the past?

19 A. Yeah. Initially, the firm -- when I first left
20 Novartis, the firm was Hoxie & Tso. I had a partner,
21 partnership dissolved in 2007, and the firm continued
22 as Hoxie & Associates LLC.

23 Q. What is your position at Hoxie & Associates?

24 A. I'm the owner.

25 We have six attorneys and two patent agents and

1 paralegals and staff. We're located in Millburn,
2 New Jersey, outside of New York City.

3 Q. How long have you been with your firm?

4 A. When I left Novartis in 2004, so counting the
5 Hoxie & Tso and Hoxie & Associates time together, about
6 thirteen years.

7 Q. And Mr. Hoxie, what does your practice at your
8 firm encompass?

9 A. As I said, my practice encompasses supervising
10 the attorneys who work for me. Personally, I do a lot
11 of work in the area of opinions for pharmaceutical
12 companies.

13 I -- right now on my docket, if I think of
14 things that I have to do, I'm going to Texas in a
15 couple of weeks. I'll represent a company in a
16 court-ordered mediation in a patent infringement case.
17 I have a couple of opinions due for companies that
18 are -- that are -- relate to investments in companies
19 where people want to invest money in companies and want
20 to know that they have adequate intellectual property
21 to protect their products.

22 I'm just trying to think what else I have right
23 now, but that's the sort of work that I do.

24 Q. Does your experience with your law firm relate
25 to the opinions you intend to give in this case?

1 A. Yes, it does.

2 Q. How does it relate?

3 A. I'm -- I represent companies with respect to
4 patent -- patent matters in the area of pharmaceuticals
5 particularly, and so it -- it -- some of the issues --
6 issues similar to some of the issues that came up in --
7 came up in the patent litigation in this case are --
8 are similar to some of the patent -- the issues that
9 come up in matters that I've handled and issues that
10 come up in patents that I've drafted and prosecuted, so
11 I -- it's relevant -- I have I think relevant
12 experience in that way.

13 Q. Where were you employed prior to founding your
14 firm?

15 A. I was employed at Novartis, Novartis Group.

16 Q. What is Novartis Group?

17 A. Well, Novartis is a large, Swiss-based
18 corporation. It's -- it's one of the largest
19 pharmaceutical companies in the world. It has a large
20 branded division, Novartis Pharmaceuticals. But it
21 also has generic divisions which have been
22 consolidated I think now under the -- under the legacy
23 name Sandoz, so now it's Sandoz Generics. But
24 previously that included companies like
25 Geneva Generics. Lek was one company they acquired.

1 Hexal. Biochemie. Gema. A number of -- there were a
2 number of generic companies around the world that they
3 handled.

4 So in working at Novartis I worked both with
5 the branded pharmaceuticals, so the innovative
6 pharmaceutical side, and I also worked on the generic
7 side.

8 Q. And Mr. Hoxie, how long were you at
9 Novartis Group?

10 A. About fourteen years.

11 Q. And what was the date range?

12 A. 19- -- beginning of 1991 to 2004.

13 Q. And Mr. Hoxie, did you hold multiple positions
14 during your time at Novartis?

15 A. Yes, I did.

16 Q. What were those positions?

17 A. Well, I started in Basel, Switzerland as a
18 patent attorney. After the merger, I came to the U.S.
19 I became -- I was in charge of the seeds and egg
20 biotech division, patents for that division. I worked
21 in Research Triangle Park.

22 Then I came -- in 1999 I came up to New Jersey
23 and to be in charge of the pharmaceutical patents
24 group.

25 And in 2000, beginning January 1, 2000, I took

1 over management of the U.S. and North American patent
2 and trademark operation. And then I -- I got
3 additional responsibilities.

4 I became global head of intellectual property
5 litigation for Novartis. And I was also in -- the
6 deputy -- deputy head of pharmaceutical patents for
7 Novartis globally. And I was also head of patents for
8 pharma markets for Novartis globally, which meant I was
9 responsible for all the agreements and patents relating
10 to marketed products as opposed to earlier-stage
11 products.

12 Q. In your first position with Novartis as a
13 patent attorney, at a high level, what were your
14 responsibilities?

15 A. I was responsible for preparation and
16 prosecution of patent applications relating to
17 pharmaceuticals and in particular therapeutic areas.

