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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE ANDREW J. GUILFORD, JUDGE PRESIDING

HSINGCHING HSU,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
	)	
Vs.	)	No. SACV15-0865-AG
	)	
	)	
	)	
PUMA BIOTECHNOLOGY, ET AL,	)	
	)	
	)	
	)	
Defendants.	)	
	)	
	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

*JURY TRIAL, DAY 6*

SANTA ANA, CALIFORNIA

THURSDAY, JANUARY 24, 2019

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EXHIBITS:

Exhibit 479 received	39
Exhibit 488 received	42
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1 SANTA ANA, CALIFORNIA; THURSDAY, JANUARY 24, 2019; 8:55 A.M.

2 ---

3 THE COURT: What's the issue?

4 MR. CLUBOK: The issue is there are two  
5 demonstratives that we have been notified will be -- that  
6 plaintiffs will try to use during Professor Feinstein, and we  
7 object --

8 THE COURT: Hold on. Can you put them on the  
9 screen, or something?

10 MR. GRONBORG: Yes. And I have hard copies which I  
11 can hand you if that's okay.

12 THE COURT: Yes. Give me the hard copies, please.

13 All right. Who intends to -- so this is  
14 plaintiffs' demonstrative 30 and 31.

15 MR. GRONBORG: Correct, Your Honor.

16 THE COURT: All right. And the defense objects?

17 MR. CLUBOK: We do, Your Honor.

18 THE COURT: Okay. And tell me why.

19 MR. CLUBOK: Under Rules 401, 403, and 703, what is  
20 depicted in these -- first of all, in demonstrative that's  
21 been marked PDEM30 entitled damages, 90-day lookback period,  
22 and a calculation of \$141 per share, that is not the damages  
23 claimed in this case. That is just showing the -- actually I  
24 don't even want to guess exactly, but --

25 THE COURT: So let me -- I'm sorry to interrupt,

1 but let's say he called an expert. In the olden days you  
2 would put a piece of butcher board and the expert would put a  
3 bunch of number, some of them outrageous. And guess what you  
4 get to do. You get to stand up there and show the jury how  
5 outrageous those numbers on the butcher paper are.

6 Isn't that what this is? You stand up and show the  
7 jury how outrageous those numbers are. How is this different  
8 than an expert putting crazy numbers on a piece of butcher  
9 paper? I mean, how is it different? I'm just wondering.

10 We let experts put crazy numbers on butcher paper.  
11 We used to say, you know, what will you blackboard on it?  
12 And they sometimes blackboard crazy things. And you don't  
13 say, Your Honor, I object, he can't put that number down.  
14 That's not the correct number. And I say, that's right. You  
15 can't put that number down. No.

16 You cross-examine him and you show the jury how  
17 ridiculous he is. Why do I have to say, don't put that  
18 number down? That's what I don't relate those to. Would I  
19 ever say to an expert, yes, that's the incorrect number;  
20 don't put that number down?

21 I wouldn't say that, so why would I say he can't  
22 put up a demonstrative that has the wrong numbers?

23 MR. CLUBOK: First of all, it includes information  
24 that would otherwise be inadmissible regarding the 90-day  
25 lookback period. It does purporting to be a damages opinion

1       that was not disclosed in his report.

2               His damages report -- and there's a previous  
3       slide --

4               THE COURT:   Now we've moved to something else.   You  
5       started off saying that number is wrong.   Now you've said  
6       this damage report isn't in his report.   I'm with you on  
7       that.

8               MR. CLUBOK:   Okay.

9               THE COURT:   Let's talk about that.

10              MR. CLUBOK:   He -- there is no opinion in his  
11       report or in his deposition that the damages in this case  
12       could be \$141.51 a share using the entire stock drop period  
13       through the 90-day lookback period.

14              And I would just note also the use of the 90-day  
15       lookback period is a misleading -- it's a misleading use of  
16       that.   It would be difficult to explain to the jury.   The  
17       90-day lookback period is a statutory cap on damages that's  
18       supposed to apply mechanically in defendants' favor if it  
19       applies.   Otherwise it has no impact on a case.

20              So to get into a discussion of all that and explain  
21       what the relevance of the 90-day lookback period is to other  
22       securities cases when it has none here, that compounds the  
23       problem.   But he certainly does not -- and I will say in his  
24       report he mentions the 90-day lookback period in terms of how  
25       that is used post damages to consider whether there should be

1 a cap on damages, but he never gives an opinion that the  
2 damages themselves, nor could he, can be as high as \$141  
3 somehow related to the 90-day lookback period.

4 That's my argument on that one.

5 THE COURT: You know, I do a lot of patent cases  
6 and other complex cases and, gosh, I wish I could sustain an  
7 objection that it's too complex to explain to the jury. It  
8 might shorten a few patent trials we have.

9 What I think I need to do is have the plaintiff  
10 show me where in their expert report these theories are  
11 covered.

12 By the way, when does this issue arise? This  
13 issue, when is it coming up?

14 MR. GRONBORG: This morning, Your Honor.

15 THE COURT: This morning?

16 MR. GRONBORG: This morning.

17 MR. CLUBOK: First witness.

18 MR. GRONBORG: First witness.

19 THE COURT: Okay. So, gosh, I wish you had -- I  
20 was here pretty late last night. I was here this morning.  
21 And now we keep the jury waiting. It's just not best  
22 practice. Show me in the report -- you have it as an  
23 exhibit?

24 MR. GRONBORG: We do not have it as an exhibit,  
25 Your Honor. If you let me approach, I can hand you a copy.

1 THE COURT: Okay.

2 MR. GRONBORG: It's addressing the issue of the  
3 90-day lookback period.

4 THE COURT: Hand it right here. Okay. This is the  
5 report of the witness we're about to hear from?

6 MR. GRONBORG: Correct. If you look at paragraph  
7 63 --

8 MR. CLUBOK: If I may, which report is it? He has  
9 three. Which one was it?

10 THE COURT: March, 2, 2018.

11 MR. GRONBORG: The one you noted discusses the  
12 90-day lookback period. I believe it's paragraph 69 as well  
13 as Exhibit 6 to that report.

14 THE COURT: Just a moment. Paragraph 69. Just a  
15 moment.

16 MR. GRONBORG: If you don't mind, I would like to  
17 back up. There was misinformation about what the opinion is.  
18 This slide does not -- there's not a demonstration that the  
19 damages are \$141.51 a share.

20 As discussed with counsel, this was the slide show  
21 that while the stock drop fell in that 90-day lookback  
22 period, \$141.51 a share, Professor Feinstein is going to  
23 opine that he has not included the full drop from that  
24 statutory 90-day lookback in his damages. His damages are  
25 actually much more conservative than that.



1           But as he discusses there directly in his report,  
2       this is a statutory period, basically a requirement to look  
3       at the stock price over the period. Defense counsel  
4       themselves have used that to introduce evidence regarding the  
5       plaintiffs' stock purchases.

6           THE COURT: So just so you know how I'm thinking,  
7       he's not going to say the damages are based on 141. I might  
8       ask him on cross: Did you prepare this chart? Yes. Did you  
9       put a big red arrow on this chart? Yes. What does that big  
10      red arrow point to? 141.51. You weren't attempting to  
11      mislead this jury by your big red arrow, were -- you know, I  
12      believe in cross-examination, and I used to love doing that.

13          MR. CLUBOK: I do. Dr. Feinstein is now prepared  
14      for those questions, but -- so --

15          THE COURT: If you -- if you keep them in the  
16      room -- I don't know Mr. Feinstein. I apologize. If you  
17      were intending to do that, I'm not sure you would be asking  
18      me to strike it. I mean, I can go on about things you could  
19      say, but apparently I shouldn't. I could go on and on. I  
20      could use certain words.

21          MR. CLUBOK: May --

22          THE COURT: And I could turn to the jury and --

23          MR. CLUBOK: I understand. But, Your Honor, what I  
24      just heard now is that this is going to be used as a basis  
25      for his opinion, i.e., a basis for how reasonable his opinion

1 is. This chart, this argument, this theory was never  
2 disclosed in an expert report or in a deposition or in a  
3 demonstrative until we got this one yesterday or at the end  
4 of the day the night before. So it was not disclosed as a  
5 basis for his opinion.

6 What I just heard plaintiffs' counsel say is that's  
7 how they're going to use it. So that's why this one should  
8 be excluded.

9 THE COURT: When you say this one, are you  
10 protesting both? I just need to know.

11 MR. CLUBOK: Yes. That's why I handed it to you.  
12 The next one is even worse in terms of including facts that  
13 are inadmissible in this case and an undisclosed basis for an  
14 opinion that was never included in the report notwithstanding  
15 Rule 26(a)(2)(B).

16 THE COURT: Why do you need a big red arrow  
17 pointing to \$213.19 per share?

18 MR. GRONBORG: Identifying what the share price  
19 decline has been from the time immediately following the  
20 false statements to where it is today.

21 THE COURT: How is that relevant to damages?

22 MR. GRONBORG: It's relevant to the extent that  
23 defendants have argued that the plaintiff here has only lost  
24 money because of when they chose to sell. And it certainly  
25 goes to the conservative nature of the damage estimate.

1 MR. CLUBOK: Your Honor, that's another basis for  
2 an opinion that certainly was never disclosed and includes  
3 facts that are not relevant to this case or even a  
4 calculation in a post-class trial of damages.

5 THE COURT: Okay. I'm not sure it's -- I don't  
6 have my transcript turned on, but I'm not sure it's relevant  
7 to the analysis. What were your words? I'm not going to  
8 remember your words.

9 Gosh, people write all sorts of things on butcher  
10 paper, whiteboards, whatever, and this is pretty much a  
11 whiteboard.

12 MR. CLUBOK: It's a basis for opinion that was  
13 never disclosed.

14 THE COURT: Again, that's a different thing. But  
15 what particular damage theory is involved here that wasn't  
16 disclosed?

17 MR. GRONBORG: It's the basis for his theory.  
18 Under the rules you have to disclose not just --

19 THE COURT: I know you have to disclose. We're  
20 beyond that. We know that rule. What are they saying here  
21 that they didn't disclose?

22 MR. GRONBORG: What I just heard is that they're  
23 saying that this demonstrates how conservative his damages  
24 opinion was because they're not including this amount in  
25 their calculations.

1           THE COURT: So let's just take a typical lost  
2 profits analysis. He develops a typical methodologically  
3 correct lost profits, and then at the conclusion he says, is  
4 this an actual reflection of the lost profits? And the  
5 person says no. The actual lost profits are 300 million. I  
6 have put them here at 200 million.

7           I don't know that that's a methodology. I don't  
8 know -- you're frowning on me, but that's what he's saying  
9 here. I did use the maximum drop. I used lesser -- a lesser  
10 number than the maximum drop. I don't know that that's part  
11 of the methodology.

12           I mean, I think it's not disputed that there was  
13 that drop from July 23rd to August 31st. We're not allowed  
14 to identify how much that drop is and then calculate from a  
15 damage theory how much of that drop should be used in  
16 calculating damages?

17           MR. CLUBOK: I'm sorry. Are you back on  
18 demonstrative 30?

19           THE COURT: I'm on both of them.

20           MR. CLUBOK: Well, on the second one, we go through  
21 December 31st, 2018, which includes all the way through well  
22 past the time that Your Honor has excluded quite a bit of  
23 information from this case based on plaintiffs' motion.

24           Now they're going to show the stock price all the  
25 way to December 31st, 2018, when we've been precluded from

1 introducing quite a bit of evidence about events that  
2 occurred during that time period.

3 THE COURT: Now we've got a third argument. I'm  
4 just trying to get down the arguments.

5 The first argument is he shouldn't use, you know,  
6 these high numbers for damages. He says he's not doing that.

7 The second argument was undisclosed methodology.  
8 I'm not sure we've resolved that one, against you or for you.

9 And the third one is unnecessarily talking about  
10 post-period stock prices not relevant. What about that last  
11 one?

12 MR. GRONBORG: So on the last one, I believe  
13 counsel is referring to the motion in limine number four,  
14 which, we went over some of the briefing. It was limited to  
15 information about the drug neratinib itself and future  
16 studies to the extent they would confuse people that there  
17 were other studies.

18 THE COURT: Yes.

19 MR. GRONBORG: There was absolutely nothing in that  
20 briefing that had anything to do with stock prices.

21 THE COURT: Forget the briefing. I'm just saying,  
22 just looking at it fresh, why are you giving statistics post  
23 period?

24 MR. GRONBORG: Certainly as we explained, the  
25 90-day lookback is a statutory period.

1           THE COURT: Okay. I've done it twice. I'm going  
2 to do it a third time. Why are you giving statistics post  
3 period?

4           MR. GRONBORG: Because they tie to the damages  
5 methodology to show what is not only included but what's not  
6 included, the conservative nature of the damages methodology.  
7 You were pointing out and saying -- Professor Feinstein is  
8 going to explain.

9           You can see there's a middle line on all of these  
10 charts. He is going to explain exactly how these relate  
11 directly to his damages methodology which only -- which  
12 counts for the stock price declines on May 14th and June 1st  
13 and 2nd and does not include, even though there's a statutory  
14 period --

15          THE COURT: Do you not open the door for them to  
16 say wonderful things that happened post period, that it's in  
17 use, that the stock prices went up yesterday? What about  
18 that? I actually don't know what happened four weeks ago on  
19 the stocks.

20          If you do this, can they say, well, you know, the  
21 stocks were up above the 2014 peak three months ago. I don't  
22 know. I don't know what those records are. But don't you  
23 open the door for them saying, you know, during this period  
24 that you've mentioned here, isn't it true we got the award  
25 for the whatever or that he was toasted at some dinner?

1 Don't you open it up for them to say how wonderful  
2 things were?

3 MR. GRONBORG: I think they could certainly, if  
4 they want to claim that the expert is cherry-picking the  
5 data, that's absolutely ripe for cross-examination.

