FEDERAL TRADE COMMISSION

I N D E X

POM WONDERFUL LLC

TRIAL VOLUME 10

PART 1, PUBLIC RECORD

JUNE 15, 2011

EXHIBITS	FOR ID	IN EVID	IN CAMERA	STRICKEN/REJECTED
CX				
None				
PX				
None				
JX				
None				
DX				
None				

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
POM WONDERFUL LLC and	)	
ROLL GLOBAL LLC,	)	
as successor in interest to	)	
Roll International Corporation,	)	
companies, and	)	Docket No. 9344
STEWART A. RESNICK,	)	
LYNDA RAE RESNICK, and	)	
MATTHEW TUPPER, individually	)	
and as officers of the	)	
companies.	)	
	)	
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WEDNESDAY, JUNE 15, 2011

10:30 a.m.

TRIAL VOLUME 10

PART 1

PUBLIC RECORD

BEFORE THE HONORABLE D. MICHAEL CHAPPELL

Administrative Law Judge

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, D.C.

Reported by: Susanne Bergling, RMR-CRR-CLR

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P R O C E E D I N G S

- - - - -

JUDGE CHAPPELL: On the record, Docket 9344.

Where were we?

MS. HIPPSLEY: Mr. Resnick was on the stand.

JUDGE CHAPPELL: Okay. Proceed when ready.

Whereupon --

STEWART RESNICK

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

DIRECT EXAMINATION (cont.)

BY MS. HIPPSLEY:

Q. Good morning, Mr. Resnick.

A. Good morning.

Q. I'd like to work through some of the studies that were done with Dr. Ornish now. And so first I'd like to start by showing you Exhibit 610, CX 610, and this is a letter agreement, dated September 19th, 2003.

A. Okay.

Q. Okay. And we're just going to focus on the first page to start. And this letter agreement confirms a contract between PMRI and the Stewart and Lynda Resnick Trust, and PMRI is the institute -- and it says, "Attention, Dean Ornish," so that was Dr. Ornish's

institute. Is that right?

A. Yes.

Q. And here it outlines two studies that will be conducted, the Beverage Study I and the beverage Study II. I just want to make sure that when we refer to these, that we're both on the same understanding of which study was studying what.

So, if you look at the Beverage Study I and the first bullet point, this study is described as PMRI will recruit 37 participants with coronary arterial atherosclerosis and will be performing measures for myocardial perfusion studies. And so this is described as the Bev I Study.

And then if you look at the second bullet, there was an understanding that Dr. Ornish would provide you with a comprehensive write-up when the study was completed that would be acceptable for submission to a peer review journal.

Is that also correct? That's part of the agreement?

A. Yes.

Q. Okay. And then if we look at the third bullet, the Beverage Study I was to cost -- had a budget of 708,000. Is that right?

A. Yes.

Q. Okay. All right. So, that's the myocardial perfusion study.

And then if we can look at the Beverage Study II and the first bullet, this study was to have 55 participants with clinical carotid atherosclerosis. And then if we look at the second bullet, again, there was going to be a write-up at the end of the study, is that right, to provide to your --

A. Yes.

Q. -- to the organization? Okay.

And then if we can look at the third bullet, this study has a budget of roughly 500,000. Is that right?

A. That's what it says.

Q. Okay. And then if we look at page 2 of the contract, under "Payment Terms," it --

A. Yes.

Q. Okay. It appears that, you know, adding those two studies together, the total donation by the trust will be 1.2 million, and it also appears that a million, roughly, of that had already been paid.

Do you have a recollection as to how it came about that basically the studies had been prepaid at this time?

A. No.

Q. Okay. Do you have any reason to doubt that that's true, that you had already paid for the studies, a million dollars, at the time this contract was written up?

A. I have no recollection.

Q. All right. Okay. Now, if we can turn, attached to this contract are the protocols for the study, and if we turn to page 4, CX 10, page 4 at the bottom, and the document is labeled "Beverage Study I Protocol."

A. Yes.

Q. Okay, great. Thank you. So, now we're into the Beverage Study I protocol, and I want to go to page 7. This outlines the methods to be used for the Bev I Study protocol. And, again, we can see here that the target sample is 45 patients and that it's going to study myocardial perfusion studies. That's sort of midway through that first paragraph, right?

A. Yes.

Q. Okay. And then if we go to page 8 of the protocol, CX 10, page 8 -- I'm sorry. And here, for the Bev I protocol, if you look to the middle of the page, "The following outcomes will be measured at baseline, 3 months and 12 months."

Is that right?

A. Yes.

Q. Okay. Now, you were here when we heard testimony that this study was cut off at three months. Is that right?

JUDGE CHAPPELL: Are you asking him if he was here or are you asking him if he knows that the study was cut off after three months?

MS. HIPPSLEY: Okay, I'm sorry.

BY MS. HIPPSLEY:

Q. Do you know that this study was cut off after three months and that the myocardial perfusion data was published for the three-month duration of the study?

A. I -- again, this happened eight years ago, and I have -- I have a recollection of doing this, but I don't have any recollection of those periods of time.

Q. Okay.

A. I don't have any specific recollection.

Q. All right. Let's look at PX 25, and this is Dr. Ornish's expert report in this matter.

A. PX 25?

Q. Yes. It -- it should be in your book at the end. It's labeled PX for POM Wonderful's exhibits.

A. Okay. I've got it.

Q. And this is the expert report of Dr. Ornish in this matter.

And if you look at page 17, which is the next

page -- we just included the excerpt --

A. Seventeen?

Q. It's PX 25, page 17 -- it's the very next page in your book -- of the report. So, basically turn to page 2 after the --

A. Oh, okay.

Q. Okay?

A. Oh.

Q. We just included the page that I'll be referencing.

Oh, I'm sorry. So, it's page 17 of the report, PX 25, page 17.

A. Okay.

Q. Okay. This is where Dr. Ornish discusses the Beverage Study I that he conducted, and if I can focus your attention about midway down the page, he states that the study was terminated after three months only because the Resnicks did not provide the funding.

Do you see that sentence?

A. Yes.

Q. Okay. And do you have any recollection of, at that time, terminating the funding for the Bev I Study?

A. Again, I don't have a specific -- I kind of remember that we had issues of the original time line and what we expected in terms of enrolling patients.

Q. Um-hum.

A. So, I remember -- so -- but I don't know if this is part of that or not. So, I don't -- I don't recall specifically why we didn't do 12 months instead of three months.

Q. Okay. And then turning to the Bev II Study that we looked at in the contract, which was to study -- let's see, if we go to page 16 of CX 610, which were the contracts. So, it's CX 10, page 16.

And at the -- and at the top, it says, "Beverage Study Protocol II."

A. Okay.

Q. Okay. And so, again, just to make sure we're following through the right study with the right protocol. So, this is the Beverage Study Protocol II, and it starts on page 16 of CX 10.

And then if you could turn to page 19 in the document, CX 10-19.

A. Yes.

Q. Okay. And under the "General Study Design," it states the design is a randomized, controlled clinical trial. The target sample is 50 -- 5-0 -- participants. And then if you can look at the very last two sentences on CX 0610, page 19, it states that the measure will be measuring IMT, as well as some other things, right?

A. Yes.

Q. Okay. Now, do you recall receiving the results of this study in 2005?

A. No.

Q. Okay. Let's look at another exhibit, then. This is CX 0754, and here is an email from Dr. Ornish to yourself, dated August 4, 2005, and he's attaching a summary of the Bev II results.

A. Okay.

Q. Okay. And you stated previously that typically, you would read the results of your studies as they were provided to you. Is that correct?

A. To the extent I could understand them, yes.

Q. Okay. So, at the time that these results were provided to you, again, do you have any recollection of whether or not you looked at them?

A. No.

Q. And you -- do you have any recollection of any discussions with, for example, Dr. Liker about what these results showed?

A. No.

Q. Do you know why the results of this study were not published at that time? The contract called for Dr. Ornish, as we had seen, to provide a write-up that could be used to publish in a peer-reviewed journal. Do

you recall any discussions about publishing the Bev II study?

A. No.

Q. Or any reason why it would not have been published? Do you have any recollection of discussions about that?

A. No.

Q. Okay. Now, I wanted to direct your attention to the Dr. Davidson study, we'll move on to that one, and this study cost about $3 million to conduct. Is that correct?

A. Yes.

Q. And in this study, you requested an interim analysis of the 12-month data as it was being created through the study. Is that right?

A. Yes.

Q. And what was the purpose of seeking the interim analysis of the 12-month data?

A. I don't remember specifically, but, you know, this was early on in our research, and we wanted to see results as quickly as we could. That's my guess as to why we wanted the 12-month, but that's -- I don't have a specific recollection.

Q. Okay. And at the time that you requested the interim analysis, were you aware that if the final

results had been positive, of the Davidson study, that you would have to take a statistical penalty for looking at the data at an interim point? Did you have any discussions about whether or not that was an issue?

A. We may have. I mean, I know that we had discussions about that. It wasn't any concern. I mean, we were not looking to get a drug approval. We were just looking to find out what was right, what was real, what was true.

JUDGE CHAPPELL: You understand that was a compound question? Within that question, you asked him if he was aware, and in the same question, at the end, you asked him if he had any discussions.

MS. HIPPSLEY: Okay.

BY MS. HIPPSLEY:

Q. So, at that time, were you aware that if you had an interim analysis and your final results had been positive, that there would have been a statistical penalty that would be taken against those results?

A. I had an understanding that if you unblinded a blinded study or did certain things, you might take a penalty.

Q. Um-hum.

A. Again, you must -- you have to understand, I'm not a scientist. This was early in our development. We

were not concerned about statistical significance. What we were concerned about, what was the truth; how did this product work; and where did it work. And whether it was 94 percent sure or 97 percent sure didn't make as much difference to me as, really, where did the product work and how did it work?

Q. Right. But this is an interim analysis we're discussing, correct?

A. I don't know what you're discussing -- I'm confused now.

Q. Well, you had requested the interim analysis, and you're aware that there's a statistical penalty. Did you have discussions with Dr. Davidson about whether or not that would affect the final results of that study and the analysis of those?

A. I don't recall them. I assume we did, because I remember having discussions with people. Now, this has been over a long period, that if you do certain things in these tests that you're running, instead of in an arbitrary way, which is fine, and if you do certain things, you have some penalties. Again, as I said, I may not recall it specifically, because I wasn't concerned about those penalties.

Q. Okay. All right. I'd like to show you CX Exhibit 0800. And this is an email from Dr. Harley

Liker to Matt Tupper, with a copy to Mark Dreher, April 22nd, 2006, and it's discussing results of the Davidson IMT data and the fact that they're going to be at your home later that week and that "apparently, as you know, Stewart and I will have a call set up with Michael for May 1st."

And does this refresh your recollection that you received the Davidson IMT data, had knowledge of it, in April of 2006?

A. I know I had knowledge of it, and I would assume this is all correct, yes. But I don't remember exact dates.

Q. Okay. And is it true that you wanted to have the results of the Davidson study verified by having another, you know, proper medical analysis of the sonogram data, have it looked at by a second company?

A. Yes.

Q. Okay. And that was done, correct?

A. I think so.

Q. Okay. To your knowledge, did it change the results that Dr. Davidson had gotten?

A. No. Well, again, I'm not sure. I mean, it -- I don't remember it changing the results in any significant way.

Q. Okay. Now, why don't we show -- if you can turn

to CX 0902. And this is an email from Dr. Liker, sent May 29th, 2007, to yourself, and he is stating that Michael Davidson would like to submit an abstract on the IMT study to the American Heart Association's annual meeting, and the deadline for submission is that Friday.

A. Okay.

Q. Okay. Do you know -- you did not approve the submission of the information for that conference at that time. Is that correct?

A. Factually, I don't know.

Q. Well, he's asking if he can --

A. I don't know what I -- I don't know what I said. I don't recall. I know that we had some discussions about submitting his -- his work for publication, and we waited some -- a little time before we did that. So, I don't know where this fits into that time frame.

Q. Okay. But you don't recall at this time, when Dr. Liker communicated that Dr. Davidson was interested in presenting his abstract, that you did not give permission at that time?

A. I don't recall this, no.

Q. Okay. Let's see if --

A. But I'm not doubting it.

Q. Pardon?

A. I'm not questioning it. I just don't recall it.

Q. Okay. Let's just make sure we have the foundation straight on dates here.

So, if you can look at CX 1336, and this is an excerpt from Dr. Davidson's December 3rd, 2010, deposition taken in this matter.

A. Okay.

Q. And if we can turn to page 180 in the deposition, of the deposition pagination, that makes it a little easier.

A. Okay.

Q. Okay. And there's a series of questions of Dr. Davidson, starting at line 14:

"QUESTION: Okay. And were you hoping to present this abstract at a meeting of the American Heart Association in 2007?

"ANSWER: It would have been for the" -- and they go through it.

"Yes. 2007, correct."

And at line 22:

"QUESTION: Did you get permission to present this abstract from the sponsor?

"ANSWER: No."

So, in 2007, POM Wonderful would not allow Dr. Davidson to present this study at the American Heart Association annual conference. Isn't that correct?

A. Yes.

Q. And why was that decision made, to not have Dr. Davidson present the abstract as he had requested?

A. We had been -- at this point in time, just going back, we had been doing research probably for seven or eight years, and everything we found, we were very comfortable with, comfortable meaning it was logical, it made sense. Certain things worked, certain things didn't work.