18 And I think I was -- I got that job and I
19 think I was hired because I had background doing
20 litigation. And at that time, they -- Novartis -- it
21 was then Sandoz -- Sandoz was involved in some patent
22 litigation. They hadn't actually been involved in
23 much patent litigation in the U.S. before, and so I
24 was sort of -- they wanted to have an American
25 attorney there in Switzerland to explain this strange

1 process that really baffled all the people in
2 Switzerland.

3 Q. After you served as patent attorney, you -- I
4 believe you testified your next position was you were
5 in charge of the division related to seeds.

6 Can you describe at a high level what your
7 responsibilities were in that position.

8 A. Yes. I -- I had a -- I had a small group of
9 patent attorneys. We were five patent attorneys, and I
10 was head of that group. And that group handled -- did
11 patents in the area of agricultural biotechnology,
12 primarily transgenic plants or generically modified
13 plants. Novartis at that time had an operation -- it's
14 since been spun off, but at that time they had that
15 kind of an operation.

16 And the -- they had a lot of -- we did
17 preparation and prosecution and contract licensing
18 relating to those products. And there was a huge
19 amount of litigation with Monsanto and other companies
20 regarding basic patents on transgenic plants, and so I
21 was responsible for managing that litigation.

22 Q. And you testified that you next -- your next
23 role was taking charge of the pharmaceutical patents
24 group.

25 What were your responsibilities, at a high

1 level, in that role?

2 A. Well, my responsibilities were managing a
3 group of attorneys that did preparation and prosecution
4 of patents, reviewing contracts and licenses,
5 negotiating contracts and licenses relating to patents
6 in the area of pharmaceuticals, and managing
7 litigation, again, in the area of brand -- in that case
8 branded pharmaceuticals.

9 Q. You also held a position as head of
10 intellectual property for North America; is that
11 correct?

12 A. That's correct.

13 Q. And what were your responsibilities in that
14 position?

15 A. So in that capacity I was head of a -- I took
16 that job in 2000, beginning of 2000, and I was -- I was
17 in charge of -- we had a group of attorneys in
18 East Hanover, New Jersey. We had a number of -- some
19 attorneys in Atlanta, Georgia. We had some attorneys
20 at certainly one point up -- they moved a large group
21 up in Boston and a group out in San Diego.

22 And so those attorneys reported to me, and I
23 sort of was responsible for managing their work, for
24 reviewing contracts and licenses, at least in major
25 deals, and, depending on the case, getting personally

1 involved.

2 I was very involved in litigation because that
3 was a very important -- obviously, that's very
4 important for a company like Novartis and management --
5 senior management was very interested in what was going
6 on with the litigation and wanted to know it was being
7 managed closely.

8 And so about half of my time in the litigation
9 side was spent dealing with generic litigation where
10 Sandoz had -- had launched a generic version of a -- of
11 a branded -- somebody else's branded drug and then
12 about half the time on the other side defending
13 Novartis against generic attacks on its products, so it
14 was a very interesting job because I got to see both
15 sides.

16 Q. In your role as head of intellectual property
17 for North America at Novartis, did you have any
18 responsibilities outside of the intellectual property
19 realm?

20 A. Yeah. I was -- I was a senior manager of the
21 company, so I was on the executive committee of
22 Novartis Corporation.

23 So the executive committee is the sort of
24 senior management committee, so we had the CEO of the
25 company, the general counsel, the head of intellectual

1 property -- that was me -- the head of HR, the head of
2 finance, all the -- all the functions, so I -- I was on
3 that. I was on that committee.

4 I was on the portfolio review committee, which
5 was a committee that reviewed products that were in
6 development and made determinations whether -- how to
7 prioritize the development products, made -- was the
8 committee that made the decision whether or not to
9 launch products and, you know, just sort of tracked
10 products that were in development prior to their
11 commercialization and prioritized and managed those,
12 those products, at a high level.

13 Q. And the products that the portfolio --
14 Mr. Hoxie, what types of products did the portfolio
15 review committee deal with?