6 THE COURT: Well, then prove that he's  
7 cherry-picking the data by citing post-period activities. Ii  
8 mean, I've actually been curious in this case about the  
9 present use of the drug. They brought a motion in limine on  
10 that, and I granted it.

11 MR. GRONBORG: No, Your Honor. We did not bring  
12 that motion. We are happy to talk about the --

13 THE COURT: I'm sorry. Excuse me. They brought a  
14 motion on that. I'd be interested in saying after all of  
15 this, after saying that this doctor lied, is the drug now in  
16 use and selling at 500 million a year? Maybe he -- maybe the  
17 lie -- maybe that's relevant to the lie. I mean, maybe  
18 that's relevant to the alleged lie.

19 I didn't allow it because it's what's in his brain  
20 at the time, and that's what affected the prices. You know,  
21 there is some relevance to how successful or not successful  
22 it is now. And again, I don't have that information, and I  
23 have somewhat wondered about that information.

24 So if you get to show this, do they get to show how  
25 great -- again, I don't know what it was because I granted

1 your motion in limine. Do they get to show these wonderful  
2 things about how it is today?

3 MR. GRONBORG: Well, we think that they are  
4 different issues.

5 THE COURT: Why are they different issues?

6 MR. GRONBORG: Well --

7 THE COURT: You want to show post-zone periods to  
8 increase your damages. They want to show -- I don't know  
9 what the facts are, but they want to show post-zone activity  
10 to show what a wonderful drug this is.

11 MR. GRONBORG: Well, I will say it is not to show  
12 that the damages are more. But certainly if that is the  
13 concern, if there's a concern about going out to today, that  
14 is fine. We don't think it opens.

15 If the Court is worried that that opens the door  
16 and then it's not subject to cross-examination, that's fine.  
17 The 90-day lookback, though, is a very different beast.

18 THE COURT: So I'm going to grant the request that  
19 you not provide post-period information concerning share  
20 prices.

21 MR. GRONBORG: Your Honor, can I make clear that  
22 would just be through to today. Again, as the 90-day  
23 lookback period is in the report, discussed as part of the  
24 methodology. It has been raised because they have raised all  
25 of the stock purchases by the --



1           THE COURT: So now let's focus on the 90-day  
2           lookback period. Tell me its relevance.

3           MR. GRONBORG: It's a statutory requirement to look  
4           at the stock price in the 90 days that follows the alleged --  
5           the end of the class period specifically because Congress has  
6           said that is a relevant period to look to see what happens,  
7           as it's discussed in the expert's report.

8           THE COURT: So you're talking about the period, of  
9           course, 90 days after the disclosure of --

10          MR. GRONBORG: After the end of the class period.  
11          Correct.

12          THE COURT: Okay. So when I said I don't want  
13          post-class period discussion, you said, what about the  
14          90 days post-class period?

15          Now we're back to what I remember was the second  
16          argument, which is this 90-day stuff wasn't revealed in the  
17          damage analysis. Okay? So where was 90 days revealed in the  
18          damage analysis to justify damages for a 90-day lookback  
19          period?

20          MR. GRONBORG: Well, it's not justifying. It's  
21          explaining how the damages are calculated. I said I believe  
22          it's paragraph --

23          THE COURT: 69?

24          MR. GRONBORG: -- 69 of the report discusses the  
25          90-day and the footnote below it discusses the 90-day

1       lookback period.

2               THE COURT: I'm going to start and I'm going to  
3       have to read paragraph 69. Give me a second.

4               (Court reading document)

5               THE COURT: Okay. Interestingly enough paragraph  
6       69 has footnote 69. How well done. But, now, I'm not seeing  
7       the 90-day lookback period in that.

8               MR. GRONBORG: That's a discussion in Exhibit 6.  
9       It lays out all of the pricing through the 90-day lookback  
10       period.

11              THE COURT: What dates are the 90-day lookback  
12       period?

13              MR. GRONBORG: Approximately I believe it runs  
14       through August 28th or 29th of 2015 from the end of the class  
15       period.

16              THE COURT: Okay. You include it in the exhibits.  
17       Where does the expert actually use, for example, the closing  
18       price of \$94 on August 28th in his analysis, his or her  
19       analysis?

20              MR. GRONBORG: It's used as a check on the damages  
21       themselves.

22              THE COURT: Where does he do that?

23              MR. GRONBORG: He discusses it in the footnote.  
24       That is part of the --

25              THE COURT: Footnote 69?

1 MR. GRONBORG: Yes, as part of the discussion about  
2 how the 90-day lookback is used and --

3 THE COURT: Okay. So my analysis here is whether  
4 the good folks at Latham could read this and cross-examine on  
5 this point. So I'm going to look at 69 again.

6 (Court reading document)

7 THE COURT: All right. I'm finding that is a  
8 sufficient disclosure to discuss the 90-day period.

9 I turn back to Latham. I have already ruled I  
10 don't want post-period prices discussed. Now I'm excepting  
11 out the 90-day period. What does the defense say?

12 MR. CLUBOK: Simply that, as it is stated in the  
13 footnote, the 90-day lookback is a number that is supposed to  
14 be applied formulaically by defendants after trial as a legal  
15 matter, not as a factual matter in the trial. It therefore  
16 should not be -- 403 applies as well here.

17 THE COURT: Okay. Any further argument before I  
18 rule? I'm about to rule. Any further argument?

19 MR. GRONBORG: I don't -- no.

20 THE COURT: Okay. I'm going to allow the 90-day  
21 period in, but I don't want to hear stock prices after the  
22 90-day period. Okay?

23 MR. CLUBOK: I understand.

24 THE COURT: Good argument, counsel. Forgive me if  
25 I'm a bit abrupt on focusing how I'm looking at it, even if

1       that's not correct.

2               MR. GRONBORG: No. I appreciate it.

3               THE COURT: So are we ready to proceed?

4               MR. GRONBORG: We are.

5               THE COURT: Good. Thanks.

6               THE CLERK: All rise.

7               (Open court - jury present)

8               THE COURT: All right, folks. Can I commend you?  
9       You've been on time from day one. I appreciate all your good  
10      work. I'm sorry we have spent the last few moments talking  
11      here about some important evidentiary issues. It's easier to  
12      talk here than back there, but it means keeping you waiting.

13              I love the phrase in the jury instructions. Do you  
14      guys know what it is? While you were waiting, we were  
15      working. I think we were working while they were waiting.

16              I appreciate your waiting, and we're ready to go.

17              Call your next witness.

18              MR. GRONBORG: Plaintiffs call Professor Steven  
19      Feinstein.

20              **Steven Feinstein, Plaintiffs' witness, sworn**

21              THE CLERK: If you will please state and spell your  
22      first and last name.

23              THE WITNESS: Steven, S-t-e-v-e-n. Feinstein,  
24      F-e-i-n-s-t-e-i-n.

25              THE COURT: Can I begin with a question? It's a

1 frivolous question. What's the name of the senator from  
2 California?

3 THE WITNESS: Feinstein.

4 THE COURT: Feinstein.

5 THE WITNESS: Either or either.

6 THE COURT: How about for you?

7 THE WITNESS: Well, it's interesting. My father  
8 says Feinstein and my uncle says Feinstein.

9 THE COURT: There's a professor at UCI and he goes  
10 both ways. And my name is either Guilford or Guilford, and I  
11 don't care. I think you used a different pronunciation.

12 **DIRECT EXAMINATION**

13 BY MR. GRONBORG:

14 Q. I'm going to go with Professor; is that okay?

15 A. I'll answer to anything.

16 Q. Professor, what do you do?

17 A. Well, I'm a finance professor at Babson College, which  
18 is a business school outside of Boston, Massachusetts. And  
19 I'm also the founder and president and senior expert at a  
20 consulting firm, Crowninshield Financial Research.

21 Q. And before we get to those, where did you grow up?

22 A. I grew up in Canoga Park, California, in the San  
23 Fernando Valley.

24 Q. And where did you go to college?

25 A. Well, okay. Pomona College.

1 Q. And is it right that you got a bachelor's in economics?

2 A. I did. I studied economics at Pomona College after  
3 graduating high school. I won the Bakers Union scholarship.  
4 My father was a baker his entire life, and I applied for the  
5 scholarship. I used that scholarship at the Pomona College  
6 to study economics.

7 Q. And is it correct you went to Yale after that?

8 A. I did. At Yale I earned two master's degrees and a  
9 doctorate in economics with a concentration in finance.

10 Q. Can you just briefly tell us, what does that mean?

11 A. The doctorate?

12 Q. A concentration in finance.

13 A. Oh, well, the field that I chose to study was financial  
14 markets, the stock market, the bond market, how stocks move,  
15 why stocks move. Growing up I didn't know anything about the  
16 stock market, but it seemed interesting, seemed exciting.

17 I saw it on television a lot and I wanted to learn  
18 more about it. So I studied it at Pomona and then studied it  
19 at Yale. And sure enough, it is exciting.

20 Q. Are you a chartered financial analyst?

21 A. I am.

22 Q. What does that mean?

23 A. Well, chartered financial analyst is the premier  
24 professional designation for a practicing financial analyst.  
25 So this is -- you know, most analysts who write analyst

1 reports have this designation CFA. So in the accounting  
2 profession, for example, there's the CPA. And in the  
3 financial analytic world there's the CFA designation which is  
4 granted by the CFA Institute.

5 It means that you've mastered what they consider  
6 the body of important knowledge. They call it the body of  
7 knowledge on how to analyze stocks, how to read and read  
8 analyst reports, that sort of thing.

9 Q. How do you become a chartered financial analyst?

10 A. It's a battery of three tough exams. You have to study  
11 for a long period of time. Then when you're ready, you take  
12 the battery of exams. Usually people take them one year  
13 apart.

14 There's also a professional practice requirement  
15 that you have to practice in some area of the field. So just  
16 to reiterate, in my career I was able to get the premier  
17 academic designation, which is the doctorate, and also the  
18 premier professional designation because I practiced  
19 financial analysis. That's the CFA.

20 Q. And when did you get your Ph.D. in economics?

21 A. 1989.

22 Q. What did you do after you got your degree?

23 A. My first job was at the Federal Reserve Bank of Atlanta  
24 where I was an economist charged with monitoring financial  
25 markets for the bank, for the Federal Reserve System, and

1     advising the Atlanta Federal Reserve president to help him  
2     with participation in policy meetings, governmental monetary  
3     policy deliberations.

4     Q.    And after your time at the Federal Reserve Bank, did you  
5     become a professor?

6     A.    I did, at Boston University.

7     Q.    And where are you currently teaching?

8     A.    At Babson College.

9     Q.    What type of classes have you taught at Boston  
10    University and Babson?

11    A.    Well, a range of classes from the introductory finance  
12    through the more applied courses of stock analysis, bond  
13    analysis.

14           Also I teach courses in derivatives, which is  
15    futures, forwards, options, swaps, those sorts of things, but  
16    essentially how to value and price securities and combine  
17    securities into investment portfolios.

18    Q.    Professor, I'm going to ask you to slow down a little  
19    bit as you're going through it so the court reporter can make  
20    sure we have a clean record.    Okay?

21           You mentioned Crowninshield.   Is that a company  
22    that you founded?

23    A.    Yes.

24    Q.    And what does Crowninshield do?

25    A.    We do research, financial research for a variety of



1 clients. But we primarily specialize in litigation-related  
2 financial analysis and research.

3 Q. When did you found Crowninshield?

4 A. In 2008.

5 Q. And is it just you?

6 A. No. I have nine colleagues that work with me at the  
7 firm.

8 Q. And you and Crowninshield were paid for your work in  
9 this case; is that right?

10 A. That's right.

11 Q. And does it sound -- about \$330,000 in total, does that  
12 sound about right?

13 A. Yes.

14 Q. And your hourly billable rate is at \$825 an hour?

15 A. Yes.

16 Q. Now, is any of the compensation that has been paid to  
17 Crowninshield, is any of that contingent on your reaching any  
18 particular opinion?

19 A. No.

20 Q. Is it contingent on the outcome of the case?

21 A. No.

22 Q. Have you been told that you have to reach any particular  
23 opinion?

24 A. No, never.

25 Q. How many times have you been an expert in litigation

1 regarding securities fraud such as this?

2 A. Well, I've been doing this work -- in addition to being  
3 a professor, I've been doing this work since 1996. So that's  
4 23 years now. Approximately 100 cases.

5 Q. And do you typically work on behalf of investors or on  
6 behalf of the corporate defendants?

7 A. Typically investors.

8 Q. And we've worked together before; is that right?

9 A. Yes.

10 Q. And you've worked with our firm on other cases before;  
11 is that right?

12 A. Correct.

13 Q. Now, is it typical in all these cases you've worked on  
14 for the defense side to try and get you kicked out of the  
15 case?

16 A. That's their standard strategy.

17 Q. Okay. And does it ever work?

18 A. Once. It did once. I mean, out of 23 years and out of  
19 a hundred cases, the vast majority of those cases, judges and  
20 juries have understood and accepted my analysis. Over the  
21 23 years and a hundred cases, there are a couple examples or  
22 a couple of instances where they disagreed. But that's  
23 understandable, I believe, over 23 years.

24 Q. Well, have you ever not been permitted to testify about  
25 an opinion regarding lost causation like you're doing today?

1 A. No.

2 Q. Well, let's get to the opinions that you have. I  
3 understand you have got a demonstrative that has a sort of a  
4 bullet point of your summary of opinions; is that right?

5 A. Yes.

6 Q. Okay.

7 MR. GRONBORG: If we can pull that up.

8 Your Honor, we'll have this identified as  
9 Exhibit 1111 for the full set of demonstratives, and this is  
10 page 1.