This was the one study that was a bit confusing, that it just didn't seem to -- that -- the fact that we had a positive result and then a change. So, I was concerned that there may have been an error either in the early -- the first 12 months or the last 18, and we -- from the very beginning, the reason that we have limited or said to people that we wanted to okay their publications was not because we were concerned about results that weren't positive, because we had been transparent about everything. We were concerned about people being too positive.

And the reason for that is early on in this business, before we really got into the expansion, we had produced a small amount of pomegranate concentrate for years when we had, like, 80 acres, and at a point -- we used to is sell it off and on, and it wasn't a big

deal. But all of a sudden, we got this big demand from Japan, and the price went -- shot up, and we were -- you know, we sold it -- I don't know, we didn't have that much to sell, but we sold it all. Then the next year or two years after, no demand. We were, like, what happened?

Well, they were making claims about it that weren't correct, about estrogen and things like that, and they were not correct claims, and they completely ruined the market. So, we were in this for the long term, and we wanted to make sure that the claims we were making were absolutely valid and correct. And so that's the reason we were careful, okay?

So -- and the reason we sent it to Aviram was we wanted it -- early on in the study, people said it would be a miracle if we got the result -- good results, because it's so hard to measure, and you're dealing with people who don't have a big build-up of plaque. So, the fact that we weren't getting a strong positive result was not a shock to us, okay?

The surprise was that we had a positive result to begin with and then it seemed to disappear. That was totally confusing compared to anything else that we had done in the past. So, that's why we were concerned about it. We wanted to make sure everything was right

before we published anything. And once we were, you know, comfortable with that -- because, look, errors happen. I mean, I'm on the board of -- I'm on the board of Cal Tech, which to me is the most -- you know, the best -- supposedly chosen to be the best university in the world last year or something. It's a wonderful place. I understand about 10 percent of what they say, at best.

But, you know, they sent a rocket up to Mars or something, and basically, it didn't work, and they probably spent well over a billion dollars, and the reason was that one scientist made a mistake, and instead of measuring something in yards, he measured it in meters. Well, stuff happens, you know?

So, we were trying to figure out, how could I overcome this confusion? Since we never could, we just -- then we said, well, go ahead and publish it.

Q. Okay. But at the time that Dr. Davidson, in 2007, was ready to present his abstract, as we saw through the time line, you already had sent it to Dr. Aviram, and it already had been reaffirmed by sending the sonogram results to these other companies.

So, did -- why, then, when Dr. Davidson, in 2007, is ready to present the abstract, do you still have concerns? Because you have already double-checked

the data. Isn't that correct?

A. No. We were still -- my understanding at that time, I believe we were still in the process of checking the data. Dr. Davidson was still looking at it. These things take time. It's not like we say, "Well, check it," and he comes back two months later. He does it over a period of time. It wasn't something that was high on my list of priorities, in other words. And so basically I still was not comfortable.

Q. So, you were questioning that Dr. Davidson was at a proper point in his own expert view that he had an abstract ready for presentation?

A. I don't remember that, but I do believe we were -- that Dr. Davidson was still doing some reanalysis of it to try to, again, find out -- you know, to try to eliminate the confusion. That was all.

I mean, Dr. Davidson always felt that this was a very positive result. There was no reason not to do it. I just wasn't comfortable. I felt it was a bit confusing, the results were confusing. Until I felt that we had done the work we needed to, I didn't want it published. I mean, I just was uncomfortable. Again, we were being -- everything we have done, we have been extremely careful with.

Q. But if Dr. Davidson felt it was ready to be

presented to the public and he's the expert researcher -- you hired him because he's a renowned clinical study researcher in the area of heart disease. Isn't that correct?

A. Correct.

Q. And if he felt it was ready to be presented to the public, who advised you that it was not?

A. Me. I didn't say it wasn't ready. I mean, it's not like he came up and was advocating publishing it. We were in discussions about publishing it. I mean, again, this was not a big issue at the time. You're making it a big issue now, but it wasn't one of those things that he said, "Look, I want to publish this and it's important to do it."

It was kind of a conversation, you know -- I don't remember specifically, but kind of generally, it was, you know, again, let's -- you know, I thought he was still in the process of relooking at it and making sure that there was no inconsistencies. That's all.

Look, by the same token, with Dean Ornish, when he came up with a very positive result, we had someone else double-check his results to make sure that they were correct on the positive side, and, in fact, we wouldn't publish it until we were -- we were comfortable that it was checked independently by someone.

So, again, it's not that -- we're just trying to be very careful here. We're in this thing for a long time. We have a huge investment. We don't want to make any representations that aren't correct.

Q. I -- okay, I understand that, but we were discussing the point in time that came when Dr. Davidson was ready to present his abstract to the annual convention in 2007, and did you receive advice from other experts at that time which were part of your view that even though he was ready to go, you were not going to have him present it publicly yet.

A. No. I made a decision myself, again, as I said, based upon the fact that I was still a bit confused.

Q. Okay. All right. Let's call up the study, which is CX 1199 in your book. This is the study that was done by Dr. Davidson. He's listed as the first author. So, this is the study we've been discussing.

And I wanted to direct your attention to when the manuscript -- there's a little footnote on the left column, and we'll put it on the screen. I don't know if that helps, but it states that -- who Radiant Research is and all the different universities that were involved, and then it states that the manuscript was received in February of 2009; revised manuscript received and accepted May 13, 2009.

And so obviously it was submitted in February of 2009. So, in fact, you didn't authorize the publication until sometime in 2008? Is that correct?

A. I'm not sure what you mean by "authorize." This was not a discussion we had on an ongoing basis. It would come up maybe once a year or so, and then when he was -- you know, so I don't say -- it wasn't like it was even necessarily -- I don't know if it was the same publication.

I kind of remember we had a meeting, a group of people, and we said, "Fine, let's go and have it published." We were now all comfortable that basically we're not going to find anything else, and if it's confusing to me, it's too bad. Just go ahead and do it. We are not going to hide anything. We never have.

The other thing is, I was even questioning if it was going to get published, because generally unless something has a rather strong positive result, they don't publish things. So, Davidson felt this result strong enough and positive enough it would get published, so go ahead.

Q. Where does that understanding that you have about studies that are negative not being published? Is that based on a discussion you have had with any of your researchers?

A. Yes, or if a study finds nothing, it's not of interest.

Q. And how is that opinion of yours informed? What is the basis of your view?

A. What I've heard from -- I mean, oftentimes, my understanding when people want to go and get published, they want to go to the most important publications first. Oftentimes those publications don't find this of enough interest to publish it. So, you keep on going down the list.

And basically, if you're published in some very weak journal, it doesn't have anywhere near the impact that a stronger journal has. That's my understanding, and many things -- most things -- I mean, many things are rejected for publication.

Q. Now, when this study was published, are you saying your understanding is that the study publication is presenting the Davidson study as a positive study?

A. From my understanding, Davidson thinks it's positive, that it showed a very good result in this subgroup -- again, I'm not specific about it -- and that the results were not -- were certainly not inconsistent with anything we had done, because it was a different group, but that it was quite consistent with what had happened in the past.

Q. Okay. Well, if we look again at CX 1199, let's just look at the summary of the study that is published in a peer-reviewed journal, and if you look at the last couple sentences in the abstract -- or the -- I guess it's called the "Summary," it states, "In conclusion, these results suggest that in subjects at moderate coronary heart disease risk, pomegranate juice consumption had no significant effect on overall CIMT progression rate but may have slowed CIMT progression in subjects with increased oxidative stress."

And then if you look further up in the document, in those sentences of the summary, sort of halfway down, there's a statement that (as read) "Participants consumed 240 milliliters per day of pomegranate juice (n equals 146) or a control beverage (n equals 143) for up to 18 months. No significant -- significant -- difference in overall CIMT progression rate was observed between pomegranate juice and the control treatments."

Now, isn't it your understanding that that is the main conclusion and primary conclusion of the Davidson study?

A. I -- I don't know that that is correct. I mean, that's one of the conclusions. The other conclusion is that people with a high oxidative stress -- in other words, you can't cure something you don't have -- or not

cure. You can't -- you can't make something better if you don't have a problem, and so generally this was consistent, in my opinion, okay, with the Aviram results, when he used -- and with the -- with the results we did on mice, which were quite clear, because unfortunately, we had to cut open the mice, and we looked at their veins, and we redid that -- that study was done twice. And so it showed a substantial decrease in plaque in animals and then in humans that had a high level of plaque.

This was not inconsistent with that, because in the subgroup, my understanding is, is that those people with a high level of risk, which, therefore, had a higher level of plaque, had -- seemed to have promising results over a short period of time. Based upon 18 months, that's not a long time, when it's taken years to build up the plaque.

So, this whole area is a little -- I mean, now, as I kind of recall, part of the reason we were also waiting on Davidson to some extent on publishing was because the ability to measure is constantly getting better, this whole ability to measure the plaque, and so we thought during that -- you know, we were still looking at other ways to possibly read the original -- whatever they are, x-rays or -- you know, to see if, in

fact, we could get a more accurate result.

Q. Okay. And your understanding, though, for the subgroup analysis is that that's something that would have to be replicated in further studies to have a -- be able to make anything of the data -- to have any conclusions drawn from the data. Isn't that correct?

A. I'm afraid that's your conclusion, not mine.

Q. That's not yours?

A. No.

Q. Okay.

A. I mean, this wasn't done in a vacuum. This was done after a lot of other research was done and, again, is consistent with it.

Q. We've heard a lot about -- in Mr. Fields' discussions about getting information out to the public. Did you have any concerns that this information -- basically, you had it in 2006, and it was being withheld from the public until 2009. Was that of any concern to you, this large study on cardiovascular disease and the relationship of pomegranate juice?

A. No. If I did, I would have had it published.

Q. And do you recall testifying in the Tropicana deposition that you have never gotten in the way of an independent researcher publishing results, one way or the other?

A. Correct.

Q. And do you still believe that's an accurate statement given the discussion we've just had about the Davidson study?

A. Absolutely.

Q. So, in presenting information on this study, in your view, would it be misleading to just discuss the 12-month results?

A. Yes.

Q. And would it be misleading to just present the subgroup analysis?

A. Yes.

Q. So that you do believe that you would have to present the results that were shown at 18 months, that there was no effect, for the people that were taking the POM Juice, the entire study group, at 18 months?

MS. DIAZ: Objection, Your Honor.

JUDGE CHAPPELL: Basis?

MS. DIAZ: Vague and ambiguous. Vague and ambiguous as to "present." There is no context given here.

JUDGE CHAPPELL: Do you understand the question?

THE WITNESS: Would you repeat it again?

JUDGE CHAPPELL: Do you want to rephrase?

MS. HIPPSLEY: Yes, that's fine.

JUDGE CHAPPELL: Thank you.

BY MS. HIPPSLEY:

Q. So, you do believe that in discussing this study, that the 18-month results should also be part of that discussion. Isn't that correct?

A. Correct.

Q. Do you recall giving a deposition in the pomegranate -- I'm sorry, the POM Wonderful versus Coca-Cola, that they took your deposition in that matter?

A. I know I had a deposition, but I don't recall it.

Q. Okay. And the date of that deposition is December 2009, which is, I think, just a couple months after the Davidson study was published. I believe that was published in the fall of 2009. Is that your understanding?

A. I don't remember.

Q. But we see that it was submitted for publication in May of 2009, right?

A. Yes.

Q. So, it would be sometime after that date.

A. Usually, yeah.

Q. Okay. And I just want to read one passage from the deposition and then ask you a couple questions based

on your testimony at that time. And this is at page 73 of the deposition.

"QUESTION: You mentioned cardiovascular. Have you -- have any results from this research showing what the pomegranate does to the cardiovascular system, how it impacts that?

"ANSWER: Right. We had a big study that was done by Dr. Davidson as to how it affects the plaque in the carotid artery.

"QUESTION: And what were those findings?

"ANSWER: Those findings? It had a major -- a significant effect after 12 months. But then later on the effect was on mostly high -- high-risk patients that it had a positive effect on.

"QUESTION: Okay. So, when you say 'high risk,' people who are more likely to have cardiovascular problems?

"ANSWER: No. They have build-up of plaque. Yes, the problem is you can't eliminate the plaque if there's none.

"QUESTION: Okay. So, when the findings, then, were that the pomegranate juice, when used with high-risk patients, has what effect?

"ANSWER: It seems to reduce the build-up of plaque, and that's published. Either it's being

published or was published. You can, again, read that for yourself."

Now, do you think that your testimony for the Coke attorneys was an accurate summary of the study results?

A. Absolutely.

Q. So, the fact that --

A. That's what I said -- didn't I just say that now? I said the same thing when you asked me the same questions, didn't I?

Q. There's no explanation to the Coke attorneys that the study's actually an 18-month no-effect study.

A. I don't think we were dealing with that issue at the time. Please.

Q. Would you agree that this --

A. You're talking about being involved in a lawsuit where Coca-Cola is selling pomegranate juice where it has three-tenths of 1 percent pomegranate juice and they're representing it as pomegranate juice. That's different than this lawsuit. I mean, it would be a good thing if you went after them.

Q. Okay. And in your view, does the Dr. Davidson study, does it support a cardiovascular disease benefit for the general population?

A. I don't know what that means, but my belief is

you could certainly, logically, take the fact that a natural product reduces -- either reduces in absolute amounts or reduces the build-up in patients that have a great deal of build-up or a certain amount of risk to patients who don't have much risk at the time, because as time goes by and they, in fact, will build up plaque, I would say certainly logically you can believe that it very well could prevent that build-up or more than likely would.