16 A. The portfolio review committee that I was on
17 managed the branded pharmaceutical products.

18 There was also a generic portfolio committee,
19 and a person who reported to me went to those meetings
20 and managed those. I sometimes went to those meetings
21 if it was a particularly critical or important launch
22 or decision, and we would -- I would go to those
23 meetings and, you know, maybe present or comment or sit
24 in or whatever.

25 Q. Mr. Hoxie, I believe you testified you also

1 held a position as head of global IP litigation and
2 head of patents and global pharma markets at Novartis?

3 A. Yeah. They created that position.

4 Basically, the most important -- the most
5 important litigation was the United States, so it made
6 sense to sort of coordinate the litigation in other
7 countries -- Novartis is a global company, so they had
8 litigation all over the world -- to make sure the
9 litigation in all the other countries was coordinated
10 with the U.S. litigation and also provide a vehicle to
11 keep management in Switzerland informed of the status
12 of the patent litigation, so were -- we were very --
13 both on the generic side and on the branded side, it
14 was important to make sure that the company as a whole
15 was taking consistent positions in all of its branded
16 and generic litigation and in all of the different
17 countries.

18 And it was also important that management be
19 apprised of when we had risks of generic competition,
20 you know, if a -- when -- when it might -- when generic
21 companies might launch, when -- you know, on the
22 generic side when we might have opportunities when we
23 might launch, when we might have, you know,
24 exclusivities, whether by 180-day exclusivities or
25 exclusivities for some other reason.

1 And so that involved a lot, lot of traveling,
2 which is one reason that I wound up starting my own
3 firm and staying home, but it was a very interesting
4 job.

5 Q. And Mr. Hoxie, during your time in Novartis,
6 what was your involvement in patent litigation?

7 A. Well, my involvement was basically to identify
8 litigation risks at the very beginning, obviously.

9 Then if we did get sued or if we decided to sue
10 somebody, you know, I would select the outside counsel.
11 I would work with outside counsel in preparing the
12 case, in providing discovery.

13 I would -- if there were briefs or motions to
14 be filed or whatever, I'd review those and comment.

15 I'd typically go to the trials if we -- if the
16 case went to trial.

17 If there were settlement negotiations, I would
18 normally be the person negotiating. Normally, the way
19 at least we did it at Novartis -- and I know my
20 clients -- I have noticed that clients of mine in
21 private practice also work this way -- typically, the
22 negotiations would be handled by an in-house attorney
23 or somebody acting sort of like an in-house attorney,
24 in other words, not the litigators.

25 Typically, we want the litigators to focus on

1 winning the litigation and not be pulling their punches
2 and not be tailoring their litigation to what was going
3 on settling -- on the settlement side. And we would
4 typically have parallel settlement negotiations, and I
5 would usually be the person representing Novartis in
6 those negotiations.

7 Q. During your time at Novartis, do you know how
8 many patent litigations you were involved in?

9 A. Dozens.

10 Q. And did some of that -- were some of those
11 patent litigations related to Hatch-Waxman litigation?

12 A. Yes.

13 Q. Do you know how many Hatch-Waxman litigations
14 you were involved in during your time at Novartis?

15 A. At least a dozen I would say.

16 Q. While at Novartis did you have involvement in
17 any patent litigations that went to trial?

18 A. Yes. I'm not sure exactly how many. Probably
19 about a dozen went to trial I guess, some Hatch-Waxman,
20 some not.

21 Q. And for those --

22 A. I mean in the United States I'm talking about.
23 I'm not talking about outside the United States.

24 Q. And for those patent litigations that went to
25 trial, what was your involvement?

1 A. Well, typically, in most cases that went to
2 trial -- well, in ones where I was personally involved,
3 I would go to the trial. I would -- in some cases I
4 was the corporate representative, so I'd sit at the
5 trial table and try by mind control to convince the
6 jury to rule our way.

7 I'd -- I'd support -- typically I had a role in
8 supporting the experts and the technical witnesses,
9 sort of helping to prepare them, and so forth, and also
10 sort of keeping the channels open with the other side
11 for possible settlement discussions.

12 And then I'd also sort of manage the litigation
13 in the sense of authorizing the outside counsel to make
14 strategic decisions.