11 THE COURT: 1111. All right.

12 BY MR. GRONBORG:

13 Q. Professor, can you walk us through the summary of your  
14 opinions?

15 A. Well, the first one is that Puma stock traded in an  
16 efficient market. Should I explain what that means before  
17 going to the next?

18 Q. If you can give a brief explanation of what that means,  
19 that would be helpful.

20 A. Well, there are essentially two competing perspectives  
21 on how the stock market works. One perspective is that it is  
22 completely chaotic, random; that stocks go up and down for no  
23 good reason. There's no rhyme or reason. It's essentially a  
24 casino for investors. That's one perspective.

25 An alternative perspective is that there is

1 structure and order in the stock market, that stock prices  
2 reflect the value of the companies that issue those stocks.  
3 And in that perspective, it's information that drives stock  
4 prices either up or down. Information is extremely important  
5 because information tells investors, tells the marketplace as  
6 a whole whether the stock should be worth a lot or should be  
7 worth a little.

8 So there are tests you can run to see which  
9 perspective for any particular stock is the correct  
10 perspective. It's a battery of tests that tell you whether  
11 information matters, whether information is important,  
12 whether the market is efficient.

13 So I ran those tests and I arrived at the  
14 conclusion that all of the tests, every single one of them,  
15 compelled the conclusion that the market for Puma stock was  
16 an efficient market.

17 Information is extremely important. It's  
18 information that makes the stock price go up or down.  
19 Information is what determines the stock prices. My  
20 understanding is nobody has challenged that opinion in this  
21 case.

22 Q. Very briefly, what does the notion that a stock trades  
23 in an efficient market mean for people who are investing in  
24 that stock?

25 A. It means they can trust the stock price. They can trust

1 that as long as parties are abiding by the laws and the  
2 information that's out there is truthful, then the price of  
3 the stock is fair. It's a fair price.

4 But it also means that if the information is not  
5 truthful, the price might be unfair. It might be inflated  
6 and investors might be paying an inflated price for the  
7 stock. So what it means is that for the average investor, it  
8 means you can trust the prices to be fair.

9 Q. Let's go on to the remainder of the summary of your  
10 opinions. The second bullet point says July 22nd, 2014,  
11 ExteNET trial statements. Can you just explain, give us a  
12 quick summary of what your opinion is with regard to  
13 July 22nd, 2014?

14 A. Well, once I established that the market for Puma stock  
15 was an efficient market, I was able to move on to more  
16 advanced analyses to see how did the alleged  
17 misrepresentations and omissions in this case affect the  
18 stock price.

19 And I can explain and I think I'll explain later,  
20 there's a number of statistical tests that can be run. The  
21 outcome of this test was that the misrepresentations and  
22 omissions, the information -- actually the information that  
23 came out about Puma stock on July 22nd, 2014, with the press  
24 release and the conference call pushed the stock price up  
25 \$167 per share.

1           It went from -- the stock price actually went up  
2     \$174.40 that day, but I was able to determine that the  
3     company-specific information was responsible for \$167 of  
4     that. So the stock price essentially quadrupled that day  
5     because of that information.

6     Q. Can you give us a quick summary of your opinions with  
7     respect to May 13th, 2015?

8     A. Well, it's alleged that some of the information that  
9     came out on July 22nd was fraudulent information, was untrue  
10    information. So I analyzed when that information, when the  
11    misinformation, misrepresentations and omissions, when they  
12    were corrected and what impact that correction of the  
13    misinformation had on the stock price.

14           So the May 13th, 2015, ASCO abstract with the  
15    information it contained caused the stock price to fall  
16    \$40.96 per share. So statistically factoring out other  
17    things like the overall stock market and the industry effect  
18    and taking into account random volatility, I was able to  
19    identify, focus, hone in on the impact of the information at  
20    issue in this case and found that it caused the stock price  
21    to fall \$40.96 the next day, May 14th.

22           May 13th was after the close, so the stock price  
23    moved the next day, which was May 14th. And it fell \$40.96  
24    because of that information.

25    Q. With respect to June 1st or June 1st through 2nd, 2015,

1 can you just quickly summarize what your finding was there?

2 A. That the corrective information caused the stock price  
3 to fall -- the new corrective information, additional  
4 corrective information caused the stock price to fall \$46.24  
5 on June 1st and June 2nd. So the disclosures that were made  
6 on June 1st caused an additional \$46.24 of stock price loss.

7 Q. And did you reach a conclusion with respect to the  
8 damages that were caused by the false statements on  
9 July 22nd, 2014, and the disclosures on May 13th and  
10 June 1st, 2015?

11 A. Sure. If you add up those two corrective disclosures,  
12 the effects of those two corrective disclosures, they add up  
13 to \$87.20 per share. So the loss to investors that was  
14 caused by the misrepresentations and omissions sums to \$87.20  
15 measured as the drops that occurred on the days of the  
16 corrective disclosures.

17 Q. Were your opinions in this case based on an event study?

18 A. Yes.

19 Q. Can you briefly describe to all of us what an event  
20 study is?

21 A. Yes. So an event study is perhaps one of the most  
22 important financial analytic tools and one of the most  
23 commonly used financial analytic tools to assess what  
24 information is causing a stock price to move.

25 To understand how an event study works, it's

1 important to know a little bit about what moves and what  
2 drives stock prices. So generally accepted understanding of  
3 this is that there are essentially four factors that are  
4 simultaneously impacting stock prices. One factor is the  
5 overall stock market.

6 So within -- you might have heard, you know, the  
7 Dow Jones industrial average has 30 stocks in it, and the  
8 Standard & Poor's 500 has 500 stocks in it. There's an  
9 overall stock market factor that will raise and lower all the  
10 stocks in the stock market.

11 So if the economy is booming, generally all stocks  
12 go up. If there is economy-wide problems, all stocks will go  
13 down. It's sort of like the tide that rises and lowers all  
14 ships. That's called the market factor.

15 Within the market there are also industry sectors.  
16 Biotech is an industry sector. From time to time investors  
17 like biotech stocks and all biotech stocks will go up.  
18 Biotech stocks might start to fall out of favor and all  
19 biotech stocks will go down.

20 It's information about the sector and not really  
21 information about the individual companies. That's called a  
22 sector factor. So you have two factors, the market factor  
23 and the sector factor, that are simultaneously pushing stock  
24 prices in one direction or the other.

25 Layered on top of those two factors you've got two



1 more things. One is company information, the specific  
2 information about how the company is doing. Is neratinib  
3 going to do well or is neratinib not going to do well, for  
4 example, in this case? So company information is also moving  
5 the stock price while the other two are also having their  
6 effect.

7 The fourth factor, is there a random element?  
8 There is some random element, sort of a catchall bucket for  
9 little effects that aren't identified that will move the  
10 stock price. And I just want to say --

11 THE COURT: Hold on. Slow down a bit. I think we  
12 should have another question rather than what he just wants  
13 to say.

14 MR. GRONBORG: We'll try and make sure we can move  
15 it along. And absolutely, if you can just speak slowly.

16 BY MR. GRONBORG:

17 Q. Can you just briefly tell us how an event study is done?

18 A. An event study pulls apart the four factors. That's  
19 what it does. It's a statistical analysis to pull apart the  
20 four factors so that we can isolate and hone in on the  
21 company information, to see the effect of the company  
22 information.

23 It was an event study that was run that led to  
24 those two conclusions, one for May 13th and one for June 1st,  
25 the \$40.96 and the \$46.24. They were identified as being

1 caused by company information. They were identified by the  
2 event study.

3 Q. As part of the event study, do you do a regression  
4 analysis?

5 A. Yes.

6 Q. Can you briefly describe for us what a regression  
7 analysis is?

8 A. That's the statistical analysis that helps the analyst  
9 rip apart the four factors to look at each one individually.

10 Q. As part of the event study, do you also look at  
11 information that is being disclosed about, in this case,  
12 Puma?

13 A. Yes. Well, part of the event study requires  
14 identifying what information there is about the company.

15 Q. And how do you do that?

16 A. That's -- I do what's called a news analysis, financial  
17 analysis. I look at newspaper articles, analyst reports,  
18 company filings, the SEC filings, conference calls that the  
19 company has with investors, all of these things, to see what  
20 new information is coming out.

21 And it's very important to compare what new  
22 information is coming out or what information is being  
23 announced with what was already announced previously. So a  
24 news analysis looks at these sources through time to see  
25 what's new on each day.

1 Q. Thank you.

2 Are event studies like you did here commonly used  
3 in your field?

4 A. Very.

5 Q. How many times have you done event studies in your  
6 career?

7 A. Hundreds.

8 Q. So as part of your event study, you did look at  
9 July 22nd, 2014; is that right?

10 A. Yes.

11 Q. Did you review the transcript of Puma's July 22nd, 2014,  
12 conference call?

13 A. Yes.

14 Q. And in your line of work and in doing these sort of  
15 analyses, is it common to review conference call transcripts  
16 like Puma's from July 22nd, 2014?

17 A. Yes, because conference calls are extremely important.  
18 Conference calls are one of the main vehicles for information  
19 to flow from the company into the marketplace.

20 Q. And did you analyze Puma's stock price reaction  
21 following the statements that were made about the ExteNET  
22 trial on July 22nd, 2014?

23 A. Yes.

24 Q. And I think you have a demonstrative.

25 MR. GRONBORG: If we can pull up Exhibit 1111,

1 page 2.

2 THE WITNESS: Yes.

3 BY MR. GRONBORG:

4 Q. What does this slide show with respect to Puma's stock  
5 price and your event study for that July 22nd through 23rd,  
6 2014, period?

7 A. Well, it shows that the news was received by the  
8 marketplace as very good news, and the stock price shot up.  
9 It went from \$59.03 to \$233.43. That's an incredibly large  
10 movement for one stock in one day.

11 And in the lower right-hand corner of this  
12 demonstrative it shows the analysis separating out that  
13 movement into its various pieces.

14 Q. Let's just break that down quickly. You have a box  
15 there for a logarithmic return. What does that mean?

16 A. It's another way of measuring returns. It's similar to  
17 percentage returns, but it's measured a different way.  
18 Financial analysts use this other way of measuring percents  
19 for a variety of computational advantages and reasons.

20 Q. Then the expected return, what is that?

21 A. That's how much of the return was caused by the market  
22 and the sector factor. So given what the stock market as a  
23 whole was doing that day, that's how much the stock would  
24 have risen if there was no Puma news. That Puma stock would  
25 have risen \$7.68 per share.

1 Q. And then the residual return, can you explain to us  
2 briefly what that is?

3 A. That's the difference between the total return of  
4 \$174.40 that Puma stock rose, and the \$7.68 that is explained  
5 by the other factors, the non company-specific factors.

6 Q. So is it right that you're saying but for the company's  
7 specific information that came out, Puma's stock price would  
8 not have risen that additional \$166.72?

9 A. That's the conclusion.

10 Q. Okay. Then you have a line -- a box there for  
11 statistical significance. What does that mean?

12 A. That's the level of confidence in the conclusion. It is  
13 also the level of confidence that this is not a random  
14 fluctuation, that in fact \$166.72 of price increase was  
15 caused by the Puma information that day.

16 Q. So in other terms, can you tell us what are the odds  
17 that this \$166.72 residual return was caused by something  
18 other than specific information about Puma?

19 A. Less than one in 10,000. I mean, it goes beyond 99.9.  
20 It's more like 98.99. So it's less than one in 10,000, is  
21 the chance that this conclusion is not accurate.

22 Q. And are you aware that the defendants in this case have  
23 hired an individual, Dr. Paul Gompers?

24 A. I am aware.

25 Q. And you're familiar with Dr. Gompers from other cases?

1 A. Yes.

2 THE COURT: Would you hold on one second.

3 I didn't quite catch that.

4 Okay. Go ahead.

5 BY MR. GRONBORG:

6 Q. Did you read Dr. Gompers' report in this case?

7 A. I did.

8 Q. And in this case did Dr. Gompers disagree with your  
9 conclusion that the residual return for Puma's stock price on  
10 July 23rd, 2014, was \$166.72?

11 A. He did not.

12 Q. And did he disagree with your conclusion that that  
13 residual return was statistically significant at the 99.9  
14 percent level?

15 A. He did not disagree with me.

16 Q. Now, what did you find was the cause of that \$166.72  
17 residual return on July 23rd, 2014?

18 A. It was caused by the information the market received  
19 from Puma in the press release and conference call, two press  
20 releases and a conference call.

21 Q. And why did you conclude that those were results to  
22 cause Puma's stock price to increase?

23 A. From the event study. That conclusion is compelled by  
24 the statistical analysis and the news analysis.

25 Q. Specifically in the news analysis, what did you see that

1 led to the conclusion that it was Puma-specific information  
2 that caused that stock price increase?

3 A. Well, I mean, that's what the event study does. I mean,  
4 it's -- it was good news about Puma's stock. It was good  
5 news about neratinib. Analysts followed up parroting back  
6 the same good news, and the event study eliminates the other  
7 causes.

8 Q. Did you look at the analyst reports that came out  
9 following the July 22nd, 2014, statements?

10 A. I did.

11 Q. In your binder, if I could have you turn to Exhibit 479.

12 MR. GRONBORG: We have 479 admitted into evidence  
13 with a limiting instruction.

14 THE COURT: Very well.

15 **(Exhibit 479 received.)**

16 BY MR. GRONBORG:

17 Q. Do you see attached to the e-mail that is sent to Alan  
18 Auerbach on the evening of July 22nd, 2014, there is a Citi  
19 report?

20 A. Yes.

21 Q. Is this one of the analyst reports that you looked at in  
22 doing your event study?

23 A. It is.

24 Q. And were the comments in this analyst report here  
25 generally similar to what you saw in other analyst reports?

1 A. Yes.

2 Q. And what was it that you referred -- that you recall the  
3 analysts were generally reporting following the July 22nd,  
4 2014, conference call?