Q. Did you have any discussions with Dr. Liker about what the results of this study actually mean?

A. I'm sure I did, but I don't remember them.

Q. And did you have any discussions with Dr. Davidson about the results of this study and what they mean?

A. Yes.

Q. Okay. And I know you've stated he's -- he feels positively about the subgroup. Did he explain to you the impact of the result at 18 months and what that means?

A. I don't recall.

Q. Did you have any discussions with Dr. Liker about your view that the 18-month no-effect results don't have any meaning in the context of whether or not the cardiovascular disease benefits are there for a

population that has mild to moderate cardiovascular disease?

A. Would you repeat the question?

MS. HIPPSLEY: Could you?

(The record was read as follows:)

"QUESTION: Did you have any discussions with Dr. Liker about your view that the 18-month no-effect results don't have any meaning in the context of whether or not the cardiovascular disease benefits are there for a population that has mild to moderate cardiovascular disease?"

THE WITNESS: I don't understand that question.

BY MS. HIPPSLEY:

Q. Well, you have been talking about your view that the subgroup analysis showed a benefit for people that have more severe symptoms, correct, of cardiovascular disease?

A. Yes.

Q. Okay. So, did you have a similar discussion with -- did you have any discussions with Dr. Liker about how to interpret the 18-month no-effect results vis-a-vis a population of consumers or patients that have mild to moderate cardiovascular disease?

A. I don't think -- you know, you're really confusing me, because you're talking about one study

that talks about plaque and the reduction of plaque --

Q. Um-hum.

A. -- and you're also now talking about cardiovascular disease, which takes many forms.

Q. Okay. Let's just keep it to the narrow issue of plaque.

A. No, I don't recall that. I mean, I may have, but I don't recall any discussions about it.

Q. So, you did not have any discussions with Dr. Liker about --

A. I didn't say I didn't have any discussions. I don't recall any discussions.

Q. All right. And did you have any discussions with Dr. Davidson about how to understand the 18-month results having no effect on the population that was studied that had, let's say, mild to moderate plaque build-up?

A. No. The discussions I had was why -- the confusion was the inconsistent results from 12 months to 18 months.

Q. And do you think that the -- oh, strike that.

Let's show -- well, let's look at -- in your book, it's CX 1180. It has a stamp on the front that says "POM Wonderful LLC" from another case, I believe.

And if you can turn to page 2 of that document,

and this is a January 2010 article, "Pomegranate Juice May Not Affect the Carotid Artery, with Caveats," and it's an abstract and commentary by a Dr. David Kiefer.

Have you seen this review article before today?

A. No.

Q. Okay. And do you know the name Dr. David Kiefer? Is that familiar at all?

A. No.

Q. Okay. Do you recall having any discussions with anyone at POM Wonderful where they brought a -- the topic of a review by Dr. David Kiefer to your attention, even if you had not seen the actual article?

A. I don't recall anything.

Q. All right. So, if we could show two ads, and we'll bring them up on the screen together to save some time, hopefully. These are -- in your book, they're -- and on the screen -- CX 0337 -- actually, maybe we should go through them one at a time, because they won't be in order in the -- in Mr. Resnick's book. So, we'll keep it simple.

So, let's look at CX 0337 first.

A. Okay.

Q. All right. And this is an advertisement for the POMx Pills, and this was run in January of 2010. And I wanted to direct your attention to the third column on

the right side, where a couple studies are listed. And the last study that's cited, if we can bring up that paragraph.

Okay, this is a quote from the Aviram study again, that "POM juice consumption resulted in significant reduction in IMT by up to 30% after one year." And the cite there actually states that it's from '04.

So, shouldn't the Davidson study, which is 2009, be being presented in your advertising at this point?

A. Number one, I don't write the ads, okay? Number two, what else should we have included? Should we have included that abstract that you just read me? Should we -- I mean, where do you stop? And I don't think there's anything inconsistent with this ad and inconsistent with the facts.

Q. Did you have any discussions with Mrs. Resnick about whether or not it was still appropriate to use the Aviram study when you had a larger study, more current results, from 2009 that could be used for this area of plaque?

A. It's a different study. I mean, we were talking about people that have had -- just as it says here, what it was, plus the fact that I didn't discuss it with Mrs. Resnick, because I don't review the ads. I mean,

we have the attorneys review the ads, and I'm very comfortable that the people that I delegate that to do the job appropriately. And they're told to be careful about it to make sure that we don't say anything that we're not absolutely comfortable that we can say.

Q. But in 2010, you had a very large study. It's --

A. But that large study is not inconsistent with any results in the past and is, in fact, consistent. Where do we stop putting in what we've done? Do you want us to write --

Q. Well, my question is --

A. -- a four-page ad? In the end, this is an ad.

Q. Right.

A. We are getting the information across to the people, okay? What do you expect?

Q. And my question is, why wouldn't you substitute a statement from your current large study in 2009 instead of using this old 2004 study on the same subject matter, which is dealing with thickness of arterial plaque and results that the company has gotten in its studies?

A. I didn't write the ad.

Q. And, again, you had no discussions with Mrs. Resnick about which study to put into the ad at

this point in 2010?

A. No. I don't -- I mean, generally, I don't discuss those things. I mean, it's not my area.

Q. Did you have any discussions with Mr. Tupper about the appropriateness of which study to use when discussing the area of arterial plaque in advertising in 2010?

A. I did not have any discussions, but I would not have -- in any way think that this is incorrect.

Q. All right. Let's -- let's look at, in this ad, the sentence about the research, 32 million in medical research.

A. Yes.

Q. Okay. Now, this number has progressed over time, right? In advertising, it's been at a 25 million figure and then 32 and I believe now it's 34 million. Is that accurate?

A. It's progressed because we've spent more.

Q. Right.

A. And we continue to spend more.

Q. All right. And presumably the $3 million that you spent on the Davidson study is contained within this number. Is that correct?

A. I would assume so.

Q. Okay. And the study that Dr. Aviram did I

believe we said would cost no more than 900,000. I think we established that on Monday.

A. Yes.

Q. Okay. And the study by Dr. Ornish that's listed here, we saw that it cost roughly 700,000.

A. Okay.

Q. Is that correct?

A. Yeah.

Q. So, the two studies here, as part of this ad, totaled 1.2 million of the 32 million that's being presented to consumers. Is that correct?

A. Yes.

Q. And do you think it's fair to increase the amount of money shown without showing the results of the newer studies that are part of the increasing amount that you're listing in the advertisement?

A. This is -- I mean, if I may say so, a rather silly question. I shouldn't -- well, okay.

Look, this was not inconsistent. We did a lot of research. We -- this is a statement that says, as far as I can read it, this is the amount of money that we've spent on research.

You know, in order to get sometimes good results, initially, you scatter gun, and there's a lot of areas that we thought that we would get results in

and we didn't. We haven't mentioned those, but that's still part of our research.

Q. Okay. And when the statement says, in the ad, "backed by $32 million," again, your feeling is that, whether it's published, not published, good results, bad results, that's still part of the "backed by $32 million"?

A. Absolutely.

Q. And what if there are no results at all yet?

A. So? It's -- still, we're spending money to try to get results. I mean, we're talking about the results we got. We're not making claims about areas we didn't. So, again, I don't understand that question.

Q. Okay. But, again, you chose not to discuss the results you got from the Davidson study.

A. That's correct. Now, when you say that I didn't -- I chose not to, whoever chose this chose not to.

Q. I understand.

A. And I don't have any argument with that.

Q. Okay. And then if we could look at -- actually, let's pull up the summary again, which -- of the medical research, which is CX 1029, and look at the heart page again, which is page 3.

Okay. And if we could focus just on the IMT

results, if you could bring those up.

All right. So, here, looking at the Davidson results that are summarized by POM Wonderful on this chart, I believe this was done by Dr. Dreher and Matt Tupper, as they testified.

So, if you look at the Davidson high-risk results, and the IMT result there is listed as a reduction of 2 to 5 percent, okay?

So, again, my question is, is it fair to continue to advertise, as an example, to consumers a 30 percent reduction in high-risk patients, rather than switching to the 2 to 5 percent that was provided in the Davidson study, a large study, randomized, placebo-controlled, done by a renowned researcher?

So, again, is it fair to still continue with the 30 percent reduction in plaque rather than use this 2 to 5 percent?

A. I think it's perfectly right. I mean, I -- yes.

Q. Okay. And, again, did you have any discussions with anyone regarding using the 2 to 5 percent high-risk result from the Davidson study instead of the 30 percent reduction that's coming from the Aviram result in advertising?

A. No. No.

Q. All right. And if we could just look at one

more example of the advertising in this time frame, this is CX 473, and it's from the pomwonderful.com Web site, and this page was captured in April of 2009, and it's also identified as Exhibit E-2 to the FTC's complaint.

Okay. Mr. Resnick, I think this one you are going to have to look at the screen, so -- we don't have a screen shot, okay?

A. Okay.

Q. And here, you can see that the title of the document or the page, I'm sorry, is "Real Studies. Real Results." Again, there is a bar chart explaining the Aviram study, and there's also a bar chart showing results of another Aviram study with ACE and blood pressure. And this is 2009.

So, again, I'm wondering, did you have any discussions with anyone at POM Wonderful about continuing to highlight these two studies, with the use of the graphics and bar charts on the Web site, at this time in 2009?

A. No.

Q. Okay. All right. Now I want to turn to a different area, erectile dysfunction, and it's correct that POM Wonderful has funded one human clinical trial in the area of erectile dysfunction. Is that right?

A. I know we have done a study. I don't know that

that's all we've done. I think that's all. I think that's right, yes.

Q. Okay. So, it's right that there's one human clinical trial?

A. As far as I know, yes.

Q. Okay. And do you recall what the budget was for that study?

A. No.

Q. All right. Let's see, if we could show CX -- let's see what we -- 0626, and this is an email from a Christopher Forest, sent January of 2004, to an email address, hpn@insyght.com, and the subject is the POM Wonderful protocol draft. It's addressed to Dr. Padma-Nathan, and it's explaining a discussion with Dr. Liker, who, again, is the medical director of POM Wonderful, correct?

A. Correct.

Q. And it states in the third paragraph that Dr. Liker is expecting that the study would cost two to three thousand per patient and would like to keep the cost of the trial in the 100,000 to 300,000 range.

Does that refresh your recollection as to a rough range for a budget for the erectile dysfunction study?

A. No.

Q. Okay. Do you recall having any discussions with Dr. Liker that Dr. Padma-Nathan had expressed to him a concern that the study was underpowered given the budget he was to work with?

A. I think so. Yeah, I kind of recall.

Q. Okay. But was it yours and Dr. Liker's decision to sort of stick with the original budget, rather than add additional patients to the study?

A. Yes.

Q. And that's all right, because -- there's not anything necessarily wrong with that, right, because it was going to be a very exploratory, preliminary study, correct?

A. It was going to be an exploratory, preliminary study; however, there is no science about how many people you need to get significant -- statistical significance, and so we felt that this would be adequate enough to give us either comfort or not comfort that it worked.

Q. Okay.

A. Or enough comfort to either go further, feel that the results we got were adequate enough to be comfortable.

Q. To be comfortable to do further study in the area, right?

A. No. To be comfortable either to make a claim or to do -- or to -- it -- to -- to -- to be comfortable that whatever representations we were making about the study was correct, and possibly then take a look at going further in this area. I know we had an interest in -- obviously we had interest in a drug approval.

Q. Um-hum. So, even though Dr. Padma-Nathan was interested in ensuring -- I mean, one of the reasons to make sure you have enough patients, right, is to make sure that the study -- you're doing the best study you can to achieve the results you're trying to find in the data. Isn't that correct?

A. Yes.

Q. Okay.

A. That is, within the limits of budget. So, I mean, what we're trying to find and what you're trying to find for a drug approval is quite different.

Q. But you felt that with this budget and what you found would be okay, as you say, if you wanted to make a claim about the study after it was completed.

A. Correct.

Q. And do you recall that one of the criticisms in the study that was published, one of the criticisms on the face of the publication is that there were not enough people in the study and this may be the reason

they didn't achieve statistical significance?

A. Yes.

Q. Okay. And then I'd like to show you -- it's CX 0127, and this is page 2 of that document, which is a press release by POM Wonderful dealing with the erectile dysfunction study.

A. Okay.

Q. Do you see that?

A. Yes.

Q. Okay. Now, did you see this press release before it went out?

A. I don't remember.

Q. Okay. And looking at the first sentence of the press release, "According to a pilot study released," the statement says, "POM Wonderful 100% Pomegranate Juice was found to have beneficial effects on erectile dysfunction," goes on to explain what that is.

And were you comfortable with that statement in the press release?

A. Absolutely.

Q. Did you have any discussions with Mrs. Resnick, prior to the press release going out, as to the strength of the word choice for a claim or an explanation of the study results, the erectile dysfunction study results?

A. I don't recall any discussions, no.

Q. So, you don't recall any discussions with her about what POM Wonderful could say about the results of the erectile dysfunction study?

A. No. Again, that's -- you know, it was -- that's delegated to our legal people, and I was comfortable, again, with the results. I had actually -- yeah, I was very comfortable with those results. Again, this was not in a vacuum. This was done after we had done the work on animals, which is where we got very positive results.

Q. Okay. If you could turn to CX 1290, and this is another review article on -- this one is on erectile dysfunction, and it's a review by Dr. Jacob Rajfer, I guess, R A J F E R, at the Department of Urology at UCLA.

Do you know Dr. Rajfer?

A. Rajfer.

Q. I'm sorry. Rajfer?

A. Yes.

Q. Okay.

A. I don't know him. I --

Q. Have you met him?

A. I've met him twice, yeah.

Q. Okay. Have you ever talked to him about his views on the pomegranate juice study on erectile

dysfunction?