15 Very often, when you go to trial, it's very
16 important to streamline your case and try to keep it
17 simple, and that means jettisoning arguments. And
18 that's not something outside counsel feel that they
19 have the authority to do, so I'm like okay, it's
20 perfectly okay to drop that argument, you know, and
21 not, you know, waste a lot of time, try to keep the
22 case focused, because typically these -- these patent
23 cases are on -- most judges at this point put them on a
24 clock and you don't have a lot of time, you have
25 40 hours a side or something, so you have to be very

1 focused.

2 Q. Mr. Hoxie, while at Novartis did you have
3 involvement with negotiating patent licenses?

4 A. Yes, I did.

5 Q. What was that involvement?

6 A. It depended on the context.

7 If it was sort of a pure patent license or like
8 a settlement agreement in a litigation or a
9 freedom-to-operate license, I probably would have been
10 the lead negotiator. In some cases it would be
11 somebody reporting to me who would be the lead
12 negotiator, and then I'd review the final product.

13 If it was a license in the context of a deal
14 that had sort of maybe some non-IP aspects, like maybe
15 there would be a manufacturing and supply piece of it
16 and other pieces of it, then I'd be part of a team that
17 would, you know, work together. And I'd sort of be
18 responsible for the licensing piece, and somebody else
19 would be responsible for the manufacturing and somebody
20 else for the R&D piece, whatever, I mean, however it --
21 however the agreement was broken up.

22 Q. During your time at Novartis, how many patent
23 licenses were you involved in negotiating?

24 A. A very large number. Many dozens I would say.

25 Q. And Mr. Hoxie, of the patent litigation -- the

1 patent licenses that were included as part of patent
2 litigation settlements, were any of those in the
3 context of a Hatch-Waxman litigation?

4 A. Some of them. Yes.

5 Q. Do you know how many of those were in the
6 Hatch-Waxman context?

7 A. Yeah. I was trying to think about that
8 earlier. I think probably about half a dozen.

9 Q. While at Novartis did you have any
10 responsibilities related to making decisions whether to
11 launch a new product?

12 A. Yes.

13 Q. What were those responsibilities related to
14 making decisions whether to launch a new product?

15 A. Well, for -- for -- every -- at least when I
16 was at Novartis, every product required a
17 recommendation from the patent department on whether or
18 not -- whether or not to launch, so the patent
19 department, so the department I was running, was
20 responsible for making a recommendation in every single
21 launch on every single product.

22 There were certain times -- oftentimes the
23 patent recommendation was simple and uncomplicated.
24 Sometimes it -- if the situation was more complicated,
25 particularly obviously when the litigation involved

1 more than that, then, you know, I might make a
2 presentation to -- to the -- you know, to the board or
3 to the committee or to the committee in Basel or in the
4 U.S., people who would -- people who would be making
5 the decisions.

6 Q. Mr. Hoxie, are you familiar with the concept of
7 launching a product at risk?

8 A. I'm familiar.

9 Q. How would you define that?

10 A. Well, I mean, in a -- broadly speaking, every
11 time you launch a product, it's at risk. It's at risk
12 of all kinds of things. It's at risk of, you know,
13 that the product will fail or that they'll -- and it's
14 particularly at risk of patent infringement. And it
15 costs \$400 or whatever to file a lawsuit, so any time
16 you launch a product, somebody might sue you.

17 But "at-risk launch" I think as it's been used
18 in this case and in Mr. Figg's report, which I'm
19 responding to, particularly relates to a situation of a
20 generic company launching in the context of
21 Hatch-Waxman litigation before they have a final
22 Federal Circuit decision in their favor. That's --
23 it's specifically that context.

24 Q. And while at Novartis did you have
25 responsibilities related to making a decision whether

1 to launch a product at risk?

2 A. Yes.

3 Q. Mr. Hoxie, does your experience at Novartis
4 relate to the opinions you intend to give in this
5 case?

6 A. Yes.

7 Q. How?

8 A. I think the experience that I had at Novartis
9 working on, you know, different products on the
10 branded side and on the generic side and also the sort
11 of more general business experience and being involved
12 with the decision-making from a business perspective
13 gives me some background to interpret the -- the
14 circumstances, the documents, the -- you know, the
15 facts, as far as -- as far as I can ascertain them, of
16 what was going on in 2010 when Impax and Endo entered
17 into the settlement and license agreement.