5 A. Well, they were -- it was the information at issue in  
6 this case really. I mean, the very -- under conclusions it  
7 says: Today Puma announced positive three-year results from  
8 the adjuvant ExteNET trial. This data represents a best-case  
9 scenario similar to our raging bull case.

10 Then under what they mean by best case scenario,  
11 this analyst lays out exactly the information that has been  
12 at issue in this case. It says: We estimate that neratinib  
13 achieved a two-year DFS rate of 90 percent to 91 percent  
14 versus 86 percent for the placebo.

15 The sentence before that is: The good news is that  
16 neratinib was successful in this setting across all subsets  
17 and the DFS curves continued to diverge with time. So what's  
18 being alleged as having been the misrepresentations, the DFS  
19 curves are spreading out; the absolute difference in DFS  
20 rates is the difference between 86 percent on the one hand  
21 and 90 to 91 on the other.

22 Then continuing on the next page: The dropout due  
23 to side effects is likely five to ten percent. And looking  
24 in the next block, it says: Neratinib has been largely  
25 overlooked by docs due to its grade-three diarrhea rate of 20



1 to 30 percent.

2 So this analyst is saying this is very good news.  
3 What was announced was the best-case scenario. And what made  
4 it the best-case scenario was the Kaplan-Meier curves, the  
5 diarrhea rate, the dropout rate, and the estimate of DFS  
6 rates being 86 for the placebo and 90 to 91 for the drug.

7 Q. And was it your understanding that those were all  
8 factors that were discussed during the July 22nd, 2014,  
9 conference call?

10 A. Yes. If you look at the conference call, you can see  
11 that this analysts got that information from the conference  
12 call. There was no other way, no other place they could have  
13 gotten that information.

14 Q. And following in the -- generally in the reports  
15 following that conference call, do you recall what the  
16 analysts were saying the absolute difference in the DFS rates  
17 was in the ExteNET trial?

18 A. Well, just like this one. They were saying four to  
19 five percent.

20 Q. Did you see any analyst reports that said that they  
21 anticipated the absolute difference in the DFS rates was  
22 going to be 2.3 percent?

23 A. No.

24 Q. Did you see any analyst reports following this July  
25 22nd, 2014, conference call that said they expected the DFS

1 rates to fall within a range of one to six percent?

2 A. Not at all. They all came away thinking it was four to  
3 five.

4 Q. And did Dr. Werber in any of his reports, the Citi  
5 analyst here, did he say he expected the absolute difference  
6 in DFS rates in the trial to be in the range of one to  
7 six percent?

8 A. No.

9 Q. If you could take a look at Exhibit 488.

10 MR. GRONBORG: We'd have Exhibit 488 admitted with  
11 a limiting instruction.

12 THE COURT: Very well.

13 **(Exhibit 488 received.)**

14 BY MR. GRONBORG:

15 Q. You see Exhibit 488 is an e-mail to Alan Auerbach on  
16 October 1st, 2014. But the Citi report that is attached to  
17 that e-mail, is that one of the analyst reports that you  
18 reviewed in the course of doing your event study?

19 A. Yes, it is.

20 Q. And was there anything in that report that you recall  
21 was of interest to you?

22 A. Yes.

23 Q. What was that?

24 A. Well, they said they had just recently talked to  
25 Mr. Auerbach. I mean, there was a dinner. It says: We had

1 a client dinner with Puma's CEO, Alan Auerbach. And they  
2 reiterated their understanding that it was still a  
3 four-percent difference in the DFS rates. It says under  
4 ExteNET explained, which is --

5 Q. Let me stop you. Just to make sure we have the record  
6 clear, you're looking at page 2 of 9; is that right?

7 A. That's right.

8 Q. Okay. And where on the page are you?

9 A. Well, the first thing was at the very top where it says,  
10 what's new? It explains that this analyst had just had a  
11 dinner with Alan Auerbach.

12 Q. Okay. And then you were reading about at the dinner.  
13 Where on the page is that? Am I getting right near the  
14 bottom of the page?

15 A. Under ExteNET explained.

16 Q. Got it. Okay. Go ahead.

17 A. "Some investors have grown concerned whether the  
18 expectations for ExteNET are appropriate and what three-year  
19 DFS values in adjuvant breast cancer is implied by an HR,  
20 hazard ratio of 0.67.

21 "At the dinner management confirmed that Herceptin  
22 control arm showed a three-year DFS rate that is in line with  
23 historical controls. We interpret that to mean 86 percent.  
24 Given this, we expect the neratinib arm to achieve three-year  
25 DFS of approximately 90 percent."

1                   So between 86 and 90, that's a four-year spread  
2 still.

3       Q.    And was that generally consistent with what you saw in  
4 analyst reports before May 13th, 2015?

5       A.    Yes.

6       Q.    We saw that some of the reports, we saw the first Citi  
7 report discussed the grade-three diarrhea rate. Did you see  
8 that discussed in other analyst reports around this time?

9       A.    Yes. All the way right up through the ASCO abstract  
10 disclosure, analysts were saying 30 percent was what they  
11 understood the diarrhea rate to be. There was a May 11th,  
12 for example -- May 11th was just -- a couple days before the  
13 ASCO abstract, there was a May 11th analyst report where RBC  
14 said 30 percent was what they thought the diarrhea rate was.

15      Q.    And prior to May 13th, 2015, do you recall seeing any  
16 analyst report where they stated that the grade-three  
17 diarrhea rate was expected to be 39.9 percent?

18      A.    No.

19      Q.    Let's turn to your analysis of the May 13th disclosure  
20 and the subsequent stock price decline on May 14th.

21                   MR. GRONBORG: If we can pull up Exhibit 1111,  
22 page 3.

23      BY MR. GRONBORG:

24      Q.    Is this a demonstrative that you prepared with respect  
25 to the May 13th disclosure and the May 14th stock price

1 decline?

2 A. Yes.

3 Q. And I think we're familiar with the terms, so could you  
4 just quickly walk us through what the results were that you  
5 found for May 14th, 2015?

6 A. May I use the pointer, the laser pointer on the slide?

7 THE COURT: Okay. There's a couple of things you  
8 can do.

9 THE WITNESS: Yes.

10 THE COURT: Let's try this and see how it works.  
11 Laser pointer on the slide, oh, that works very well. Okay.

12 THE WITNESS: Well, the abstract came out and  
13 corrected the market's understanding of the absolute DFS  
14 rates and the DFS spread between neratinib and the placebo.

15 So the abstract came out, and now people knew it  
16 was 2.3 percent and not four to five percent. They also knew  
17 the diarrhea rate was 39.9 percent and not 20 to 30 percent  
18 or anything less than 39.9 percent.

19 The stock price fell -- that's what this line is --  
20 in one day. So the abstract came out the night of May 13th,  
21 so the market was closed on the -- when the abstract came  
22 out. But the next day the market could trade on that  
23 information, and the price plunged on that information from  
24 209.72 to 170.67. That's this drop here (indicating).  
25 There.

1           So there is, you know, other factors affecting the  
2 stock price in here, but this drop here is what we can  
3 analyze with an event study, and the event study showed that  
4 there was actually an upward push on the stock price that day  
5 by the market and sector factors. The upward push was \$1.91.  
6 The stock fell \$39.05.

7           Had it not been for the information, the stock  
8 would've risen \$1.91. So we can trace \$40.96 of drop to that  
9 information. In other words, we can value the information  
10 that came out that day. We can see how the marketplace  
11 valued the information that came out that day.

12           The marketplace put a price tag, a value, of  
13 negative \$40.96 on the negative neratinib information that  
14 came out that day.

15 BY MR. GRONBORG:

16 Q. That was also statistically significant at the  
17 99.9 percent level; is that right?

18 A. Yes.

19 Q. And again you -- did Dr. Gompers, the defendant's  
20 expert, did he disagree with your conclusion that the  
21 residual return on May 14th was negative \$40.96 a share?

22 A. He did not disagree.

23 Q. Did you compare the disclosures that were made on  
24 May 13th, 2015, with the statements that had been made months  
25 earlier on July 22nd, 2014?

1 A. I did. There's almost a one-for-one correspondence.

2 Q. And you have a demonstrative for that as well?

3 A. I believe so, yes.

4 Q. Go to page 4 of Exhibit 1111.

5 A. (Witness complies.)

6 Q. And briefly, what was it you were comparing between the  
7 statements made in July of 2014 and what was disclosed on  
8 May 13th of 2015?

9 A. Well, on the left, upper left side of this slide here,  
10 this area here, we've all seen this many times in this case.  
11 This is the interchange between the Citigroup analyst Yaron  
12 Werber and Mr. Auerbach where Yaron Werber says: According  
13 to my calculations, it looks like the difference must be the  
14 difference between 86 percent for the placebo and 91 for  
15 neratinib. Mr. Auerbach confirmed and said that he's  
16 comfortable with those numbers.

17 Then, so that's what the market was led to believe  
18 up until May 13th. But then on May 13th, in the night of  
19 May 13th, this information came out that showed that it was  
20 -- that this information was not true.

21 Q. With respect to the grade-three diarrhea statement, did  
22 you do the same analysis or comparison of the July 22nd  
23 statements and the May 13th disclosures?

24 A. Yes. So -- well, the fact that these questions were  
25 asked by the analysts on July 22nd informs me that these are

1 the important things analysts want to know about neratinib.  
2 And what they were told was the diarrhea rate was 29 to  
3 30 percent. May 13th, in the evening, they find out it's  
4 40 percent.

5 Q. And did you consider the news and the analyst report  
6 that came out following the disclosures on May 13th, 2015?

7 A. I considered everything, all the news, everything in the  
8 analyst reports, everything in the abstract.

9 Q. Why were you considering those news and analyst reports?

10 A. To see how they were taking this, to see how they  
11 reacted to this information, and to see what they said the  
12 market -- how the market was reacting to this information.

13 I mean, from my analysis it's plain that the market  
14 investors reacted negatively to this information and the  
15 stock price plunged, but the analyst reports confirmed that  
16 the market reacted badly to this information, that it wasn't  
17 a random fluctuation.

18 The analyst reports confirm that the event study  
19 got it right, that it was company information that drove down  
20 the stock price that day.

21 Q. Are you looking to see if the analysts say that there  
22 was a fraud that occurred?

23 A. Analysts hardly ever will say that. Analysts will  
24 correct information. They'll try -- you know, they'll  
25 present information, but they rarely will come out and accuse



1 management of fraud or even of being misled.

2 Q. Did you take into consideration any bias there might be  
3 among the analysts?

4 A. I did.

5 Q. Is there any academic literature about conflicts of  
6 interest or bias among analysts?

7 A. There is extensive literature. One needs to understand  
8 that analysts are in a difficult predicament when there's  
9 negative news about a company.

10 Analysts make their livelihood by having access to  
11 management and being able to talk to management and go to  
12 conferences and get information from management that they can  
13 then analyze and report back to their clients and their  
14 investors. And if an analyst alienates management, they lose  
15 that access.

16 I think we actually -- we've seen a lot of evidence  
17 specifically in this case that that was a fear among  
18 analysts, that they wouldn't get to go to conference calls.  
19 They wouldn't be -- or conference dinners and meetings. They  
20 wouldn't be put on the list to ask questions of management if  
21 management was upset with them.

22 So to keep access to management and not alienate  
23 management, analysts will try to present the truth. They  
24 will present the truth when they hear it, but they'll try to  
25 spin it or pose it in a way that isn't going to alienate

1       their position with management.

2               And then additionally, analysts work for the same  
3       companies that do underwriting jobs for companies, and  
4       there's millions of dollars of potential profits at stake  
5       from being able to do underwriting with companies. And if  
6       analyst A alienates the management at company B, analyst A's  
7       underwriting company, their investment bank, will probably be  
8       left out of the underwriting business with company B.

9               So they're under tremendous pressure not to say --  
10       to spin things in the most positive light. So they have an  
11       easy task when there's good news. They have a very difficult  
12       task of how to report it when there's bad news.

13       Q.     And in this case did you look for or see any evidence  
14       that the analysts who were covering Puma, that their firms  
15       were also doing investment banking business with Puma?

16       A.     Yes. It's disclosed. There's a disclosure at the  
17       bottom of the analyst reports that say exactly that. I  
18       should say also that when I teach financial analysis and when  
19       I taught classes for the Boston Security Analysts Society,  
20       this is one of the things we teach, that there is almost an  
21       art to how to read analyst reports, understanding that they  
22       have an easy job when there's good news and a difficult job  
23       when there's bad news.

24               So there is a way to read analyst reports to see  
25       what's new that's bad. There's a way to read them that we

1 teach, which is essentially to look at what they used to say  
2 and how they changed their story over time even though they  
3 might not highlight, you know, with opinion of the negative  
4 news.

5 Q. Did you also look at private e-mails that the analysts  
6 were sending and compare those with what they were putting in  
7 their analyst reports?

8 A. Yes.

9 Q. And why did you do that?

10 A. Well, it again confirms that, in this particular case at  
11 least, analysts were concerned about alienating management  
12 and that there was bias, that they would say more negative  
13 things behind the scenes than they were willing to say in  
14 their reports when the bad news came out.

15 Q. Do you recall any examples of any analysts who were  
16 saying things in their nonpublic e-mails that was different  
17 from what was in their reports?

18 A. Yes.

19 Q. Do you recall --

20 A. I think we all saw it. I mean, there was Eric Schmidt  
21 from Cowen who said he wouldn't buy the stock at any price  
22 and he didn't know how you can put investors' money into Puma  
23 stock with a straight face. He didn't say that in his  
24 reports.