A. No.

Q. Have you read this article by him on the study?

A. No.

Q. Did anyone -- let's look at the conclusion. He's got the last couple of sentences there. "The bottom line is that daily pomegranate juice for at least 28 days did not improve one's erection regardless of whether one was in the first or second treatment group." He goes on to say, "This study highlights the fact that not all bench findings prove clinically efficacious and demonstrates the necessity of randomized, double-blind, placebo-controlled studies."

Do you recall having any discussions with anyone at POM Wonderful about this review article and Dr. Rajfer's conclusions?

A. No.

Q. So, no one brought it to your attention?

A. No.

Q. And who at POM Wonderful should be looking at scientific literature dealing with POM Wonderful Pomegranate Juice and publications that are out there discussing POM Wonderful Juice? Would that be Dr. Liker's job?

A. I don't know. I mean, who should be -- I'm

sorry. Go ahead. Ask your question.

Q. Who -- wouldn't you want someone at your company to bring these kinds of review articles to your attention?

A. Yes.

Q. And who is responsible for doing that?

A. Well, I'm not sure that we -- it would be eventually Matt Tupper, who's involved with this on a day-to-day basis.

Q. Okay. And would you expect Dr. Liker, if he is working for you as medical director, to keep up with publications dealing with POM Wonderful Pomegranate Juice?

A. I don't know. I mean, again, we don't have a set procedure to do that. Maybe we should.

Q. Um-hum.

A. But I generally see the articles that are published, and we don't pay a lot of attention to -- not that are -- articles that are published by others, because we don't know that they do the rigorous research. This was an article that -- but generally, we're -- we know most of the articles that are published. This, I would say I am not at all familiar with. I have no idea about it.

Q. Okay. All right. Now we can switch gears again

and we can go into the prostate research, and I'd like to start by showing you Exhibit CX 0568, okay?

And this is a clinical trial agreement, January 2003, between the Regents of the University of California and, again, the Stewart and Lynda Resnick Revocable Trust.

First, if we could turn to page -- oh, I'm sorry, and this is with -- it's describing -- if you look at the "Whereas" clauses on page 1, it's describing that the sponsor wishes the university to conduct a phase II study evaluating pomegranate juice in patients with recurrent adenocarcinoma of the prostate, and Dr. Pantuck is going to be the investigator.

So, this is the contract that was entered into for the Pantuck phase II study. Is that right?

A. Yes.

Q. And, in fact, if you turn to page 6, is that your signature under the "Sponsor" line on behalf of the trust?

A. Yes.

Q. Okay. And then if we can go to page 9, this is entitled "Exhibit B" to the contract and shows the study budget. So, this would have been the budget that you agreed to as part of the contract. Is that right?

A. Yes.

Q. Okay. And it calls for a budget of 341,000 for the phase II Pantuck study.

And then if you can turn to CX 815 -- oh, I'm sorry, 0815. This is a -- again, the actual publication for this study.

A. Okay.

Q. Okay. And I wanted to just direct your attention to the conclusions that Dr. Pantuck drew in the publication, which is at page 8.

You have read this study before, correct, the Pantuck phase II study?

A. Yes.

Q. Okay. And I just want to refresh your recollection as to some of the conclusions that are in here, which is at page 8, his "Conclusions" section.

A. Okay.

Q. Okay. And so, again, the study, as he summarizes, does show a statistically significant effect on PSADT, coupled with corresponding effects on prostate cancer in vitro cell growth and apoptosis.

But then he goes on to list some of the limitations of the study, which I know you discussed before. And so you'd been cautioned directly by Dr. Pantuck, is that right, not to read too much into these results?

A. I don't know that I would say it in that way.

Q. Okay. Has he cautioned you that there's not enough data to get a drug claim from the FDA based just on his study?

A. Yes.

Q. Okay. If we could show the witness CX 274, and this is an advertisement by POM Wonderful, the "I'm off to save prostates!" advertisement.

A. Okay.

Q. Okay. Now, first of all, I wanted to direct your attention to the amount of money here. The little body copy says, you know, "Man by man, gland by gland, The Antioxidant Superpower is 100% committed to defending healthy prostates. Powered by pure pomegranate juice... backed by 32" -- I'm sorry, "backed by 25 million in vigilant medical research."

And do you see the asterisk that drops down, so that the consumer is directed to look at the prostate study details at your Web site? Right?

A. Yes.

Q. Okay. And as we just saw, the study that presumably one finds when one goes to the Web site cost around 350,000. Is that correct?

A. Yes.

Q. And in your view, is it accurate to say that the

"I'm off to save prostates!" slogan in this ad means helpful for prostates?

A. I don't know what -- what it means.

Q. Okay. Let's see if this -- I am going to turn to a deposition that you had in the POM Wonderful versus Ocean Spray matter, and this is at page 151 of that deposition. Let's see if this might refresh your recollection. And you were shown the "I'm off to save prostates!" ad.

"QUESTION: What, if anything, is this ad, "I'm off to save prostates!" meant to communicate to consumers?

"ANSWER: I think this is a tongue-in-cheek approach to say that this is helpful for prostates.

"QUESTION: Helpful for prostates in what way?

"ANSWER: Well, we believe that it reduces the risk or postpones the onset of prostate cancer, okay, and we -- we have research that we're comfortable shows that -- that, in fact, has been published in one of the major cancer journals available to doctors and was the subject of one of their national meetings one year, because it was so revolutionary."

So, does that refresh your recollection as to your understanding of the meaning of "I'm off to save prostates!"?

A. Yes, my interpretation.

MS. DIAZ: Objection.

JUDGE CHAPPELL: Hold on. We have an objection.

MS. DIAZ: Objection, Your Honor. The testimony was communicated in such a way to be misleading. There is further testimony on that page where he answers, I believe, Ms. Hippsley's question now.

JUDGE CHAPPELL: Hang on. He answered the question. That's something you will need to bring up in cross. Overruled. He didn't say he didn't understand the question. He answered it.

BY MS. HIPPSLEY:

Q. And now, in the area of prostate cancer research by POM Wonderful -- sponsored by POM Wonderful, there are three additional human clinical trials, one of which is concluded, two others that are ongoing at this time. Is that correct? Since the time of --

A. At least two ongoing, I --

Q. Two ongoing?

A. There may be some other smaller ones.

Q. That are human clinical trials?

A. Yes. I'm not sure if we're doing one or someone else is doing one, but it's -- it's -- I'm not sure, but I know there are two major ones that you're talking about.

Q. Okay. Two major ongoing ones?

A. One's ongoing. One is done and one's ongoing.

Q. All right.

A. And by the way, the ones that we've done are ongoing.

Q. Um-hum.

A. The Pantuck study continues, and we continue to get very consistent and even better results.

Q. Follow-up -- he's following some of the patients that were part of the Pantuck original study?

A. Yes.

Q. Okay. Do you know how many patients currently are still part of that group?

A. No.

Q. Is it under ten?

A. I don't know, but I wouldn't be surprised.

Q. All right. And have those ongoing results been published?

A. I don't know.

Q. Okay. Now, I think we were both trying to get down to the same study. There is a study -- I'd like to refer to it as the Carducci study. This is the study that was conducted by Dr. Carducci at Johns Hopkins, right?

A. Right.

Q. And this is the study that used POMx Pills as the product that was being analyzed?

A. Yes.

Q. Okay. And he measured patients that took either one dose, if you will, of the pill versus patients who took I believe it was three times that, right?

A. Right.

Q. Okay. Now, there was not a placebo arm to that study. Is that correct?

A. Correct.

Q. Okay. And do you recall that Dr. Carducci originally designed the study to have a placebo arm?

A. I don't recall.

Q. Do you recall him requesting that you sponsor and fund the study with a placebo arm?

A. I don't recall. But, again, I wouldn't question it.

Q. Well, let's just see if we can refresh your recollection or make sure we're straight. Maybe I don't have it.

All right. So, I'd like to look at the testimony that Dr. Carducci gave in this matter, which I have in your book there. It's CX 1340, and was testimony in a deposition dated December 13th, 2010.

If you look at the deposition pagination, so

that I'm looking at page 28, it's numbered page 28 at the top, okay?

A. Yes.

Q. Okay. I just want to make sure we're in the same place. And line 17 of that deposition -- of that page. I'm sorry.

So, the question is:

"QUESTION: So what about the design of the dose study was changed?

"ANSWER: So we, in discussions with POM, originally talked about a larger study, more phase III in nature, so we had planned a randomized study versus a placebo in the rising PSA after local therapy. Based on the size and the statistical design of that study, when we completed it and returned it to the sponsor and they did their" -- continuing onto the next page -- "feasibility analysis and cost, felt that it was in a way -- felt that it was in a way cost prohibitive, and we looked at alternative designs."

Does this refresh your recollection as to POM being asked to fund a placebo arm by Dr. Carducci for his study?

A. No.

Q. Okay. And you don't recall, today, any discussions you had, say with Matt Tupper, about whether

or not to have a placebo arm for Dr. Carducci's study?

A. No.

Q. Do you recall any discussions with Dr. Kessler where he asked if you would be willing to fund a placebo arm for the Dr. Carducci study?

A. No.

Q. Okay. I'd like to now show you an exhibit, which is marked CX 1175, and this is an article from Internal Medicine News, and I wanted to -- first of all, have you read this article yourself?

A. No.

Q. And you've never seen this before?

A. No.

Q. And, again, no one brought this to your attention?

A. No.

Q. Okay. Well, I just want to turn to page 2 and look at it now, then. And first, I wanted to direct your attention to the third paragraph. This is summarizing Dr. Carducci's presentation of his extract study at a conference. The article is dated February 2011, and the conference -- I don't think we have a date. Okay.

So, in the third paragraph on page 2, it states that, "During his presentation, Dr. Carducci

acknowledged that the study was limited by the lack of a placebo," and then noted that there are reports in the literature of other drug studies where the placebo can slow PSADT.

Have you had discussions after the study was concluded about this limitation that Dr. Carducci is noting?

A. Yes.

Q. Okay. And what has been the nature of those discussions?

A. Generally, those discussions were about if we want a drug approval, we're going to have to have a placebo effect.

Let me also say that there's never been a -- one of these tests that we've done that after the fact we were happy with the way we designed it. You never do them right, okay? That's what I've learned. And I'm pretty naive at this, and so the reason we -- and so basically they're always criticized.

Q. Okay. But Dr. Carducci did -- I mean, he's, again, a very renowned, you know, researcher. Obviously, you commissioned and sponsored his work, and in his study design, he did recognize the need for a placebo at the time he was designing his study.

A. Well, in terms of if you want to get a drug

approval. He's, you know, used to dealing with drugs, but there are limitations of budget. I mean, when you talk about $350,000 like it doesn't mean anything, it may not mean anything to you, but it's my money.

Q. Okay, but --

A. There are certain limitations on where -- what information we think we want to get, what we want to spend for it, and then we decide if we want to go further.

Q. So, what was the purpose of Dr. Carducci's study, then?

A. To validate the original study and so that if people were questioning -- I mean, this issue of somewhat -- people tend to be cynical about all research done on natural products, because most of the research is not done properly. We've tried to set a or we have set a different standard.

And to the extent that we thought, well, people might be critical because we did so much work at UCLA, we thought, well, what is the most outstanding cancer institution that people look at in the world? It's Johns Hopkins. And we said, "Let's do the same thing there, have more validation, and then we can then decide what we're going to do after that."

It was explained to me over and over, and I had

asked at least a hundred urologists, and up to maybe six months ago, they all told me, well, there is absolutely this doubling time that it's a standard and it's all well accepted and it's absolute, and if you measure it against this internal doubling time, that that will be adequate.

Now, they bring up, well, maybe you should have used a placebo, because there seems to be one research report that said a placebo had an effect, and I -- I haven't seen that, but I've heard about it. So, I mean, again, I can understand a placebo having an effect on something that's mental, I mean, where you think there's a psychological effect, but on PSA, it's hard for me to see how a placebo is going to have an effect on something that's internal to you and you just deal with it in an emotional way.

Q. I have a couple follow-ups on that, then.

So, we saw in the 2006 published study by Dr. Pantuck that he did raise in the publication, in 2006 -- so you were aware of it at that time -- that one of the limitations was lack of placebo, correct?

A. Right. But, again, this is all -- this is a doctor who's used to doing things for drugs, drug approval. We are now doing one with a placebo effect, because we're looking for a drug approval.

Q. What were you looking for when you had Dr. Pantuck do the original study?

A. Whether or not pomegranate juice had an impact on helping to prevent or helping to prolong the oncome of prostate cancer, and all we wanted to do was find the truth. Did it work? After we did test tube work -- you know, prior to this work, if I remember now, we probably spent a million -- over a million dollars originally on animals and in -- in vitro.

Q. Um-hum.

A. So, we had a strong feeling that this was going to work, and as a matter of fact, this first study was brought -- that the ---one of the doctors who worked on the in vitro and the rabbit study -- I think it was mice or rabbits, I forget -- I think it was mice, came to me and said, "We should do this on humans. This is the best result I've ever seen. There is nothing that has had this effect." So, they recommended that we go ahead and do it.

Q. Right. But after Dr. Pantuck explained the limitations in his "Conclusions" section of his study, then when you moved forward with research, again, and Dr. Carducci had designed his study to have a placebo, I mean, I understand the budget issue, but I guess, with the limitation, what was that study -- you mentioned

adequate. What would that study then be adequate for without the placebo?

A. It would be a second study.

Q. I'm sorry?

A. It would be another study to validate the first study. So, in other words, it was a validation. I mean, you're saying you need two double-blind placebos. As far as I was concerned, at that point in time, this study was as good as one with a placebo for what we were looking for and still is.