18 Q. And Mr. Hoxie, where did you work prior to
19 Novartis Group?

20 A. You know, prior to the Novartis Group, when I
21 first graduated law school, I worked for a company
22 called -- a law firm called Semmes, Bowen & Semmes.
23 And it was located -- primarily I worked in Baltimore.
24 I was admitted to practice in Baltimore and in -- in
25 Maryland and in the District of Columbia, so I did some

1 cases and spent some time in the D.C. office, but
2 the -- the firm -- most of my time was in the Baltimore
3 office.

4 Q. And what did your practice consist of while at
5 that firm?

6 A. It consisted of general litigation. There
7 were actually a couple of patent -- patent
8 infringement cases, but also general commercial
9 litigation, maritime litigation. And I also did some
10 criminal litigation in pro bono cases and in
11 Criminal Justice Act Panel cases.

12 Q. Did it include trial work?

13 A. Yes.

14 Q. Does your experience at Semmes, Bowen & Semmes
15 relate to the opinions you intend to give in this
16 case?

17 A. Yes. To the extent that, you know, a -- I
18 did -- I did at one time work as a litigator. I have
19 tried cases to juries. It was a long time ago, that's
20 true, but yeah, I think it does -- it does -- it
21 bears -- it's part -- it's part of the experience that
22 I bring to the table.

23 Q. Mr. Hoxie, do you have any certifications or
24 admissions to practice?

25 A. Yes.

1 Q. What are those?

2 A. I'm a registered patent attorney, so admitted
3 to practice before the U.S. Patent and Trademark
4 Office.

5 I'm admitted to the bar of Maryland, the
6 District of Columbia and New Jersey. I'm admitted to
7 the federal district courts in those jurisdictions as
8 well.

9 I'm admitted to practice in the Court of
10 Appeals for the Federal Circuit in the Fourth Circuit,
11 the U.S. Court of Claims and the Supreme Court.

12 I think that's -- I think that's about
13 everything.

14 I'm also -- well, was at one -- I mean, at one
15 time I was admitted to practice in -- in -- as a
16 solicitor in England and Wales and also -- but that's
17 not active because I'm -- I don't maintain an office in
18 England.

19 And I passed the examination to practice as a
20 patent attorney in -- a European patent attorney, but
21 again I'm not active, I'm not listed, because I don't
22 live in Europe and I'm -- and also for the reason in
23 that case I'm not a European citizen.

24 Q. Do you have any involvement in professional
25 organizations related to your practice as a patent

1 attorney?

2 A. Yes. I'm involved in, you know, several
3 professional organizations.

4 Probably the one I'm most consistently -- been
5 most consistently involved with over the years is the
6 Association of Corporate Patent Counsel, the ACPC,
7 which is an organization of chief patent counsel and
8 former chief patent counsel for large corporations, so
9 it's a group that meets twice a year and then pretty
10 much all the chief patent counsel from all the -- all
11 the major -- all the larger corporations are members of
12 that organization.

13 So it's a very interesting organization. There
14 have been presentations, and it gives me an opportunity
15 to meet with people in the industry and have a sense of
16 their reactions and, you know, what the feeling is
17 about legal developments and -- and in the area of
18 patents.

19 JUDGE CHAPPELL: It's after 6:05. We're going
20 to call it for today.

21 I would note that's just over 30 minutes of
22 qualifications. That's enough. You need to get into
23 opinions tomorrow.

24 MS. PEAY: Yes, Your Honor.

25 JUDGE CHAPPELL: Everybody note, we will start

1 tomorrow not at 9:45, we will start at 10:30 in the
2 morning, 10:30.

3 We're in recess.

4 (Whereupon, the foregoing hearing was adjourned
5 at 6:08 p.m.)

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1 CERTIFICATE OF REPORTER

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4 I, JOSETT F. WHALEN, do hereby certify that the
5 foregoing proceedings were taken by me in stenotype and
6 thereafter reduced to typewriting under my supervision;
7 that I am neither counsel for, related to, nor employed
8 by any of the parties to the action in which these
9 proceedings were taken; and further, that I am not a
10 relative or employee of any attorney or counsel
11 employed by the parties hereto, nor financially or
12 otherwise interested in the outcome of the action.

13

14

15

s/Josett F. Whalen

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JOSETT F. WHALEN

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Court Reporter

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