25 Q. Let me have you look at Exhibit 844.

1 A. I just want to add to that. I mean, you know, we all  
2 saw the video clip where Eric at Cowen also said that he  
3 expected friends of Alan to spin the news positively, which  
4 is exactly what the literature says happens when there's  
5 negative news.

6 Q. If I could have you turn to Exhibit 844, which is a  
7 May 14th, 2015, RBC Capital markets report. I believe it was  
8 admitted into evidence by defendants yesterday.

9 A. I don't have that in the binder, so I'll be looking at  
10 the scene.

11 Q. Let's look at the title of that.

12 A. Okay.

13 Q. This analyst report -- I guess, what did you draw from  
14 the title of the analyst report?

15 A. The analyst is recognizing that the dip was caused by  
16 this new negative information about Puma. He says that the  
17 ASCO abstract -- specifically that information and not other  
18 information, not the market, not the sector, but the ASCO  
19 abstract scared investors. It was bad news.

20 Q. The analyst goes on to say: We think data are good.

21 What did you make of that?

22 A. That's opinion. I mean, there's opinion and fact that  
23 you have to separate out. I mean, the facts are what they  
24 are. It's hard to make the case that 2.3 is good as an  
25 absolute spread when people were expecting four to five.

1           So, you know, the analyst writes the facts in here  
2           and lets investors draw their conclusion and recognizes that  
3           the market dropped on that information. But I think a lot of  
4           people might disagree. It's pretty clear that a lot of  
5           people did disagree that the data were good.

6           MR. GRONBORG: Actually before I move on, if we  
7           could bring up slide 1111, 3, one back from where we were  
8           before.

9           BY MR. GRONBORG:

10          Q. And before we move on to June -- I don't have your  
11          pointer, but the stock price falls on May 14th, and then it  
12          goes up a little bit in the few weeks after, between May 15th  
13          and May 28th. Do you see that?

14          A. I do.

15          Q. And did you look at that period of time between May 15th  
16          and May 28th when you were doing your event study analysis?

17          A. I did.

18          Q. All right. Did you look at every day during the class  
19          period?

20          A. I did.

21          Q. And during that time period between May 15th and  
22          May 28th, did you identify any day where there was a  
23          statistically significant residual return for Puma's stock  
24          price?

25          A. No. Those returns, those fluctuations after that dip

1 were not statistically significant. So I recall in defense  
2 counsel's opening statement, he said that you don't need an  
3 expert to read a stock chart. I thought about that, and I  
4 think in some cases it helps.

5 One reason it would help is I ran the test to see  
6 if what we're talking about is this increase here, was that  
7 statistically significant, meaning it was caused by  
8 information; or was it not statistically significant, which  
9 means it was -- you can't rule out that it was caused by  
10 volatility. And I found the latter.

11 This is -- there's a lot of volatility in this  
12 stock. You know, we know this drop was caused by  
13 information, but this rise here was not.

14 Q. And then turning to June 1st --

15 A. I just want to be clear about that. There is no day in  
16 that period that had a statistically significant increase in  
17 price.

18 Q. If we can turn to your demonstrative, page 5 of  
19 Exhibit 1111. Is this your analysis of Puma's stock price on  
20 June 1st through 2nd, 2015?

21 A. Yes.

22 Q. And why were you looking at the stock price at that  
23 time?

24 A. Well, this is the -- June 1st is the other day when the  
25 alleged misrepresentations and omissions were corrected. So

1 it was important to focus the event study analysis on the  
2 days the market learned the truth that corrected the  
3 misrepresentations and omissions.

4 So I focused the analysis on the first day of the  
5 class period where the price went up. I focused event study  
6 analysis on May 14th when the market was reacting to the  
7 abstract. It was also important to focus event study  
8 analysis on June 1st and June 2nd when the market learned the  
9 rest of the truth.

10 Q. Now, is it common in your field to look at a stock price  
11 movement over two days?

12 A. Yes.

13 Q. Were you comfortable doing that here?

14 A. Yes. There's -- sometimes with some information, one  
15 day is the appropriate window to look at. But with certain  
16 circumstances -- and the circumstances were satisfied here --  
17 it was necessary to look at two days. It was important and  
18 necessary. It was justified to look at two days.

19 Q. Now, was the fact that the information that was  
20 disclosed in this case, that it came out in the middle of the  
21 day on June 1st, 2015, was that relevant to your decision to  
22 use a two-day window?

23 A. Yes, and let me explain that.

24 So by comparison the May disclosure came out the  
25 night of May 13th. So the market had the night of May 13th

1 to think about it, digest it, all day long on May 14th to  
2 trade on it.

3 With this disclosure on June 1st, the information  
4 came out in the middle of the day. They shut down trading in  
5 Puma stock in the middle of that day, June 1st. During  
6 June 1st the company announced that there would be a meeting  
7 with analysts the night of June 1st in order to provide more  
8 information and the company's take on what these disclosures  
9 had been.

10 All of those factors extend the market's reaction.  
11 All of those factors make it necessary to look at June 2nd as  
12 well as June 1st.

13 Q. And have you used multiple days to analyze stock price  
14 in other matters?

15 A. I have. And other people have, too. My report lists  
16 examples from the literature where this is generally accepted  
17 practice.

18 Q. If we can go through, then, quickly again the slide.  
19 Just tell us what conclusions from your event study and  
20 regression analysis you were able to draw with respect to  
21 Puma's stock price on that June 1st through 2nd time period.

22 A. Okay. The first piece -- these red lines here show that  
23 the stock fell from \$195.45 to \$169.97 on June 1st. That is  
24 a statistically significant drop individually, meaning we  
25 know for sure it was caused by company information.



1           The second day the price went down from \$169.97 to  
2     \$146.65 also on this information. This also was a  
3     statistically significant drop, meaning it was caused by  
4     information. It's not a random fluctuation.

5           Over this period the market was negative. The  
6     overall market was slightly negative, so the stock would have  
7     lost \$2.56 anyway. So even though the price fell 48.80, I  
8     take out the \$2.56 that would have been lost anyway because  
9     of market and sector information and conclude that the  
10    company disclosures are responsible for \$46.24 of Puma  
11    stock's drop over those two days.

12    Q.   And again, were those statistically significant at a  
13    99.9 percent level?

14    A.   Yes, individually and collectively.

15    Q.   And based on your review of his report, did Dr. Gompers  
16    disagree with your conclusion that the residual return over  
17    the June 1st through 2nd period was negative \$46.24?

18    A.   No. That wasn't his criticism.

19    Q.   And did he disagree with your conclusion that that  
20    finding of a negative \$46.24 company-specific return was  
21    statistically significant at a 99.9 percent level?

22    A.   He agreed with that.

23    Q.   Now, did you compare the disclosures that were made on  
24    June 1st, 2015, with the statements Mr. Auerbach had made on  
25    July 22nd, 2015?

1 A. Yes.

2 Q. Do you have a slide for that?

3 A. Yes.

4 Q. I believe that slide is page 6 of Exhibit 1111.

5 Can you briefly just explain to us what comparison  
6 you did or what analysis you did with respect to the  
7 statements in July of 2014 and the disclosures on June 1st of  
8 2015?

9 A. Okay. So in the upper left-hand block is a review,  
10 recap of what Mr. Auerbach said on July 22nd, 2014, regarding  
11 the Kaplan-Meier curves. Well, he says if we look at the  
12 Kaplan-Meier curves going out beyond that, it looks like the  
13 curves are continuing to separate.

14 And then what I thought was very impactful on the  
15 market, he says in the second -- the last sentence of the  
16 next paragraph, the example he gives: So, for instance, in  
17 the BCIRG trial, the DFS difference was six percent at two  
18 years, seven percent at three years, then eight percent at  
19 four years. We're seeing the same preliminary trend in the  
20 ExteNET trial where the curves appear to be continuing to  
21 separate as you go out year over year, and the absolute DFS  
22 difference is increasing year over year as well.

23 So he gave the impression that the market would see  
24 numbers like six percent, seven percent, eight percent, you  
25 know, one percent increases in the spread between the

1 Kaplan-Meier curves.

2 So that's what the market was led to believe. That  
3 was the information that was provided to them by the company.

4 Then in Arlene Chan's presentation, this chart was  
5 provided and discussed that showed that that just wasn't the  
6 case, that there was a -- well, the way the analyst described  
7 it is the curves were parallel or that the spread -- you  
8 know, they pointed out that there was a spread that opened up  
9 early on, and the spread was maintained.

10 So if you look at, you know, the UBS and RBC  
11 analyst reports, they'll say that the, you know, that -- they  
12 point out that the truth was not that the curves were  
13 spreading out but that they were being maintained or staying  
14 parallel. So that's what people learned.

15 Q. And --

16 A. That's half of it.

17 Q. All right. What's the other half?

18 A. Well, the other half is that there was a question that  
19 was asked at the July 22nd, 2014, conference call which was  
20 essentially -- which was how many people are still taking  
21 this drug? How many people took the drug for the entire  
22 year, the entire course?

23 The answer that was provided was that the dropout  
24 rate from adverse events was five to ten percent. So let's  
25 make sure we have it precisely here: I just want to clarify

1 an earlier answer to a question. So you were asked about the  
2 dropout rate, and I think you wanted to defer to dropouts due  
3 to discontinuations due to adverse events, but can you just  
4 mention, or maybe I missed it, how many patients actually  
5 completed the year of therapy?

6 And the answer this analyst got was: In terms of  
7 patients who dropped out due to AEs -- that's adverse  
8 events -- like I said, historically with neratinib that  
9 should be somewhere in the five to ten percent range.

10 Q. How did that compare with the information that came out  
11 on June 1st, 2015?

12 A. Well, what's interesting is the exact same question was  
13 asked during the Arlene Chan presentation: How many people  
14 completed it? And the answer was: 39 percent dropped out  
15 and 16.8 percent discontinued due to the diarrhea AE alone.

16 So people learned that it was three times -- three  
17 or, you know, from five to ten percent, it was 16.8 percent  
18 instead just due to the diarrhea adverse event alone. And  
19 the total dropout rate was 39 percent.

20 So it learned that what they had been told before  
21 wasn't true and that the drug was not as good as they  
22 previously were led to believe, that it had more severe, more  
23 common side effects.

24 Q. Did you consider whether there was any other new  
25 information unrelated to the alleged false statement that

1 could have caused the negative residual return of the stock  
2 price decline on June 1st and June 2nd, 2015?

3 A. I certainly did. That's called confounding information  
4 analysis, and I performed an extensive confounding  
5 information analysis. I looked at everything else about the  
6 company that came out that day. So I looked at the slides  
7 from Arlene Chan's presentation. I looked at the transcript  
8 from Arlene Chan's presentation. The transcripts included  
9 comments from the audience.

10 I looked at even the transcript from the conference  
11 that Puma had with investors that night of June 1st. I  
12 looked at every one of Arlene Chan's slides and I asked the  
13 question: Is there something else negative about Puma that  
14 could've contributed to the stock price drop that day?

15 If I can continue, the way you run --

16 Q. Let me just ask: What did you conclude based on what  
17 you've described as a confounding information analysis?

18 A. Well, the way you run a confounding information analysis  
19 is in order to be truly confounding information, which means  
20 it might be another factor that's causing the drop, in order  
21 to be truly confounding information, there has to be other  
22 information, one.

23 The other information has to be new, surprising,  
24 unexpected, because if it was already expected or not new, it  
25 would've already changed the stock price and wouldn't change

1 it going forward. So there's got to be information. It's  
2 got to be new and unexpected and surprising.

3 It's got to be unrelated to the alleged fraud. I  
4 mean, it can't just be another ramification of the fraud.  
5 Otherwise it wouldn't be an alternative explanation. And  
6 it's got to be negative.

7 I mean, if it's positive news, it would, if  
8 anything, push the stock price up and ameliorate or reduce  
9 some of the drop. So it's got to be negative if it's really  
10 going to be offered as an explanation for why the stock price  
11 might have fallen.

12 Nothing else satisfied that screen. There was no  
13 other information, even though there was a lot of  
14 information. I applied the screen to all the information.  
15 Nothing else satisfied the screen as being new, unexpected,  
16 surprising, negative information that was material that could  
17 cause the stock price to drop besides --

18 Q. Thank you.

19 A. Okay -- besides the two pieces of information I  
20 described.

21 Q. I appreciate that. I'm just going to ask again if you  
22 could just slow down. I know it's a lot of information. So  
23 as you're getting through it, if you could just slow down so  
24 we can make sure we have a good record on it.

25 In the end, then, you did not identify -- in your

1 confounding information analysis, did you identify any  
2 confounding information that you believe caused the negative  
3 residual return of \$46.24 on June 1st through 2nd, 2015?

4 A. No. There was no other information that caused any of  
5 that drop.

6 Q. And you also calculated ultimately the damages that were  
7 caused by the inflation in the stock price during the period  
8 between July 22nd, 2014, and the May and June disclosures; is  
9 that right?

10 A. That's right.

11 MR. GRONBORG: If we could pull up slide seven --  
12 excuse me, page 7.

13 BY MR. GRONBORG:

14 Q. Is this a summary of your findings of what the damages  
15 are?

16 A. It is.

17 Q. And you've gone over most of this, but can you explain  
18 to us how you arrived at the total of \$87.20 a share of  
19 damages?

20 A. Well, I looked at the two disclosure events, the  
21 May 13th ASCO abstract and the June 1st presentation at ASCO,  
22 and isolated using the event study the price drop caused by  
23 the negative information, proved with information analysis,  
24 news analysis, and confounding information analysis, that the  
25 drops were because of the information at issue in this case

1 found that at \$40.96 was corrected on May 14th. \$46.24 was  
2 corrected in the stock price on June 1st and 2nd. They sum  
3 to \$87.20 per share.

4 So that's how much the stock price was inflated  
5 because of the misrepresentations and omissions, and that's  
6 how much money per share investors lost because of the  
7 misrepresentations and omissions when the truth came out.