Q. And what are you looking for?

A. We're looking for whether or not pomegranate juice has an effect or what effect it has on prostate cancer.

Q. Okay. And who told you that it would be adequate for that purpose without a placebo? I think you mentioned that you were told, until recently, that the placebo was not necessary.

A. Well, every -- every urologist I talked to, and the ones who are -- you know, Dr. Pantuck, for one, who said this is a -- this -- Dr. -- actually, his senior, Belldegrun at UCLA, that you could measure, you know, against a person's doubling time, and it would be accurate, accurate being accurate for the information, maybe not adequate for a drug approval. But, again, we

weren't looking for drug approvals.

Q. Right. I think -- hold on.

Okay. So, I asked you what you were looking for, and the answer was we're looking for whether or not pomegranate juice has an effect on prostate cancer. So, is it your testimony that Dr. Pantuck and Dr. Belldegrun said that these studies would be adequate for that purpose without a placebo?

A. Certainly Dr. Belldegrun. I don't know if I had that specific discussion with Dr. Pantuck. Actually, that -- that study was designed -- I mean, was recommended by Dr. Belldegrun, who's Dr. Pantuck's boss, who said that's the way we should do the study. Again, I am not a doctor.

Q. Right.

A. But this study was absolutely accurate, and having a placebo is not going to have any impact, but we're doing one with a placebo to satisfy the scientists and get eventually a drug approval.

Q. Right. But that they were adequate to show -- the purpose was to show an effect of the pomegranate juice on prostate cancer, that was the purpose, let's say, of the phase II Pantuck study, in your view?

A. Yes.

Q. But, again, Dr. Pantuck's conclusion in the

published study was that further research is needed to prove the validity of these tests and to determine whether improvements in such biomarkers, including PSADT, are likely to serve as surrogates for clinical benefit.

So, he's not saying that his study establishes that pomegranate juice will have an effect or prevent prostate cancer, correct?

A. I think you're going to have to ask him about what he's saying.

Q. Okay.

A. I can't interpret that.

Q. But you think you had discussions where he told you that it would -- his study did have a conclusion that the pomegranate juice was beneficial to prevent prostate cancer?

A. I don't know. Again, you're using words --

Q. Well, I think that was the word you used.

A. Okay.

Q. It had an effect --

A. What I'm saying is to me --

JUDGE CHAPPELL: Hold it. Hold it. One at a time.

BY MS. HIPPSLEY:

Q. Let me rephrase it.

Did you have discussions with Dr. Pantuck that his studies showed that pomegranate juice had an effect on prostate cancer?

A. It had an effect on lowering the PSA, and if you believe that PSA is a marker for prostate cancer, yes, and most urologists believe it's a marker for prostate cancer.

Q. And did he specifically correlate the PSADT for you to an effect on prostate cancer, or did he warn you, actually, that that is not the view held by most urologists?

A. I don't believe you're right. I don't think that -- I think that is the view held by most urologists. I don't think it's the view yet accepted by the FDA.

Q. Okay. If we could go back to that CX 1175, which was the article on Dr. Carducci's presentation, and if we look at page 1 of that Internal Medicine News article, and there's a -- there's a fourth paragraph where he reports or the journalist reports that nearly 20 percent of the population that was taking the POMx Pills, however, had their PSADT shortened, leading to treatment discontinuation.

Has anyone pointed this out to you before today, that there was this result in the dose study where 20

percent of the people that were participating and taking the POMx Pills had to stop participating in the study because their PSADT was actually shortening?

A. What do you mean, "shortening"? Oh, the doubling time, sorry.

Q. Right, the doubling time.

A. I do know that certain people dropped out for other therapies.

Q. Because of the shortening of the doubling time?

A. For whatever reasons.

Q. Okay. Did you have any discussions with Dr. Carducci about the amount of people that had to discontinue the treatment because of the PSADT shortening?

A. No, but this wasn't surprising.

Q. Okay. And how it would affect an analysis of the conclusions of the study?

A. Again, they're doing the studies, and they're the scientists, and I look at what their conclusions are.

Q. Okay. And then going back to page 2, if you look at the second to the last paragraph, there's a statement that is attributed to Dr. Carducci. "Ultimately, the decision to use pomegranate extract or juice is a matter of discussion between physician and

patient."

Is -- do you see that one?

A. Yes.

Q. Okay. So, if this study is published, are you planning to use it in marketing or advertising for POM Wonderful, or is POM Wonderful planning to use it?

A. I don't know. I mean, again, it's totally consistent with our prior studies, so whether or not we include this in an ad or not is -- is -- I guess we'll see. I don't -- I don't know. I don't know where we're going with our advertising.

Q. Now, with Dr. Carducci's study, do you recall that there was a point in time when Johns Hopkins was going to terminate the study unless POM Wonderful received what's known as an IND, investigational new drug approval by FDA?

A. I know that we had some issues with Johns Hopkins about some technicalities. I don't remember the specifics about them.

Q. Okay. And do you know whether or not that IND was obtained from the FDA by POM Wonderful?

A. I don't know. I know that they finished the study.

Q. Okay.

A. Or they finished the original part of the study,

and they're continuing, I believe, with -- with the participants that are still on it.

Q. Okay. And now, are you familiar with a study that Dr. Pantuck designed as the principal investigator that is a study -- it's called a "Preprostatectomy Study," where the tissues of the patients -- they'll drink -- well, I guess, they will be on a POM product, and then they will have a prostatectomy, and then the tissues will be analyzed for an effect?

A. Yes.

Q. Okay. And do you know which product is being used in that study?

A. No.

Q. But it is a POM Wonderful product?

A. Yes.

Q. Okay. And isn't it true that for this study, that you -- that POM Wonderful and UCLA did not reach an agreement on the contract, and so Dr. Pantuck is not the center for the study going forward?

A. I don't know.

Q. And you don't recall anything about an issue with who would obtain the intellectual property rights in that study?

A. No. All I know is that UCLA, even though we do a lot of work with them, is extremely difficult to deal

with. So, I'm not surprised.

Q. Okay.

A. Their legal department, particularly.

Q. Okay. Did anyone bring to your attention that this was a hurdle, that you had to make a choice whether or not you were going to sign a contract with UCLA where you would relinquish intellectual property rights to UCLA so they could go forward with the study?

A. I don't know, but generally, we've asked that we keep the intellectual property rights.

Q. Okay.

JUDGE CHAPPELL: We're approaching two hours today. How much more time do you think you'll need?

MS. HIPPSLEY: Possibly an hour.

JUDGE CHAPPELL: Didn't you tell me an hour and a half when we ended on Friday?

MS. HIPPSLEY: I said maybe an hour and a half to two, but there has been lengthy discussion, and -- I mean, it might be as short as 45 minutes, but I don't want to underpromise again.

JUDGE CHAPPELL: Go ahead.

MS. HIPPSLEY: Okay.

BY MS. HIPPSLEY:

Q. Okay. So, on Monday, and I think we have mentioned again here today, that POM Wonderful is trying

to get drug approval from the FDA in the area of its products in relation to prostate cancer. Is that correct?

A. I didn't -- I say that we're -- I don't know what you -- we're thinking about it. I don't know --

JUDGE CHAPPELL: Hold on a second. Hold on a second. When someone stands up to object or when someone else talks, can you hold your answer, please?

THE WITNESS: Okay.

JUDGE CHAPPELL: By what you were starting to say there, it appears to me that you don't understand the question, so it is not going to help any of us if you answer a question you don't completely understand. Am I correct that you didn't understand that question?

THE WITNESS: I think I understood the question. I didn't understand how to answer.

JUDGE CHAPPELL: Why don't we have her restate the question, then.

Go ahead, Susanne.

(The record was read as follows:)

"QUESTION: So, on Monday, and I think we have mentioned again here today, that POM Wonderful is trying to get drug approval from the FDA in the area of its products in relation to prostate cancer. Is that correct?"

MS. DIAZ: Objection, Your Honor. Misstates prior testimony.

JUDGE CHAPPELL: The question asked, "Is that correct?" I'll allow it. Overruled.

THE WITNESS: We are not, as I -- as far as I know, we are not dealing with the FDA directly in terms of setting up what is going to be necessary for a drug approval. We are trying to do research in the way that we can approach them when this placebo study is done and then figure out what would we do next to get a drug approval.

Our plan is to try to get a drug approval according to what -- they will find it necessary what research we have to do to be necessary to get that approval. We're certainly not going to do an approval if we have to do a research that's going to cost us $700 million and take seven years or ten years.

BY MS. HIPPSLEY:

Q. Okay.

A. That's not something that we're capable of doing.

Q. All right. And to just clarify, we are talking about the area of prostate cancer. Is that correct?

A. Yes.

Q. Okay. And would the same answer apply to the

area of erectile dysfunction?

A. Yes.

Q. And what products -- what POM products are you interested in seeing whether or not the research will then lead to the steps that you can seek drug approval from the FDA?

MS. DIAZ: Objection, Your Honor. My apologies. I believe this is an area of confidentiality that we have expressed previously with the FTC. Commercial interests here may dictate then a discussion on specific products, and we are going to request they be in camera.

JUDGE CHAPPELL: All right. You two have a discussion, and if you disagree, let me know. So, talk, now.

(Pause in the proceedings.)

MS. HIPPSLEY: Okay. I'll withdraw that question.

JUDGE CHAPPELL: Thank you.

BY MS. HIPPSLEY:

Q. Is there a business reason for working to see if the research will result in your ability to then take these next steps to get drug approval from the FDA?

A. There's a business reason and a -- yes, there's a business reason.

Q. Okay. And what is it?

A. The business reason is that to the extent that we prove satisfactorily to doctors that pomegranate juice or extract works, the problem is that there's a huge amount of fraud out there in the industry, where people are selling what the consumer believes is pomegranate juice, such as Tropicana -- such as Minute Maid's Pomegranate-Blueberry Juice, which essentially is 99.6 percent apple and pear juice, and people buy it thinking it's going to do some good for them, and obviously, it has no pomegranate in it.

So, part of this is to make sure that the research that we've done, and if we're there to help people, that they do get the help that they're expecting. So, until the FTC and FDA cleans out this area, which it doesn't seem to be terribly interested in, or we're successful in our lawsuits against them, that we have to have a product that people know what it is, and, therefore, that's why we want to get a drug approval and make sure that they get the right product, which is, in fact, real pomegranate.

Q. And how will the FDA process ensure that the consumer gets the right product?

A. By doing something about the labeling laws and making it clear what's in a product.

Q. You mean so that if you are successful in the

FDA, you could label your product to distinguish it?

A. No. We're not dealing with the FDA right now, because the FDA is not going to change their -- their labeling requirements, even though we think they are totally counter-productive, but we are fighting it out in court for that reason.

Q. But I'm trying to understand how you're linking up the FDA -- the business benefit from getting the FDA approval, given this paradigm you just testified --

A. If people were selling pomegranate juice that was, in fact, pomegranate juice and -- then the potential individual who was buying it knew that they were getting pomegranate juice, I'd be less concerned. Also, all the research is done with our pomegranate juice and the process that we go through, which we know is effective.

So, we want to make sure that people get an effective dose of what they're buying. So, the only way we can do that is to get a drug approval and, therefore, either have it over-the-counter or have doctors prescribe it. I mean, this prostate cancer is a very serious issue, and if we can do some good here, I believe that I can do more good than all the money we spend on charity.

Q. Okay. But the -- the fact of whether or not the

consumer is getting 100 percent pomegranate juice, you are able to do that right now on your label, right?

A. Right, but people think of pomegranate juice as pomegranate juice, and when they buy another product that the package good company is trying to sell to them, knowing that they think it's pomegranate juice, without any pomegranate juice in it, then that individual does not get the benefit that he thinks he's getting.

Q. Okay. And so, again, my question is, how will the FDA approval of your products, if you're able to obtain it, change that paradigm? Are you going to be able to put something different on your label that distinguishes it?

A. No. We'll have a -- we -- we still haven't decided yet, but we may end up where they prescribe it or it's over the counter, so they know specifically what it is and people won't be able to make that same claim.

Q. So, it will be over the counter and, what, you will be able to put an indication for use, in other words, on the product?

A. I don't have -- we haven't gone that far.

Q. And what is your understanding of what the drug approval process would allow you to say about your product vis-a-vis the marketing?

A. I don't -- I don't know that either. We haven't

gotten that far. That's up to the FDA.

Q. All right. And then in your deposition that we took about a month ago -- and I think I'll just go to it so we can refresh your recollection and then I'll ask a question.

So, on page 271 of that deposition, you gave an answer at line 21 that, you know -- I had asked a question about FDA health claims, and you said you had "looked at that opportunity, but then you're looking at drug claims, and you're looking at botanical drug claims, and, again, it's a little mushy, and even as of today, I'm not clear. What I'm saying is everybody tells me that if we get a positive result on this next 200-people report with -- on prostate cancer and it's statistically significant and we have a placebo, that we can't get a drug claim, cannot get a drug claim."

Do you recall that testimony?

A. Well, we can't get a drug claim just based upon the research done to date, including that research.

Q. Including the 200-person study --

A. Right, that we have to go further.

Q. I'm sorry.

-- that's ongoing?

A. Correct.

Q. Now, who told you that you could not get a drug

claim based on the research, including that study to date?

A. I -- most everyone. I mean, they just say they don't think that's enough, that you would need another -- and basically, with the FDA's position that you need two double-blind placebo controls for a drug, it seems to me that seems correct, unless they are going to make an exception, and I don't have a lot of confidence that they will make an exception.