8 Q. When you say inflated, you're referring to that's how  
9 much was inflated following the July 22nd, 2014, statements?

10 A. Yes.

11 Q. Did you do anything to check the reasonableness of your  
12 identification of \$87.20 a share in damages?

13 A. Yes.

14 Q. And what did you do?

15 A. Well, a couple of things. One thing, as I noticed, is  
16 the drop in the -- well, this number is half of how much the  
17 stock price went up on the first day. So I'm not saying that  
18 the entire increase in the stock price on July 23rd was  
19 fraud. I'm concluding that half of it was.

20 So in that sense, it's a conservative -- it's a  
21 conservative number. But another thing is if you look at --

22 Q. Let me stop you.

23 A. Okay.

24 Q. You showed it to me before.

25 MR. GRONBORG: If we could pull up page 8. I think



1     you did a slide, so maybe you can use the slide to walk  
2     through it.

3     BY MR. GRONBORG:

4     Q.    Is this what you were discussing --

5     A.    Yes.

6     Q.    -- with regard to a check?

7     A.    Yes.

8     Q.    Okay.  So if you can briefly describe for us what this  
9     shows us.

10    A.    Well, a couple of points here.  One is that this rise  
11    here, I'm not saying that the entire thing was caused by the  
12    misrepresentations and omissions.  I'm saying half of it was.

13           During this case we've heard questions about, is  
14    neratinib a good drug?  Does it help anybody?  I'm not  
15    opining about that at all.  You know, it's very possible that  
16    there's value there.  But the analysis shows that it's half  
17    as much the value there as that jump.

18           Okay.  The next thing is I compared the decline in  
19    the stock price from right after the initial conference call  
20    with the alleged misrepresentations and omissions to the day  
21    after June 2nd reacted to the second corrective disclosure,  
22    and the price came down from after the misrepresentations and  
23    omissions to, after the correction for the corrective  
24    disclosures, \$86.78, which is very, very close to the number,  
25    the \$87.20 number that the event study identified, the event

1 study that focused on the corrective disclosures.

2 So that's a check that they're comparable numbers.

3 Q. And in addition to checking your damages by looking at  
4 what the price was from the beginning to June 2nd, did you  
5 also look at what happened to the -- do a check using the  
6 stock price for the 90 days following June 2nd?

7 A. Right. So the statute on -- there's a statute on how to  
8 calculate damages when there is securities fraud. The  
9 statute requires that the damage expert look at what happened  
10 after the corrective disclosure. Did the stock come back, or  
11 did the stock keep going down?

12 And what I saw is that it just kept coming down.  
13 So using -- taking into account that the statute says you  
14 have to look at what happens after disclosure, we see in the  
15 chart that the stock price just kept going down.

16 Q. But did you include in your damages calculation the  
17 entire \$141.51 a share?

18 A. No. I want to be clear about that. My calculation is  
19 that damages are \$87.20 per share. Even though the stock  
20 price fell \$141.51 per share going to 90 days after the  
21 disclosure, my conclusion is still that it's \$87.20 per  
22 share.

23 MR. GRONBORG: Thank you.

24 THE COURT: Does that conclude your examination for  
25 now?

1 MR. GRONBORG: It does.

2 THE COURT: Okay. Perfect.

3 We'll take a break and we'll see you all at ten  
4 minutes to 11. Thank you.

5 THE CLERK: All rise.

6 (Recess taken from 10:34 a.m. until 10:50 a.m.)

7 (Court and counsel conferring)

8 THE CLERK: All rise.

9 (Open court - jury present)

10 THE COURT: Welcome back, folks. We now have the  
11 cross-examination of the expert.

12 Go ahead.

13 **CROSS-EXAMINATION**

14 BY MR. CLUBOK:

15 Q. Good morning, Professor Feinstein. I'm Andy Clubok.  
16 That name gets mangled way more than any others that I've  
17 seen for a while.

18 Professor Feinstein, you talked about Paul Gompers.  
19 You know that Puma has hired Professor Paul Gompers to  
20 respond to the opinions that you've offered here today,  
21 correct?

22 A. Yes.

23 Q. And when it's our turn, we'll ask Professor Gompers to  
24 respond. There's been other cases where you -- litigation  
25 cases, I should say, where you and Professor Gompers haven't

1     seen eye to eye or in fact have been directly opposed to each  
2     other, correct?

3     A.    Yes.

4     Q.    If you could, if it's possible, if you could separate  
5     out that litigation context and just -- I'm going to ask you  
6     a question about Professor Paul Gompers in the academic  
7     world. Fair to say that he's a well-regarded expert in his  
8     field of academia, setting aside whatever disagreements you  
9     may have in litigation cases? Is that fair?

10    A.    Yes.

11    Q.    He's a very well-respected, well-regarded,  
12    well-published professor, correct?

13    A.    Yes.

14    Q.    Now, sir, you are a professor at Babson, correct?

15    A.    Yes.

16    Q.    And you are not what is called a full professor. You're  
17    what is called an associate professor; is that correct?

18    A.    That's my rank.

19    Q.    And to become a full professor, you have to demonstrate  
20    to your university a certain level of academic standing,  
21    academic publication, that sort of thing, right?

22    A.    You have to apply for the promotion, and there are a  
23    number of criteria.

24    Q.    And one of them is the contribution that your academic  
25    work has made in the field, correct?

1 A. Correct.

2 Q. Now, sir, you are familiar with a search engine called  
3 Google Scholar; are you?

4 A. Yes.

5 Q. In Google Scholar there's a place called Google Scholar  
6 citations which can track the times that articles that you've  
7 cited have been cited by others going after you, correct?

8 A. Right.

9 Q. And are you aware that if -- we just did this this  
10 morning -- if you plug into Google Scholar citations and put  
11 your name to see how many times your peers in academia cite  
12 you, you get approximately 60 hits. Were you aware of that?

13 A. No. I mean, I've devoted my career towards a different  
14 type of practice. I have a mix of academic and practitioner  
15 practice.

16 Q. Understood, and we'll get to what you do most of the  
17 time. But just for your academic career, you have no reason  
18 to dispute, according to Google Scholar, you've only been  
19 cited about 60 times by other academics? Any reason to  
20 dispute that?

21 A. No reason to dispute that.

22 Q. Are you aware that Professor Paul Gompers has been cited  
23 over 36,000 times in that same search engine?

24 A. I'm not aware.

25 Q. Now, let's talk about your -- most of your -- I think

1     you said, you talked about how you divided your practice  
2     between your academic career and something else. I take it  
3     that something else is running the company called  
4     Crowninshield, which is this litigation consulting company;  
5     is that right?

6     A.    It's consulting with an emphasis on litigation. But  
7     it's a -- we're a research and analysis firm.

8     Q.    And that's where you generate probably the vast majority  
9     of your income from?

10    A.    It's fair to say.

11    Q.    Like, 90 percent plus?

12    A.    I don't think plus but maybe close to 90.

13    Q.    Okay. And you talked about how many cases you've  
14    testified in. I think you said roughly a hundred over the  
15    last 23 years. Do you remember that testimony?

16    A.    Yes.

17    Q.    But actually in recent years your rate of testifying has  
18    increased dramatically, correct?

19    A.    Not really. What has happened is in the past, I would  
20    be asked to write a -- to do analysis. I would do the  
21    analysis, write a report, submit a report. And the Court  
22    would accept that report and perhaps parties would use the  
23    report.

24               Now every time I submit a report, there's  
25    deposition testimony requested as well. So what's changed is

1 the amount of deposition testimony, not the number of  
2 engagements.

3 Q. Well, let's just take an example. For the year between  
4 March 15th, 2017, and March 2nd, 2018, during that roughly  
5 one-year period you testified in ten separate cases, correct?

6 A. I don't know the exact number, but I don't doubt that.

7 Q. And I will represent to you that I took that right from  
8 your report where you identified those ten cases. Okay?

9 A. Fair enough.

10 Q. No reason to dispute those numbers?

11 A. That's what I said. Correct.

12 Q. In every single one of those ten cases last year, your  
13 testimony was on behalf of plaintiffs in a stock drop case  
14 like this, correct?

15 A. That's right.

16 Q. And in a number of those cases that year, you worked  
17 with Robbins Geller, correct?

18 A. A number of them, sure.

19 Q. And in the three months' period after March 2018, in  
20 other words, just between that date I gave you which was  
21 March 2nd, 2018, and by the time you had prepared your third  
22 report in this case in May of 2018, just in those three  
23 months alone you testified in another three cases, correct?

24 A. I'll take your word for it. I don't have the document  
25 you're looking at in front of me.

1 Q. Again, all on behalf of the plaintiff in securities  
2 stock drop cases, correct?

3 A. Correct -- the investors.

4 Q. Well, you're hired in each of these cases by the law  
5 firms, correct?

6 A. That's right.

7 Q. And that's who is paying your bills here today, Robbins  
8 Geller, correct?

9 A. Yes.

10 Q. Now, sir, in your -- we talked about your reports. You  
11 understood that you had an obligation in order to testify  
12 here to identify in your reports all of the opinions you  
13 intended to offer here today, right?

14 A. That's right.

15 Q. And you were supposed to also describe all of the bases  
16 for your opinions in these reports, correct?

17 A. That's correct.

18 Q. And you were supposed to identify a full list of all of  
19 the facts or the data that you considered when you formed  
20 these opinions, correct?

21 A. Yes. I do want to point out that when you asked that  
22 question in the deposition, I pointed out that there were  
23 probably many other documents that were also supportive of my  
24 opinions but that what I had put in the report was in my  
25 opinion sufficient and that there could be many other



1 documents as well that would be supportive.

2 I mean, they wouldn't change my opinions, but there  
3 are other documents I could have referred to that would also  
4 support them. I pointed that out in my deposition.

5 Q. Okay. If we can, to the best you can, if you could  
6 simply answer the questions I ask, I would appreciate it.

7 My question to you is whether you understand that  
8 you had an obligation under the rules that Federal Courts  
9 impose on people like you to identify the facts or data  
10 considered by you when you formed the opinions you set forth  
11 in your report?

12 A. Right. And there's an exhibit in my report called  
13 documents considered.

14 Q. Right. Now, let's talk about what you did to form your  
15 opinions. Well, first of all, sir -- I'm sorry. Let me turn  
16 back very quickly to your qualifications. You are not a  
17 professor in -- you don't have a degree in biotechnology,  
18 correct?

19 A. Correct.

20 Q. You don't have a degree in biology?

21 A. That's correct.

22 Q. You're not a doctor, a medical doctor?

23 A. That's correct.

24 Q. Certainly not an oncologist?

25 A. Yes.

1 Q. You've never participated in a clinical trial of a new  
2 drug, correct?

3 A. That's correct.

4 Q. And you've never been called upon to help a drug company  
5 or anything frankly to do with applying for FDA approval of a  
6 new drug; is that fair?

7 A. I'm a financial analyst is what I am.

8 Q. Right. So if you looked at, say -- and you did look at  
9 the press release and you read the transcript of the  
10 information about neratinib that came out on July 22nd, 2014,  
11 correct?

12 A. Yes.

13 Q. You would have no expertise to be able to look at that  
14 information and make an assessment as to whether that  
15 information should support the approval of a drug by the FDA,  
16 correct?

17 A. That's not entirely accurate, because as a financial  
18 analyst, I know how to -- I couldn't produce that type of  
19 research, but I know how to consume it and use it. I mean, I  
20 know how to read the analyst reports. I know how to read the  
21 reports. I know how to look at changes and information over  
22 time that are available and assess which is good and which is  
23 bad.

24 I mean, I wouldn't be able to write an application  
25 for -- a new drug application, but from an investor point of

1 view and as a financial analyst, I can assess what's good and  
2 what's bad.

3 Q. Well, from reviewing what was stated in a press release  
4 about neratinib and what was said on the conference call,  
5 based on that information, did you form an opinion as to  
6 whether or not that the drug would qualify for FDA approval?  
7 In connection with your work in this case, have you done  
8 that?

9 A. I read all the documents that are out there, and there  
10 was extensive discussion about whether -- you know, from a  
11 variety of people there's documents and reports about whether  
12 those results would support approval or not.

13 So based on reading those documents -- I couldn't  
14 write those documents, but based on reading those documents,  
15 I came up -- I had an opinion. It wasn't one of the opinions  
16 that was -- it's not a financial analytic opinion I was  
17 called on to express, but I have an idea.

18 Q. You did not identify anywhere in any of your three  
19 reports some opinion that you came up with as to whether or  
20 not neratinib would get FDA approval; is that correct?

21 A. That was not the scope of the report. It was a  
22 financial analysis report.

23 Q. Okay. And that's not your expertise in predicting which  
24 drugs will get FDA approval; isn't that true?

25 A. Correct.

1 Q. But -- all right. So let's talk about what you did do  
2 in connection with this report. You reviewed analyst  
3 reports; is that what you said?

4 A. Among many other things, but, yes.

5 Q. And there was just a few that you talked about on direct  
6 examination. But fair to say in the course of your work in  
7 this case, you reviewed many more, maybe 150 or so?

8 A. That's about the right amount, yes.

9 Q. You understood it was important to review whatever  
10 analyst reports you could identify throughout the class  
11 period?

12 A. Yes.

13 Q. You never talked to any analysts?

14 A. Correct.

15 Q. And you never conducted a survey of actual investors in  
16 Puma stock during this time period to see what those  
17 investors say motivated them about why they did or did not  
18 purchase the stock; is that fair?

19 A. That's fair.

20 Q. Now, you also didn't talk to -- well, strike that.

21 You did identify approximately 232 unique major  
22 institutions that were investors in Puma at some point during  
23 the class period, correct?

24 A. That's right. That was part of my analysis in the  
25 market efficiency phase.

1 Q. Of those 232 major institutions, that includes the likes  
2 of Fidelity, T. Rowe Price, and Franklin Templeton  
3 Investments, correct?

4 A. Yes.

5 Q. It includes many pension funds both here in the U.S, and  
6 in other countries, correct?

7 A. Yes.

8 Q. Now, you did not speak with Fidelity or any  
9 representative of Fidelity about why they did or did not  
10 purchase any stock during the class period?

11 A. Correct.

12 Q. Same answer for T. Rowe Price?

13 A. Yes.

14 Q. Same answer for Franklin Templeton?

15 A. I already answered I didn't speak to investors.

16 Q. You were here -- I think you testified that you have  
17 been here since opening statements. At least you were here  
18 during opening statements and maybe several other trial days?

19 A. That's right. Not every day.

20 Q. By the way, you said earlier about how much money you've  
21 already been paid or your firm has been paid. Have you  
22 billed Robbins Geller yet for the days you spent in court  
23 listening to testimony?

24 A. No.

25 Q. Do you intend to?

1 A. Yes.

2 Q. At your same regular rate?

3 A. Yes.

4 Q. And you had assistants here that you're going to bill at  
5 that rate for helping watch?

6 A. I have no assistants here.

7 Q. Getting back to the other investors, other major  
8 institutional investors that invested in Puma during this  
9 class period. Are you aware of which institutional investors  
10 bought stock in the stock offering that took place in  
11 January 2015 that has been the subject of various testimony  
12 in this case?

13 A. I mean, do I know the entire list or do I know any? Is  
14 that what you're asking?

15 Q. Let's start with the entire list. Do you know the  
16 entire list?

17 A. The answer would be no to either. That wasn't part of  
18 the analysis.

19 Q. Let's be clear. You don't know the entire list of  
20 investors who bought in the secondary offering in  
21 January 2015, correct?

22 A. Correct.

23 Q. And you also don't know anyone on the list of  
24 institutional investors who bought in the secondary offering  
25 in 2015, correct?

1 A. Well, no. You had put up a slide earlier. I saw that  
2 slide. I couldn't recall it from memory for you.

3 Q. Okay. So other than seeing a slide that was put up, if  
4 I -- in fact, that slide referenced Fidelity, T. Rowe Price,  
5 and Franklin Templeton. Those -- strike that.

6 Other than what you saw in this case since the  
7 trial started, you would have had no idea who invested in  
8 Puma during that secondary offering that's been the subject  
9 of this case, correct?

10 A. Well, first of all, I don't think the secondary offering  
11 is the entire subject of the case. My analysis did include  
12 reviewing the quarterly reports to see which institutions  
13 owned Puma stock at the end of each quarter. I didn't need  
14 to and didn't trace who bought specific in the secondary  
15 offering rather than in the secondary market or earlier.

16 Q. Do you -- I will represent to you that Fidelity bought  
17 in the secondary offering. Do you have any idea or the  
18 reason they chose to purchase Puma stock in January 2015 as  
19 part of that offering?

20 A. No.

21 Q. Do you have any idea what work they did internally to  
22 analyze the stock before they made that decision?

23 A. No. And --

24 Q. If I may, if I could ask you to just answer my questions  
25 and not add a narrative, I would appreciate it, because I'm

1 limited on time.

2 Same thing with T. Rowe Price. Same answer for  
3 T. Rowe Price?

4 A. I don't know their reasons, but I know their stock  
5 price.

6 Q. You know the stock price, but you don't know if they had  
7 internal analysts analyzing Puma and what those people said  
8 about it, correct?

9 A. Correct.

10 Q. And by the way, to be clear for the jury, when you talk  
11 about the analyst reports that you reviewed, you're talking  
12 about public analyst reports that, generally speaking, could  
13 be available to a public person even if they don't work at  
14 the company that issued the report, correct?

15 A. That is right.

16 Q. There are other kinds of analysts employed by entities  
17 like Fidelity, T. Rowe Price, and those are internal analysts  
18 who issue research recommendations internally but don't  
19 publish that, correct?

20 A. That's right. They're called buy-side analysts.

21 Q. All right. And have you spoken with any buy-side  
22 analysts in connection with forming your opinions in this  
23 case?

24 A. No.

25 Q. Now, there is one -- you understand that Robbins Geller



1 hired you to assist them in representing their client,  
2 Norfolk Pension Fund, correct?

3 A. That's not how the engagement reads.

4 Q. Okay. Let me restate it. You know the plaintiff in  
5 this case is Norfolk Pension, right?

6 A. Yes.

7 Q. And you know that -- well, strike that.

8 Do you know who made Norfolk's decisions to  
9 purchase Puma stock during the class period?

10 A. I've sat in during this case long enough to hear the  
11 answer to that, so I do.

12 Q. Did you just learn that since this trial started last  
13 week?

14 A. I think I may have heard it earlier.

15 Q. Did you ever -- well, what is your understanding about  
16 who made the decision to purchase Puma stock on behalf of  
17 Norfolk?

18 A. Capital Group and the analyst or the -- the  
19 representative, the relationship manager, who was Skye  
20 Drynan.

21 Q. Okay.

22 MR. CLUBOK: Let's put up Exhibit 1102, the one I  
23 struggled mightily with yesterday, you may recall, if you  
24 were here.

25 BY MR. CLUBOK:

1 Q. Exhibit 1102 identifies Norfolk's purchases of Puma  
2 stock during the class period July 22nd, 2014, through  
3 May 29th, 2015, and it identifies with blue boxes the date of  
4 the press release and conference call, and the date that the  
5 ASCO abstract was released in advance of the ASCO  
6 presentation. Do you see Exhibit 1102?

7 A. Yes, I do.

8 Q. In addition, 1102 has red dots that indicate purchases  
9 of Puma stock by Norfolk during the class period. Do you see  
10 that?

11 A. I do.

12 Q. Okay. So there is -- and by the way, fair to say to say  
13 this stock is volatile throughout the class period?

14 A. That's a relative term. I mean, more volatile than some  
15 stocks and less volatile than others.

16 Q. You would say -- you personally, Dr. Feinstein, in fact  
17 would say there's a lot of volatility in this stock  
18 throughout the class period; isn't that true?

19 A. Well, given the jump at the beginning and the drops at  
20 the end, yes.

21 Q. Setting aside the jump at the beginning, let's just take  
22 it from when the stock -- I guess it's from July 23rd. Just  
23 from the period July 23rd where the stock is already  
24 increased following the press release and conference call,  
25 through May 29th, 2015. Just during that period you,

1 Professor Feinstein, would agree that there's a lot of  
2 volatility in this stock during that time period; isn't that  
3 true?

4 A. Again, I think that would be a reasonably fair  
5 characterization, but understand that volatility is relative.  
6 So it's more volatile than some stocks and less volatile than  
7 others.

8 Q. But without that qualification that you just gave, you  
9 would agree that just in this period right here that I'm  
10 pointing at with my laser pointer, from the day after the  
11 ASCO abstract was released until a couple days before, a few  
12 days before the ASCO conference, just in that period you  
13 without qualification would say there's a lot of volatility  
14 in this stock that's apparent right in this period; isn't  
15 that true?

16 A. I think that's reasonable.

17 Q. And certainly if it's reasonable for a professor like  
18 you to call that a lot of volatility, you would have to agree  
19 that all of this other period of time throughout the class  
20 period, that's even more volatility than this little period  
21 right here; isn't that true?

22 A. I would need to look at the numbers specifically. There  
23 are measures of volatility, and I don't have them memorized.

24 Q. Sure. But --

25 A. And like I said, it's more volatile than some and less

1 volatile than others. The statistical analysis controls for  
2 the volatility.

3 Q. So is that a no to my question? Unlike what you were  
4 able to say on direct examination without qualification about  
5 the volatility here, you can't just agree that it's at least  
6 as much or more than the rest of the class period? Couldn't  
7 you just agree to that?

8 A. No. I mean, there's --

9 Q. That's fine. That's all I wanted to hear. Thank you.

10 A. There's statistical analysis for that.

11 Q. Right. You would need to do statistical analysis for  
12 this to give an unqualified answer as opposed to the period  
13 from May 13th through May 27th? That's your testimony?

14 A. No. I think the tools can be applied to both segments  
15 to measure the volatility.

16 Q. And I'll try it one last time. Just from eyeballing it,  
17 you can't tell that it's more volatile this whole period as  
18 compared to what you've testified unqualifiedly with regard  
19 to the volatility during this May 13th to May 27th time  
20 period? Is that true? Yes or no?

21 A. Well, I would want to say -- I would want to say that  
22 even for the -- if you're trying to measure volatility,  
23 there's a way to measure it, and you don't rely on just  
24 visual inspection of a chart.

25 Q. Is that a no?

1 A. So a no to do I know how much volatility? Can I measure  
2 it by looking at it? That's a no. I can't measure the  
3 volatility simply by looking at the chart.

4 Q. Okay. With respect to the volatility between July 23rd  
5 and May 13th, that's what you were just answering, correct?

6 A. Yes.

7 Q. Okay.

8 Now, by the way, you said that you did a test -- I  
9 think you said you checked to see if on any particular day --  
10 strike that. Let me start over.

11 You see how the red dot here shows about the time  
12 that the -- I guess it's the closing price, the day after the  
13 ASCO abstract is released. Do you see that?

14 A. Yes.

15 Q. And then the stock climbs over the next few days to get  
16 back up to about \$200 a share; is that fair?

17 A. Well, we can look at the actual numbers. Should we? I  
18 mean, again it's hard to -- you say about. I guess I could  
19 agree with about. But, I mean, to know for sure, we should  
20 check the numbers.

21 Q. Actually it's slightly more than \$200 a share. Do you  
22 know that?

23 A. I don't have that. I don't have the numbers memorized.  
24 But, yeah, seems to be about 200.

25 Q. Okay. In fact, it just so happens that's slightly

1 higher than where the stock price was on this date a few days  
2 after the press release and conference call; is that true?

3 A. You know, I -- that's not how I do financial analysis.  
4 I mean, if you're asking me to compare two numbers, I want to  
5 look at the two numbers. I don't think that would be too  
6 hard. Why don't we do it?

7 Q. Let's start with this. Do you know -- you were here in  
8 my opening when I think I made this point and you talked  
9 about things you heard in my opening you disagreed with. Any  
10 reason to disagree with the fact that this stock price for  
11 Puma in late May of 2015 is approximately or slightly higher  
12 than the stock price was at this lower point a few days after  
13 July 22nd, 2014? Any reason to dispute that as you sit here  
14 today?

15 A. I mean, it's a simple matter to check the numbers. I  
16 wouldn't agree or disagree with a comparison without looking  
17 at the numbers. But if you're representing it and want me to  
18 assume it, sure.

19 Q. Have you checked those numbers since you heard me say it  
20 in the opening?

21 A. No.

22 Q. Okay. So let's talk about the actual dates in which  
23 Norfolk purchased Puma stock. First you can see that there  
24 was a cluster of purchases in approximately October of 2014.  
25 See these red dots? This looks to be, we learned, the first

1 time that Norfolk purchased stock. Do you see that? And my  
2 helper has drawn helpfully a red box around that area to  
3 highlight. Do you see that?

4 A. She seems to be buying on the dips.

5 Q. Who was buying on the dips in your opinion at that time?

6 MR. GRONBORG: Objection, Your Honor. Foundation.  
7 We've strayed awfully far from the actual subject of the  
8 expert's report.

9 THE COURT: This is cross-examination of an expert.

10 Overruled.

11 BY MR. CLUBOK:

12 Q. Who specifically made the decision to purchase Puma  
13 stock on behalf of Norfolk in October 2014?

14 A. Well, I mean, I'll give an answer, but I just want to  
15 point out that it was not in the scope of my reports or in my  
16 analysis. I'm giving you an answer based on what I heard  
17 here in court.

18 Q. I'm well aware it's not in your analysis. My question  
19 is, do you know who it was?

20 A. I believe it was Capital Group.

21 Q. Okay. And that was not -- that was -- in fact, you  
22 anticipated my next question. You didn't take that into  
23 account anywhere in your analysis; isn't that true?

24 A. It had no role in my analysis. It has no role in an  
25 event study.

1 Q. So that's a yes, correct?

2 A. Correct.

3 Q. All right.

4 What was the reason that Skye Drynan chose to  
5 purchase Puma stock on behalf of Norfolk during this time  
6 period that's marked by a red box but is indicated by red  
7 dots on Exhibit 1102?

8 A. I think there are other parties in this case that can  
9 speak to that better than I can. It wasn't a component or a  
10 necessary component of my analysis.

11 Q. Fair to say you have no idea what Skye Drynan relied  
12 upon in making the decision to purchase that stock that day?

13 A. That's not fair, because --

14 Q. Let me ask you this, then. Then let me ask you a  
15 different question. You've never asked Skye Drynan what she  
16 relied upon in making her purchase decision; is that fair?

17 A. I never asked, but --

18 Q. And you never -- by the way, you know that Capital still  
19 works for Norfolk, right?

20 A. I heard that from you.

21 Q. And you know that Skye Drynan still works for Capital,  
22 right?

23 A. I mean, I would have no independent way of knowing that  
24 except for what I heard here in court.

25 Q. And did you ever ask the lawyers who hired you to find



1 out from Skye Drynan what she really relied upon when she  
2 purchased this stock in October 2014? Did you ever make that  
3 request to the lawyers who hired you?

4 A. No. My opinion --

5 Q. Thank you. That's all I really wanted to know.

6 A. Okay.

7 Q. Now, sir, let's turn to this cluster of purchases in,  
8 I'm going to say -- let's just say toward the end of the year  
9 2014. And I'm not trying to test your ability to discern  
10 those dots. It looks like it's approximately either late  
11 November or mid -- early to mid December 2014. Would you  
12 agree with that approximation of the dates?