Q. Okay. And -- but you don't believe that that's a correct analysis. Isn't that right?

A. That what's the correct analysis?

Q. That you will not be able to get a drug claim.

A. Oh, I think we will eventually get a drug claim. I don't think we can get a -- I'm saying I believe that it would be very hard to get a drug claim after we're just finished with this -- with what we've done in the past and the next double-blind placebo control that we are doing with the 200 patients.

Q. Okay. And I think at the time of our deposition, you went on to say that -- that "we can't get a drug claim."

I said, "Okay."

And answer: "I don't believe that. I think we should be able to get a drug claim. Now, I think the

chances are 20 or 30 percent, but everybody says there's no chance, and I think hopefully even they're logical."

So, you're still hoping that you may be able to, I guess, persuade the FDA to provide a drug claim based on the research through the 200-person study?

A. Yes, but after this trial, and I have now sat through a few of the testimonies of sort of FDA-type people, they seem to have a very strict process, and the logic doesn't seem to enter into it too much. So, I'm getting a little less confident that we will get it without an additional research project.

Q. Okay. And then I think I had just mentioned in the testimony, early on, you did think about getting FDA approval for a health claim for pomegranate juice. Is that correct?

A. Yes.

Q. Okay. And why didn't you go ahead and pursue that?

A. Because it was very unclear how to go about it, and it just -- we kind of just dropped it.

JUDGE CHAPPELL: All right. We are going to take a break here. We will reconvene at 1:00 p.m. We're in recess.

(A brief recess was taken.)

JUDGE CHAPPELL: Back on the record, Docket

9344.

Next question.

BY MS. HIPPSLEY:

Q. Mr. Resnick, if you could look back again at the medical research portfolio, which is CX 1029, and I'm going -- okay, and I am going to start on the second page of that document, which is the overview, CX 1029, page 22.

Okay. And first of all, there are various areas of research listed here, and one question I had was, given, as you've stated, the cost of research, what was the business decision behind researching this large variety of diseases and areas, as opposed to focusing the research budgets in the areas that you would choose to have most interest in, for example, prostate cancer?

A. This isn't about my interests. I mean, this is about what pomegranate can do as a healthy alternative to other -- other methods of health in terms of, you know, of a healthy lifestyle. So, basically -- which, again, the whole concept here was that we went into this with the idea of, you know, going back to six or eight thousand years of mythology that talks about this being a healthy product, and we wanted to do the research specifically where it did the most good.

So, you never know -- and when you're starting

off in research, you don't know what's going to happen. I mean, it's kind of like, you know, half the stuff goes nowhere and half the stuff starts going somewhere, and you just -- you see where it -- based upon the research you've done and the results you've gotten, it opens doors to potentially other factors. So, we do this in a relatively broad way.

Q. Okay. And then in 2006, when you got those first results with Dr. Pantuck, for example, was there any interest then in focusing the budgets directed more towards an area where you -- you know, you did have good research coming along and you wanted to, as you say, get to the end and find out what the actual truth was for prostate cancer, so focusing more of your dollars in that area?

A. We didn't believe there was any need to focus more dollars in that area, that we were getting the information we needed, and we were budgeting for that amount. We just didn't believe that it was -- that we would get any more information from a placebo arm than not having a placebo arm. That's information.

We were not -- maybe now, after the fact, since the -- since -- I think since this study has been so positive, as I now think about it, that there has been more cynicism about it, and people are now throwing up,

"Well, you didn't do a placebo," because doctors tend -- and I can't blame them -- to be cynical about natural products. That's not what they're used to.

Q. Okay. Okay. And then if you look on this page, the current plan of action, which is sort of the text that runs down the center of the page for each of the chronic diseases, if you look at the "Type II" diabetes column, and then across, the statement is, "Finish current study, then launch PR effort to convince diabetics that POM Juice is safe." And this document was on January 13, 2009.

Do you know what current study that is referring to?

A. No.

Q. Okay. And has POM Wonderful launched a PR effort to convince diabetics that POM Juice is safe?

A. Not to my knowledge.

Q. Okay. And then if you go down, again, following the "Disease" column, to the "Urinary Tract Infection" line, again, it says, "Finish current study; publish & aggressively communicate results."

Do you know what current study that's referring to?

A. No.

Q. And do you know whether POM Wonderful has

aggressively communicated results in the area of urinary tract infection?

A. I don't think we've done anything. Again, this was not my document.

Q. But you saw this document, correct?

A. I saw the document, but I didn't study it. I mean, I'm looking at this document, for me, based upon, you know, the budgeting, what we spend, what we have left to spend, and then what we might spend going forward.

Q. And isn't also part of the meeting you had to develop a current plan of action?

A. Yes.

Q. Okay. All right. And then on the next line, "Livestock," it states that there's an immunity study and consider commercializing POMx as feed additive.

Has that occurred?

A. I -- I don't -- I know that we've done a study -- again, some of the -- okay. Some of the to-dos may be based upon other research coming out. If the research didn't come out positive or didn't -- wasn't -- wasn't positive enough or didn't end up with a big enough benefit, we're certainly not going to make any claims about it.

Q. And here I'm asking whether or not POMx has been

commercialized as a feed additive for cattle feed.

A. I don't think so.

Q. Okay. And then under "Sports Performance," the plan of action for 2009 was "Finish current study. If positive, aggressively publicize results. No future research."

The company has, in fact, launched a POMx sports performance product. Isn't that correct?

A. Yes.

Q. Okay. And has aggressively publicized the results of a study in conjunction with the launch of that product. Isn't that right?

A. I don't know if you would call it "aggressively." I think we've done some small amount, and basically, I think, have done very little research, although we have published the results of this positive study.

Q. Okay. And if you can turn to the page within the document, which is CX 1029, page 25, and it's labeled "Other Cancers."

A. Yes.

Q. Okay. And if we could focus on the bottom half of this page, the portion called "Where do we go from here?" and the column "End Game Scenarios" and the Section A.

A. Okay.

Q. All right. And the statement is, "Pursue clinical research on subset of high-value/high-priority cancer types, with an eye toward Marketing/PR," et cetera.

What, in your view, are "high-value/ high-priority cancer types"?

A. Well, originally --

MS. DIAZ: Objection, Your Honor. Lacks foundation.

JUDGE CHAPPELL: He's been asked what, in his view. I'll allow that. Overruled.

THE WITNESS: My view is the researchers who work on this -- and early on, we tested a number of cancers in vitro and found that pomegranate juice worked well with them. One included breast cancer. And a lot of the doctors and scientists believe that there's a -- some kind of a relationship between the breast and the prostate, and so that's an area we've looked -- we are now doing some minimal research on to see what we could establish there. I know that is one cancer.

The others, I am not aware of. I just happen to know that particularly.

BY MS. HIPPSLEY:

Q. Okay. And that was one of my questions.

Currently, there is research ongoing in the breast cancer area sponsored by POM Wonderful?

A. Yes. And let me also say that we had positive results on POM Juice against breast cancer in vitro -- in vitro, and we haven't discussed that at all, because we felt that that was not adequate, although most other people would have made a big deal about that. And that happened ten years ago.

Q. Okay. Because, in fact, you do need the human clinical research follow-up to basically reinforce your in vitro or animal studies. Is that your view?

A. That's my view. It's not other people's view. I mean, that's our -- that's the standard, and we believe that we set a very high standard, and we are not making any claims that we don't have adequate scientific information for.

Q. Okay. And to make claims, POM Wonderful waits until it has human clinical research. Is that what you're --

A. Or are comfortable that the research we've done is all we can and adequate and the information is important for people to have.

Q. And are the studies that are ongoing currently human clinical studies in breast cancer?

A. They are human studies. I don't know that you'd

call them "clinical." I mean, there may -- I think right now we're looking at bioavailability and if it ends up in certain areas of the breast, and so I -- I know we're doing very basic research right now. There is no clinical trials.

Q. Okay, thank you.

Okay. And if we could turn to page 26, and this is the page labeled -- excuse me, labeled "Type 2 Diabetes/Glycemic Control."

First, if you look at the section "What we have learned?" under the column "Human," and you will see there is two Aviram studies and then there's an unpublished study, 2003, "POM Juice Glycemic Index is Higher Than Grape and Blueberry Juice By 15%."

A. I'm sorry. Where is that?

Q. It's the third study listed under "POM Studies" in the "Human Research" section.

A. Oh, okay. Yes, I see it.

Q. Okay. And it refers to an unpublished study, with a date of 2003, "POM Juice Glycemic Index is Higher Than Grape and Blueberry Juice By 15%."

Do you recall receiving information about this glycemic index study?

A. No. These studies -- no.

Q. Okay. So, Dr. Heber has not discussed a study

about POM Juice glycemic index in relation to other juices with you?

A. Well, I know that we have discussed the glycemic index. Quite candidly, I have no idea what that has to do with diabetes.

Q. All right. So, you have had no discussions with anyone at POM Wonderful about the glycemic index and its relationship to diabetes?

A. Correct.

Q. Okay. And then if you look at the "Assessment" column under this "Where do we go from here?" write-up, and A is, "An end game, confirm that POM Juice is safe." And then if you look at the assessment, there's listed challenges, and again, there's a bullet point, "POM Juice has the highest Glycemic Index, a potential concern for diabetics & their dieticians."

That doesn't refresh your recollection about any discussions about that topic?

A. No. No, I mean, I know that we've discussed it, but I don't remember specifically, so no.

Q. Okay. So, you don't remember having any conversations with the scientists, let's say Dr. Dreher or Dr. Liker, about a concern for diabetics, given the glycemic index level for POM Juice?

A. No. The only -- no.

Q. Okay. And did -- have you had discussions about the next bullet, that "POM Juice is also high in sugar and calories," and its relationship to diabetics?

A. Well, it is what it is, and basically, the calories and sugar are about the same as other juices.

Q. Okay. But, again, in the context of discussing whether or not the juice can be recommended to diabetics, have you had any discussions in that context?

A. Not about -- not in the context of sugar and calories.

Q. That's what I was asking. Okay.

And then if you look at the next bullet (as read), "4 ounces of 100% juice is defined as a 'single serving' by the American Diabetic Association and Smart Choices Labeling Program."

Again, did you have any discussions with anyone at POM Wonderful about this American Diabetes Association single-serving definition and the use of POM Juice by diabetics?

A. No.

Q. Did you have any concern or discussions about whether or not the company should disclose in its advertising that diabetics -- that a single serving would be half the daily dose that POM Wonderful advertises, four ounces instead of eight ounces?

A. No.

Q. Did you discuss with Mrs. Resnick any concern about marketing to consumers that it's eight ounces daily and having -- and not having a warning for diabetics who are drinking POM Juice?

A. Well, I don't think -- I certainly wouldn't have worried about it, because it's -- these are the standards as set out by the Diabetic Association, so diabetics know about it. So, no, I don't -- I don't think this is -- I wouldn't worry about it today.

Q. Okay. All right. If we could turn to page 28, and it's labeled "Cold and Flu/Immunity." That's the topic, okay?

And starting with the section on -- labeled "Humans," under "What have we learned?" it describes two studies that were done with POMx Shots versus placebos, and let's start with Study A, which was done at the University of Texas, n equals 460 patients.

Do you know if this study was ever published?

A. I don't know.

Q. And the next study is Study B, POMx Shot versus placebo, University of Virginia, with 150 subjects.

Do you know if that study was ever published?

A. No, I don't know.

Q. Okay. If you look at the top, under the two

studies, it states that one was submitted and one unpublished.

Does that refresh your recollection?

A. No.

Q. Okay. And did you ever have any discussions with Mark Dreher about attempting to get these studies published?

A. I don't recall any, but I may very well have. I think it's fairly back -- you know, historical. I mean, this isn't -- this must be three or four years old, I would think.

Q. Well, this is in 2009, the document itself.

A. Okay. Well, I don't recall any. I may very well have, but I don't recall it.

Q. Okay. And just to make sure I'm clear, so did you ever discuss with Dr. Dreher trying to get the results of a cold and flu study published?

A. No.

Q. And do you recall whether or not he ever expressed to you that he had submitted one of the cold and flu studies for publication but had not been successful?

A. No.

Q. Okay. Or with Dr. Liker, did you have any discussions to that effect?

A. Again, I don't recall any. I may very well -- I'm sure we discussed this, because I remember doing the study.

Q. Right, the large studies.

A. I remember the rather large study, but the way, at least, it was explained to me is unfortunately, the results were not conclusive, because that was a year that there was very little colds and flus.

Q. Okay. And do you know, roughly, how much these two large studies cost? Would it be in the area of $4 million?

A. I don't remember.

Q. Do you recall, would it be in the area of millions of dollars?

A. I don't remember. I remember them being expensive, I'd say, but I don't remember how much.

Q. Okay. And would the money spent on these studies be included in the, for example, ad that we looked at that had the "backed by science $32 million" figure?

A. Yes.

Q. Okay. And if we can look at page 29, this page is labeled "HIV/AIDS," and do you know whether it's -- here in the document, there's ongoing studies, and it listed one study by the AIDS Research Alliance with 80

patients.

Do you know whether that study has concluded?

A. No.

Q. Okay, because this is in 2009, and it is now 2011. You are not aware of any results of a study --

A. No.

Q. -- on HIV or AIDS? Correct?

A. Correct.

Q. Okay. Now, if we could look at page 31, and if we could start by looking at the "Human" -- again the "Human Studies" section, under "What have we learned?" and let's start with the Howell study in 2004. It was a POM Juice versus cranberry cocktail study. It states that the results were not promising. It gives some summary there.

Do you know if that study was published?

A. I don't know.

Q. And you don't recall reading the results of such a study?

A. I remember generally that the results, at least the -- because I remember the investigator felt that it had an impact, but it didn't show up on the studies because of the way we did the study or something. So, that's all I remember about it.

Q. All right.

A. But this was one of the original studies we did, as far as I -- this must go way back, or at least the original work that we did on --

Q. Okay.

A. -- on urinary tract infection.

Q. All right. And if you look at the Howell 2008, Study 1, again, there's a bullet there, "Results: POM Juice does not prevent bacterial adhesion."

Do you know whether that study was published?

A. I don't know.

Q. Okay. And looking down at Study 2 for 2008 by Dr. Howell, do you know if that study was published?

A. I don't know.

Q. Okay. And then if you look at the "Where do we go from here?" Section A, and if you go to the assessment, it states there, "Not worth pursuing. Even though research suggests a possible advantage over cranberry, they already 'own' the UTI space and will fight hard to keep it."

Do you recall any discussions about whether to do further research in the UTI area?

A. I remember some discussions about it, but I don't remember them specifically.

Q. Do you recall discussing that it was not worthwhile because the cranberry juice companies already

owned the space in that area of UTI disease?

A. I would agree -- I would agree with it.

Q. Okay. So, then, it wouldn't be worth researching. Is that fair to say?

A. Or to make any claims, you know, just basically there's a product that seems to do okay, and we just want to pick our areas that we think we should focus on, where we can do the most good.

Q. Okay. And if you can turn to the next page -- actually, strike that.

Page 36, which is the page on skin care. Do you know whether the studies, the four studies that are listed under "Human Studies" there, have been published, the POM studies -- I'm sorry, not the non-POM study, obviously, you wouldn't know, but do you know if the three POM studies have been published?

A. I don't know.

Q. And has POM Wonderful brought to market a skin care product?

A. No.

Q. And why is that?

A. Because we're not in the skin care business.

Q. Okay. Did you pursue whether or not that would be a feasible product for a while?

A. We did.

Q. And there was a determination that it would not be feasible to bring a POM skin care product to market?

A. That's correct, although we believe it works well. We just didn't believe that it was going to sell.

Q. And works for what?

A. Acne, and my wife swears by it for skin care, but then she swears by every new product for at least six months, and then it's on to another new product.

Q. Okay. And do you know whether or not the research that you've conducted in the skin care area is also included in the research dollar total that appears in consumer advertising?

A. I believe it is.

Q. And then turning to the next page, page 37, and it's labeled "Authenticity." And if you look down at the assessment, it states, "Our highest priority."

Can you explain to me, first of all, what authenticity research would be about?

A. Well, as I say, when we started selling pomegranate juice, it became quite successful. People also started selling pomegranate juice or labeled as pomegranate juice, which when we tested them I think about five or six years ago, six or seven, we tested ten juices, two from California and -- well, two from California pomegranate juice, and -- one of them was

ours, and the rest was around the world, and even some others from the U.S., and basically only ours had -- maybe the other one had 100 percent, I'm not sure.

But, at best, two of them had 100 percent pomegranate juice which were being sold as 100 percent; two of them had no pomegranate juice in them whatsoever and were being sold as 100 percent pomegranate juice; and the rest we determined were not -- were very, very diluted. So, we tried to put a test together for authenticity so people wouldn't be selling apple juice or carrot-colored water and calling it pomegranate juice.

Q. And is part of the research to figure out a standard by which to measure POM products -- a standard that can be used in the industry to assess the amount of pomegranate agent, if you will, in these products?

A. Yes.

Q. And that's part of the authenticity research?

A. Yes.

Q. Okay. And is this research also included in the dollar figures in the advertising?

A. I would assume so. I'm not sure.

Q. Okay. Okay. And then if we can turn to page 39, and this page is labeled "Bioavailability." Okay?

A. Okay.

Q. Okay. And if you can look at the fourth Heber study, 2008, unpublished, "POMx Combined With Dairy Products Results in Decreased Ellagitannin Bioavailability by About 20 Percent."

Do you know why that study was not published?

A. Well, that was a study that we did, as far as I remember, to decide whether or not we were going to try to put -- come out with a drink that had -- was also a -- potentially had some dairy products in it and whether it would affect the efficacy of the pomegranate juice. That was our concern.

Q. Um-hum.

A. So, this wasn't -- I mean, again, no one would have stopped this from being published. I just don't know if people were interested.

Q. Okay. And POMx is combined in a yogurt bar. Isn't that correct?

A. That's correct.

Q. Okay. And is there anything on the packaging of that to indicate the bioavailability or reduction based on Dr. Heber's study that it decreases the bioavailability of the tannins?

A. Well, that assumes that that does reduce the bioavailability, which I'm not sure that assumption is valid.

Q. Dr. Heber's conclusion --

A. No, no, his conclusion is valid, but I don't know what -- how much yogurt is on that bar compared to the amount in it, and I'm sure that the bioavailability is what we -- what we say it is.

Q. Okay.

A. It's one thing to mix it with yogurt, you know, and have three tablespoons of this and eight tablespoons of yogurt, and it's another thing to have a bar which is 80 percent something else and maybe 10 percent yogurt and say that that reduces -- you know, so if it reduces it by 20 percent versus 5 percent versus 1 percent, I think is reasonably de minimus.

Q. Has there been any testing to understand when POMx is used in products that contain dairy products, how it affects the bioavailability of your various POM products, let's say the POM Tea -- I'm sorry, the POM Coffee or --

A. I think we did do that on the POM Coffee, from what I understand.

Q. And do you know how that came out?

A. I think that it more or less did what we said it did.

Q. And what about mixing the POMx with smoothies and these recipes that are offered on the Web site? Is

there any information also provided about the interaction with dairy that Dr. Heber found?

A. No. I don't know. Again, I have never seen a Web site.

Q. And you don't see a need to tell the public about Dr. Heber's study and the effect if they put it into their dairy products?

A. No. I think if I was to conclude everything you wanted me to, that we would have to put -- every particular product we have, we would have to have a little book that we send to everybody.

Q. Okay. All right. Turning to page 40, which is the "Drug Interaction/Safety" page, as labeled, and I wanted to direct your attention to the animal studies here first, that there are listed, under "Drug Interaction," three non-POM studies, published, and the conclusion of these published animal studies was that pomegranate juice triggers drug interaction in rat models, specifically with anticoagulant drugs.

Do you see where I was reading from, for the animal studies?

A. No.

Q. On the "Drug Interaction" page?

A. Well, I see the drug interactions, but just tell me where it is.

Q. Okay. And then under the "Animal Studies" column, there are seven studies?

A. Oh, I see where you are.

Q. Okay. If you could just look over that section on the three non-POM studies.

A. Okay.

Q. Okay. And then if you jump down to the assessment, under "Where do we go from here?" Section B, "No further research," and then it has a section, "Important to publish another non-POM clinical study on drug interaction. Drug interaction concern will remain an issue until there are more published human studies to counteract the Japanese animal studies."

And so this conclusion is that the human studies will better inform on the issue of drug interaction for POM products. Is that correct?

A. Only through human studies after animal studies, and this is the study that one should be doing.

Q. Exactly. And the human clinical study is needed to either reaffirm the results of the animal study --

A. No, I didn't say a clinical study was needed.

Q. Well, here, the idea is that a human study will counteract the animal study, right?

A. It will counteract studies that we think are not correct.

Q. Right.

A. And we did the study to make sure that we didn't have a problem, and we were comfortable that we didn't.

Q. And your studies were human clinical studies, correct?

A. As far as I know. I don't -- I don't remember the studies. I just remember, again, doing this and making sure that there was no problem.

Q. Right. You wouldn't just stop with the animal studies; you wanted to see what would happen in humans.

A. I don't -- you are putting words in my mouth. I don't -- I'm just reading this for -- maybe not the first time, but I haven't paid much attention to this. So, whatever it says here, it says. I know that I was comfortable, because these publications did come out, and we wanted to see what, in fact, the truth was. And I know Dr. Heber did a lot of work -- I don't know if anyone else did -- to make sure that we didn't have these interactions.

Q. Right.

A. And as far as we were concerned, we didn't.

Q. Correct. And the way -- I'm sorry?

A. It didn't cause any problem.

Q. Right. And the way you knew that was because Dr. Heber, in fact, conducted human studies, correct?

A. I don't know that. The reason I did it was because he assured me there was no problem.

Q. And if you look in the "Human Studies" column, the pill safety study you are discussing, is that the Heber 2007 published study?

A. What's -- I'm not talking about -- I think I've tried to clarify that I know I talked to Dr. Heber. I'm not sure what studies he did to satisfy himself, but I was satisfied, everyone else seemed to be, that this was the main problem.

Q. Okay. And you don't know whether his studies were human clinical studies or further animal studies?

A. I don't know.

Q. Okay. Okay. And the last tab, the last tab of your exhibit book, there's an exhibit that starts with a Google -- it will be a Google Search page. Do you see that?

A. Yes.

Q. Okay, great. All right. So, this is a Google Search that we put in on June 12th, 2011, and there's an ad that came up. We put in "pomwonderful.com," and the ad came up, "Real Juice Real Healthy" -- I'm sorry, "Savor the Flavor of Health POM Juice," et cetera.

And then when we clicked through. If you go to page 2 of the exhibit, this was the landing page, if you

will, of where the ad directed us onto the POM Wonderful Web site.

And I wanted to focus your attention on the top paragraph about 100% Pomegranate Juice. Thank you. There again we see the sentence, "We have also provided over $34 million in funding to support scientific research on POM products at top institutions around the globe," et cetera.

And just to make sure, as of today, this number still would include, as we've described, basically a running tab of all the research and development by POM Wonderful?

A. Yeah, but also let me comment, since you seem to be trying to -- well, never mind that, but this does not include -- I mean, basically, if we were an institution of any sort or any other kind of company, we would -- we don't include any of the overhead, any of our own expenses.

So, truly, if you looked at what we spent on research, if we had some outside firm do this, we would have spent probably, today, to get where we are, over $50 million. So, we are being quite conservative about the amount. My understanding is all we talk about is how much we have spent outside of our own company, to third parties. So, it's a very conservative approach to

what we've spent.

Q. Okay. And the sentence, the express statement is, "to support scientific research at top institutions," but the numbers also include, for example, holding research summits and other expenses, not just the direct grants to the institutions. Is that right?

A. That may be.

Q. Okay.

A. But it doesn't include, as I say, a great deal of overhead and anything else that any other institution would be charging or any other independent firm.

Q. Okay. And then if we go to the next page, this is the Web page for Lite POM, and if we could -- oh, that's good -- show that -- sort of the top half of the page.

I believe this is -- it says "New," the new product that Mrs. Resnick was testifying about at the hearing previously, right, the Lite POM was bringing to market?

A. Yeah.

Q. Okay. And there's a statement, the second sentence, "Not only is it thirst-quenching, but one bottle provides all the antioxidant benefits of a full serving of our POM 100% pomegranate juice."

And then, again, if you drop to the second paragraph, it's a little -- under the "POM Pomegranate," there's another statement, "Just one bottle provides the same daily dose of antioxidants as an 8 ounce bottle of POM Wonderful 100% pomegranate juice."

Now, I thought the Lite POM has basically half the pomegranate juice that's contained in a bottle of the 100% pomegranate juice.

A. Correct.

Q. Okay.

A. But the bottle is 16 ounces.

Q. Which bottle?

A. The bottle of Lite POM.

Q. Okay. And if --

A. If you drink 16 ounces and it's one-half of a whole day.

Q. Okay. But there is nothing here to indicate that the bottle is 16 ounces versus an 8-ounce bottle of POM, is that right, in this text?

A. Well, I don't know. I've never seen this before.

Q. Okay. And actually, if we look at the two graphics side by side --

JUDGE CHAPPELL: Wait a second. The ad says "Just one bottle."

MS. HIPPSLEY: I'm sorry?

JUDGE CHAPPELL: You mean other than what it says, "Just one bottle"?

MS. HIPPSLEY: It doesn't say if the bottle is an eight-ounce bottle or a 16-ounce bottle of Lite POM.

THE WITNESS: We don't have eight-ounce bottles of Lite POM.

MS. HIPPSLEY: It says, "Just one bottle provides the same daily dose of antioxidants as an 8-ounce bottle of POM."

JUDGE CHAPPELL: Right, but didn't he testify it's only available in the 16-ounce?

MS. HIPPSLEY: Yes, but my point is, that information is not presented on the Web page here.

JUDGE CHAPPELL: But if you can only buy a 16-ounce and it says "Just one bottle," how can you possibly be confused --

MS. HIPPSLEY: Well, you don't --

JUDGE CHAPPELL: -- on that point?

MS. HIPPSLEY: Right, because the daily dose is an eight-ounce bottle of POM, but the POM, when you go to the grocery store, is also sold in a 16-ounce bottle size. Isn't that right?

THE WITNESS: Yes, but we also say that the eight ounces is the daily dose. I mean, this is just

factual, it seems to me. I don't know what else you want us to say. Do you want us to tell how it's manufactured?

BY MS. HIPPSLEY:

Q. Okay. Okay. And if we go to the next page, which is "Our Health Story," and here there's the statement again about the 34 million in research support to top scientists. And then the next statement says, "55 total studies, including 16 clinical studies," et cetera.

Do you know what portion of the 34 million has been spent on the 55 total studies?

A. No, but I don't -- again, I don't know what that means since when you start and if a study isn't published, it still is money spent on research that eventually gets studies published.

Q. Well, we've seen today a lot of studies that are never going to be published, isn't that right, Dr. Ornish, for example?

A. We didn't know that before we started, and we may be -- I think eventually we may. I think we're looking at that again.

Q. But at the time you're making the presentation of dollar amount, you know which studies -- for example, the Dr. Heber being unpublished or the skin care --

A. No, I'm not making that -- excuse me. I'm making a different point. You don't know what is going to happen from a research study until you do it.

Q. Right.

A. And, therefore, oftentimes, research in the negative is just as beneficial as research in the positive. It tells you what direction to go in. So, you can't just choose what's going to work. So, all the research we've done has affected the research that's been published.

Q. And you do know, though, that some are never going to be published, the individual studies that are included in the dollar amounts.

A. Do I know that? I -- I believe that some will never be published, yes.

Q. Okay. Okay. And then if we can turn to the next page, which is the page titled "POM" --

JUDGE CHAPPELL: I want to go back to something. This -- you have been asking the questions, he's been answering about something called a daily dose, and I believe you said the daily dose was eight ounces. Where does that come from, this daily dose?

THE WITNESS: That's what we put in our -- basically, we have done all our research on eight ounces of pomegranate, and we consider that to be the daily

dose, eight ounces.

JUDGE CHAPPELL: Okay. And this ad we have been looking at earlier with the Lite POM -- and, again, I just saw what was on the screen here -- is there anything on there that indicates that that's a daily dose, that eight ounces is a daily dose of Lite?

THE WITNESS: No, not that I know of. I mean, I don't -- I don't -- I think the bottle just has what it is, and we clearly say there's only 50 percent pomegranate juice in it. So, again --

JUDGE CHAPPELL: But is it made clear anywhere that if I want a daily dose of the Lite -- I mean, is that your position somewhere? Are you using "daily dose" anywhere in connection with Lite where you indicate anything other than what I saw, where it says "Just one bottle"?

THE WITNESS: Not to my knowledge, no. I don't think -- if we're -- my -- I haven't seen everything. My directions would be, and I think that the people would certainly do it, if we're talking about a daily dose, we would be talking about 16 ounces. I'm not sure that we talk about a daily dose for POM.

Now, that's an arbitrary amount that we've decided on. Four ounces does a lot of good, too. I'm not even sure it doesn't do as much good.

JUDGE CHAPPELL: All right. You were going to put them up side by side before I asked the question?

MS. HIPPSLEY: Just to show, on the graphics, that the bottle sizes on the two pages are identical. The bottle size graphic for the 100% pomegranate juice on that page, and then the next page, where you're -- where the company is advertising POM Lite, the graphic makes the bottles the exact identical size.

And so the point was, on the Lite POM, there's no express indication of the daily dose, rather than trying to equate it, just to say it's the 16-ounce daily dose.

JUDGE CHAPPELL: And I was trying to follow your questioning. I thought --

MS. HIPPSLEY: Right.

JUDGE CHAPPELL: -- you were trying to make the point that POM is saying in that advertisement that eight ounces is enough of the Lite POM.

MS. HIPPSLEY: Correct.

JUDGE CHAPPELL: Is that your position?

MS. HIPPSLEY: Yes, because it's too confusing. The two bottles are of identical size.

JUDGE CHAPPELL: And this comparison, that's on the same ad?

MS. HIPPSLEY: I'm sorry, yes, the comparison on

the Web site. So, that's our point.

JUDGE CHAPPELL: Did you put that on the screen or did you refrain from doing that when I asked the question?

MS. HIPPSLEY: The 100% POM Juice does not address the POM Lite. That 100% POM Juice page states --

JUDGE CHAPPELL: Well, let's put it up on the screen. What's the CX number?

MS. HIPPSLEY: Okay. I had already shown that page, Your Honor, but yeah, I'll make sure you understand where it was.

JUDGE CHAPPELL: And is it your position these pages run side by side?

MS. HIPPSLEY: They are two pages on the Web site.

JUDGE CHAPPELL: Oh, this is the Web page, okay.

MS. HIPPSLEY: Yes.

JUDGE CHAPPELL: And the one on the left, the 100% POM Juice, that bottle and that ad, as far as you know that is an eight-ounce?

MS. HIPPSLEY: That was my question. I don't know what it is, but --

JUDGE CHAPPELL: I don't want to interrupt the line of questioning. I just wanted to clarify where you

were going. So, go ahead and ask the question.

THE WITNESS: Let me clarify. That is not an eight-ounce bottle. That is a 16-ounce bottle on the left and a 16-ounce bottle on the right.

BY MS. HIPPSLEY:

Q. Of the 100 -- okay, so both bottles are 16-ounce?

A. Yes.

Q. Okay.

JUDGE CHAPPELL: All right. And what are we looking at right now on the screen, for the record? What are the exhibit numbers?

MS. HIPPSLEY: I'm sorry?

JUDGE CHAPPELL: What are the exhibit numbers that he's answering about that we're looking at right now?

MS. HIPPSLEY: Oh, this is our demonstrative exhibit. So, it was just to ask Mr. Resnick if he understood what is going on with the marketing of these two products and equating the dosage in the two products.

JUDGE CHAPPELL: And, sir, you're clear that these ads for POM -- 100% POM and POM Lite, these are all eight-ounce bottles -- I'm sorry, 16-ounce bottles?

THE WITNESS: They are both 16-ounce bottles.

JUDGE CHAPPELL: Okay, thank you.

MS. DIAZ: Your Honor, may I object to the question stated before Your Honor's --

JUDGE CHAPPELL: You mean my question? You're objecting to my question?

MS. DIAZ: No.

JUDGE CHAPPELL: I would probably overrule that, but go ahead.

MS. DIAZ: To Ms. Hippsley's question where she stated in her question, she assumes that there was an equating of dosage in the two products.

JUDGE CHAPPELL: Well, that's why I asked my question, because I wasn't clear, and I didn't know if the witness was clear, and one of my jobs, among many, is to make sure the record is clear and that people understand it. And as I have told him earlier, when I thought he was answering a question that he didn't understand, it doesn't help any of us in this process for him to answer a question that he didn't understand. So, we've probably beat the horse enough, but I've got an objection to a question, what, five minutes ago or -- which question?

MS. DIAZ: Just about four minutes ago, Your Honor, that -- in her previous questions, she suggested that there was -- that one dose was equated to the

other, and that's just not clear, and there's been no foundation set for that in the documents that she's putting up on the screen right now.

JUDGE CHAPPELL: Rather than go back and peruse realtime, how about she rephrases that question and we let this man answer?

MS. DIAZ: That's fine, Your Honor.

BY MS. HIPPSLEY:

Q. Okay. So, let's just put the page back up on POM Lite, and I'll just restate what that page shows since it's a demonstrative.

So, the Lite POM pomegranate equates in the middle second paragraph that just one bottle provides the same daily dose of antioxidants as an eight-ounce bottle of POM Wonderful 100% Pomegranate Juice, and that's the statement that appears on the page for the Lite POM, right?

A. Yes.

Q. Okay. Okay.

A. I can't help myself here, but does this go under the heading of no good deed goes unpunished, that here we're trying to make it very clear to people that you need to take -- that this is equivalent to half, we're trying to make it real clear, and you're trying to think we're trying to fool people? I think that's a position

that to me is just irresponsible.

Q. Okay. If we can turn to the next page in the demonstrative, which is from the WonderfulPomegranate Research.com site, and this is a page, "Scientific Studies on Wonderful Variety Pomegranates. Featured Studies."

And I just wanted to -- and this, again, was from the Web site as of June 12th, 2011, and if we can just touch on a few of the areas again. So, in the "Cardiovascular" section, under "Atherosclerosis," the first bullet describes I think what we would agree is the Davidson study, right? That it was a clinical trial that followed 289 subjects at moderate risk for coronary heart disease.

A. Okay.

Q. Okay. And it states that after 18 months, the conclusion was that there was no reduction in the progression of the thickness of the carotid artery and the pomegranate juice as a whole, and then goes on to explain the company's position that further analysis revealed that the rate of progression slowed in nearly one-third of the pomegranate juice subjects with elevated cardiovascular disease risk factors.

And one question I had is, again, none of the numbers from the study are listed here, right? So, the

2 to 5 percent reduction for this high-risk group is not listed in the paragraph describing the study, right?

A. Correct.

Q. Okay. And then when we drop down to the 19-subject study, which I think we would agree is the Aviram study, again, it lists that the reduction is a 30 percent reduction. And, again, have you had any discussions with anyone at POM -- at POM Wonderful about switching this up, so that the numbers from the Davidson study would be utilized instead of the Aviram study?

A. No. I haven't discussed it.

Q. Okay. And then if you look at the topic area of "Blood Flow/Pressure," this second bullet is a pilot study of ten subjects with hypertension, reduction in ACE, et cetera.

And after seeing the summary of studies that came in after this study was conducted, which I believe this study was in the 2003, 2004 time frame, and so, for example, seeing the blood pressure results that have come in from the Ornish studies and Davidson, et cetera, have you had any discussions about still highlighting this ten-person subject about hypertension and the issue of hypertension?

A. I don't think we talk about hypertension now, or very little.

Q. Well, this is on the Web site as of June 12th.

A. Yeah, but the Web site has lots of things on it, and, again, I -- I don't have a computer, so I have never seen this Web site.

Q. Okay. And you haven't had any discussions with anyone at POM Wonderful about still listing this study under your featured studies?

A. No. I haven't had a conversation either way.

Q. Okay. And then if you look at the "Prostate" section for the featured studies, that second sentence in the first paragraph, "A longer term, six-year continued evaluation of active subgroup subjects showed a further increase in PSA doubling time to 88 months."

Again, do you know whether or not that information is in a published study?

A. I don't know.

Q. Okay. And then scrolling down the page to the "Erectile Function" section, there's a descriptor there of the human clinical trial on erectile dysfunction, and after -- the last sentence is, "After consuming 100% pomegranate juice daily for 4 weeks, the men reported 50% greater likelihood of experiencing improved erections as compared to placebo."

And, again, there's no statement here that there was no statistical significance reached, right, in the

summary?

A. Right.

Q. Okay. And have you had any discussions with anyone at POM Wonderful about whether or not that information should also be included in a summary of the study on the Web site?

A. No.

Q. Okay.

All right, Your Honor. At this time, I have no further questions for Mr. Stewart [sic].

JUDGE CHAPPELL: All right. Any cross?

MS. DIAZ: Yes, Your Honor.

JUDGE CHAPPELL: When you're ready.

CROSS-EXAMINATION

BY MS. DIAZ:

Q. I just have one follow-up area.

You referred to, early in your testimony, before the recess, you referred to the phrase "health claim" and "FDA approval," and there was some discussion about that. I just want to clarify.

Do you think that you need FDA approval for any health claims POM has made?

A. No.

Q. Okay.

All right, thank you. No further questions,

Your Honor.

MR. FIELDS: Your Honor, there's a housekeeping matter I would like to address on three exhibits before we close, if I may.

JUDGE CHAPPELL: First, let me make sure whether there's any redirect.

MR. FIELDS: Oh, I'm sorry.

MS. HIPPSLEY: No, Your Honor. There is no redirect.

JUDGE CHAPPELL: All right.

Thank you, sir. You're excused.

Go ahead.

MR. FIELDS: Your Honor, there are three exhibits that we would like to move into evidence that were testified about during the examinations of Dr. Sacks --

JUDGE CHAPPELL: And have you conferred with Complaint Counsel?

MS. HIPPSLEY: No.

JUDGE CHAPPELL: Let's do that first before there's an offer.

(Pause in the proceedings.)

MR. FIELDS: All right, I think we have solved this, Your Honor.

JUDGE CHAPPELL: Okay. That's why I like for

you to confer first.

MR. FIELDS: You were absolutely right. The -- Dr. Eastham's article on prostate and doubling time is already in evidence. So, we don't need to quarrel about that one.

JUDGE CHAPPELL: Okay.

MR. FIELDS: And the suggestion by Complaint Counsel, the two exhibits, 5029 and 5010, be deferred until the final session and the individual who did the examination is present, and I agree with that. So, I will withdraw the offer now, without prejudice to offer them later.

JUDGE CHAPPELL: Okay. Just be advised that I won't remind you of that.

MR. FIELDS: Then I will probably forget.

JUDGE CHAPPELL: I have got a lot of balls to juggle up here.

All right. Anything further?

MS. HIPPSLEY: No, Your Honor. That concludes our presentation of affirmative witnesses, and, of course, we will reserve the right to put on witnesses in our rebuttal case when we resume.

JUDGE CHAPPELL: Okay. Then subject to rebuttal, if approved by me --

MS. HIPPSLEY: Right.

JUDGE CHAPPELL: -- the Government rests?

MS. HIPPSLEY: Yes, Your Honor.

JUDGE CHAPPELL: Okay.

Anything further?

MR. FIELDS: Nothing further, Your Honor.

JUDGE CHAPPELL: All right. I believe, unless something changes, we are scheduled to reconvene at 0930 on August 30th?

MS. HIPPSLEY: Yes.

JUDGE CHAPPELL: Everybody agree?

MS. HIPPSLEY: Yes.

MR. FIELDS: Yes, Your Honor.

JUDGE CHAPPELL: All right. Until 9:30 on August 30th, we're in recess.

(Whereupon, at 2:03 p.m., trial was adjourned.)

C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER: 9344

CASE NAME: POM WONDERFUL LLC

DATE: JUNE 15, 2011

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: 6/21/2011

SUSANNE BERGLING, RMR-CRR-CLR

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

SARA J. VANCE, CMRS