13 A. Reading your chart, yes. I mean, I'm just -- that looks  
14 like how to read your chart.

15 Q. Okay. This -- and you were here when Mr. Younger --  
16 were you here when Mr. Younger agreed these were the dates of  
17 the purchase?

18 A. Yes.

19 Q. Okay. So who specifically made the decision to purchase  
20 Puma stock for Norfolk between November and December 2014?

21 A. Well, I heard another witness say that he thought it was  
22 Skye Drynan.

23 Q. Do you know?

24 A. No. No, I don't have independent knowledge of that.

25 Q. Okay. And I take it you've not tried to find out what

1 the person who made the decision -- well, strike that.

2 Do you know if the person who made the decision to  
3 purchase Puma stock communicated the reasons why amongst  
4 Capital at the time in roughly November, December 2014? Do  
5 you know, sitting here today?

6 A. There's a problem with your question.

7 Q. Sir, I will try to do my job and you try to do yours. I  
8 may ask bad questions. As long as they're not objected to or  
9 the judge tells me to stop, I'm just going to ask you to  
10 please answer my question. Okay?

11 A. Could you repeat?

12 MR. CLUBOK: Could I ask that my question be  
13 repeated back, Your Honor?

14 THE COURT: You may.

15 MR. CLUBOK: Thank you.

16 THE WITNESS: Thousands of people bought the stock  
17 on those days.

18 THE COURT: Hold on just a moment.

19 (Record read)

20 BY MR. CLUBOK:

21 Q. Yes or no?

22 A. It's not a yes-or-no question because thousands of  
23 people who did not know the full truth about Puma bought the  
24 stock on those days. It's not just one person. It was  
25 thousands of people who had not yet heard the full truth.

1 Q. My question, sir, is much simpler than that. My  
2 question is, do you know whether the individual or  
3 individuals at Capital who made the decision to purchase Puma  
4 stock on Norfolk's behalf in this time frame communicated  
5 their own decisions within Capital? Do you know that? Yes  
6 or no?

7 A. No.

8 Q. Okay.

9 And by the way, you said there were thousands of  
10 other investors. Have you spoken with a single, even one  
11 investor about his or her or its decision, for example, to  
12 purchase stock in this time frame, the November to December  
13 2014 time frame? Have you spoken to a single one?

14 A. No.

15 Q. Now let's move on to early January 2015. Again, a  
16 cluster of purchases of Puma stock by Norfolk via their  
17 investment manager, Capital. Do you see that area?

18 A. Yes.

19 Q. Who made the decision to purchase this stock on  
20 Norfolk's behalf? Who?

21 A. Same answer as before. I had no personal knowledge of  
22 this, but I heard another witness explain that it was Capital  
23 Group, Skye Drynan.

24 Q. And beyond what you heard -- strike that. Beyond what  
25 you've heard since this trial actually started last week, you

1 have made no effort to learn that, correct?

2 A. There was no reason to for this type of analysis.

3 Q. Fair to say you don't know whether internally at Capital  
4 or externally from Capital to Norfolk there was any  
5 explanation as to actually why they chose to purchase the  
6 stock on this time period? Is that fair?

7 A. That's fair.

8 Q. Okay. Then I want to jump ahead. It's the last one on  
9 this chart. This is a purchase of Puma stock on November 14,  
10 2015 [sic], after the ASCO abstract came out. Do you see  
11 that?

12 MR. COUGHLIN: May 14, 2015.

13 MR. CLUBOK: Thank you so much. I appreciate that.  
14 I'm sorry. This is harder than it looks.

15 BY MR. CLUBOK:

16 Q. On May 14, 2015, Norfolk purchased stock in Puma,  
17 correct?

18 A. Apparently so.

19 Q. Who made the decision to do?

20 A. Same answer as before.

21 Q. What was that person or persons' reasons?

22 A. I don't know what she was thinking.

23 Q. You know it was Skye Drynan? Is that the she you meant  
24 there?

25 A. Yeah, we knew what she didn't know, but we don't know

1       what she was thinking.

2       Q.     Is the she in that sentence Skye Drynan?

3       A.     Yes.

4       Q.     That's who made the decision on May 14th to purchase the  
5       stock?

6       A.     That's what I heard others say.

7       Q.     And did she communicate -- do you understand whether she  
8       gave any reasons why internally as to why she would be buying  
9       that stock? And by internally, I mean internally at Capital.

10      A.     No.

11      Q.     And do you know whether or not Capital ever reported in  
12      one of these quarterly reportings or follow-up meetings that  
13      you heard about whether they ever explained their investment  
14      decision to Norfolk? Do you know that?

15      A.     Well, I think I heard Mr. Younger say that he did not  
16      recall that it was explained to him.

17      Q.     I'm asking about what you know, sir. Do you know  
18      anything beyond what we all heard Mr. Younger say?

19      A.     That's what I've been saying. Correct. No.

20      Q.     You referred to a couple of -- strike that.

21                You reviewed something like 150 analyst reports.  
22      You only talked about a few of them when your -- when Robbins  
23      Geller's attorney was questioning you on direct examination,  
24      correct?

25      A.     That's right.

1 Q. I'm going to focus your attention on one in particular.  
2 This is Exhibit 488. It's one you talked about on direct  
3 examination. It was a report from Citi dated -- I'm sorry.  
4 I apologize. It's 150 reports. It's a little tricky. I'm  
5 actually going to ask --

6 THE COURT: Get closer to the microphone, please.

7 I know you're working on books.

8 MR. CLUBOK: I'm sorry. Exhibit 843, sir.

9 BY MR. CLUBOK:

10 Q. If I could turn your attention to Exhibit 843.

11 A. I don't believe I have that here.

12 Q. Well, let's put up -- it's been admitted into evidence,  
13 I believe. If not, we'll know shortly.

14 THE COURT: 843 is not in evidence on my list.

15 MR. CLUBOK: I apologize. 844 is the actual  
16 winner.

17 THE COURT: 844 is not in evidence on my list.

18 MR. CLUBOK: All right. Your Honor, we would like  
19 to offer in Exhibit 844 subject to the limiting instruction.

20 THE COURT: Any objections?

21 MR. GRONBORG: No objection.

22 THE COURT: 844 is admitted.

23 **(Exhibit 844 received)**

24 BY MR. CLUBOK:

25 Q. And I apologize for the confusion. Professor Feinstein,

1 I'm going to put up the first page of Exhibit 844. I think  
2 you will recognize that you were asked about the title of  
3 this report. It says: ASCO abstract scares investors; we  
4 think data are good and we're buying this dip.

5 Do you see that?

6 A. I see it.

7 Q. And I think you -- in your view, ASCO abstract scares  
8 investors is a fact, and the statement after the semicolon,  
9 we think data are good and we're buying this dip, is an  
10 opinion. Is that what you testified on direct examination?

11 A. Yes.

12 Q. So let's look -- let's go beyond the title, and let's go  
13 to the first paragraph.

14 MR. CLUBOK: If we could blow up where it starts  
15 the second "we believe."

16 THE WITNESS: Could you scroll up for a bit so that  
17 I can see the heading on the top of the page. RBC. That's  
18 what I wanted to know. Okay.

19 BY MR. CLUBOK:

20 Q. It says -- it starts with the first paragraph: We  
21 believe that last night's 25 percent selloff is unwarranted,  
22 view the ExteNET data as positive, and are buyers in this  
23 weakness. Do you see that?

24 A. I do.

25 Q. And in particular, the next paragraph goes on to say:

1 We believe that an apples-to-apples comparison of these data  
2 to prior trials points to this drug's strong efficacy and  
3 additional benefits, especially in hormone-positive patients.

4 Do you see that?

5 A. I see it.

6 Q. And if you continue on to where it's in italics, it  
7 says: Our conviction in neratinib and PBYI -- that's Puma  
8 Biotechnology --

9 A. Yes.

10 Q. -- remains unchanged and we anticipate investor/medical  
11 community understanding of the data to be fully realized at  
12 ASCO. We reiterate our outperform rating on PBYI.

13 Do you see that?

14 A. I see it.

15 Q. And if we go -- then if we could go down a few  
16 paragraphs to the last paragraph that begins "a closer  
17 comparison to HERA trial," if we could expand that. This  
18 report goes on to explain in their opinion that a closer  
19 comparison to HERA trial -- comparing apples to apples,  
20 semicolon.

21 And if you go down -- you see where it says  
22 patients enrolling into ExteNET had their HERA status  
23 confirmed initially at local labs before being confirmed  
24 through a central review process? Do you see that?

25 A. I do.



1 Q. It says: On the other hand, patients enrolled in HERA  
2 all had central review of HER2 status. Do you see that?

3 A. Of course.

4 Q. So looking at the subset of only centrally confirmed  
5 review -- I'm sorry.

6 Looking at the subset of only centrally reviewed  
7 patients in ExteNET, the treatment benefit was significantly  
8 more pronounced HR -- do you know what HR means there?

9 A. Hormone -- wait. HR equals 0.52. It's hazard ratio.

10 Q. Okay -- hazard ratio equals 0.52 than it is in the  
11 overall patient population. HR equals 0.67. Do you see  
12 that?

13 A. I see it.

14 Q. A couple of things. First of all, the hazard ratio for  
15 centrally confirmed HER2-positive patients in the ExteNET  
16 study was .52, fact, correct?

17 A. That's my understanding, yes.

18 Q. And what that fact means is that for those women in the  
19 ExteNET study who were centrally confirmed to actually have  
20 HER2-positive breast cancer, they actually had a 48 percent  
21 increase in disease-free survival; isn't that what that  
22 means?

23 A. Yes. And I take it you don't want me to comment on  
24 that, right?

25 Q. I want you to answer my questions, and I'm sure the

1 lawyers who paid you will ask you follow-up if they need to.

2 With respect to that hazard ratio and that  
3 48 percent improvement that is a fact from the ExteNET study,  
4 what is the corresponding increase in disease-free survival  
5 at the end of the two-year data for that centrally confirmed  
6 population in the ExteNET study? Do you know?

7 A. Yes. It's in the Leerink report. It's in the UBS  
8 report. It was not in the abstract, but it was leaked by the  
9 company to Leerink and UBS so that they can slice and dice  
10 the data and look for some good news.

11 MR. CLUBOK: Move to strike the answer, everything  
12 beyond my answer -- the answer to my question.

13 THE COURT: Yes. Everything beyond the initial  
14 answer is stricken.

15 MR. CLUBOK: Thank you, Your Honor.

16 THE COURT: No need to thank me. I'm just doing my  
17 job.

18 BY MR. CLUBOK:

19 Q. Professor Feinstein, it was also a true fact that for  
20 all of the women in the ExteNET study, even those who were  
21 not centrally confirmed -- strike that.

22 If you looked at all of the women in the ExteNET  
23 study, including those women who were not centrally confirmed  
24 to actually have HER2-positive breast cancer, for that entire  
25 population there was a 33 percent improvement in disease-free

1 survival according to the results of the ExteNET study; isn't  
2 that a true fact?

3 A. That's my understanding.

4 Q. Final series of questions.

5 You were asked a series of questions by Robbins  
6 Geller. You were asked a series of questions by me. You  
7 identified opinions in your report. In any -- at any point  
8 in any of those questions or anywhere in your report, do you  
9 mention the word Pfizer?

10 A. I don't recall every single word. I don't know.  
11 Possibly in the -- I don't know.

12 Q. Well --

13 A. I would have to say possibly. I don't remember if it's  
14 in my report or not. I don't think it was mentioned in the  
15 testimony today, but you're asking about my reports. Maybe  
16 it is; maybe it isn't.

17 Q. If I represent to you that we've done an electronic word  
18 search to try to find that word and we couldn't, any reason  
19 to dispute that?

20 A. No.

21 Q. Also what's never mentioned in your report is -- in any  
22 of your three reports in this case -- is anything about that  
23 secondary offering; isn't that true?

24 A. My recollection is it's mentioned in the market  
25 efficiency report.

1 Q. Can you tell me where?

2 A. I might be wrong. It certainly -- you know, it was  
3 mentioned in the deposition for sure.

4 Q. Well, we'll maybe get to that with your lawyers. I said  
5 in your reports. Remember how you said you understood you  
6 had an obligation to identify all of your opinions that you  
7 were expecting to give in those reports? Remember how I  
8 asked you that at the beginning of this?

9 A. Yeah, of course.

10 Q. In your reports did you include any opinions about the  
11 impact of the secondary offering on Puma's stock price at any  
12 point? Any opinion like that in your report?

13 A. Implicitly but not explicitly.

14 Q. You never used the -- well, can you tell me what  
15 paragraphs?

16 A. Well, let me first tell you what I mean by implicitly.

17 Q. I didn't ask you that. I just want to know if you can  
18 tell us the paragraphs that you claim discuss the secondary  
19 stock offering and the impact that it had, if any, on Puma's  
20 stock price during the class period.

21 A. Well, I --

22 Q. Just the paragraph, sir, please.

23 A. I -- no, I don't think I can do that without explaining  
24 why implicitly it references good news and bad news that  
25 occurred over the course of the class period that had nothing

1 to do with --

2 THE COURT: Hold on. I'm going to move on to the  
3 next question.

4 MR. CLUBOK: Thank you.

5 BY MR. CLUBOK:

6 Q. Now, one thing you do mention in your report, however,  
7 is the impact that anticipated regulatory approval could have  
8 on Puma's stock price during the class period. That is  
9 something you actually mentioned in at least one or two of  
10 your reports, correct?

11 A. Yes.

12 Q. In fact, it is your opinion that over the course of the  
13 class period, Puma's valuation was entirely based on the  
14 probability that the drugs under development, primarily the  
15 one at issue in this case, i.e., neratinib, would obtain  
16 regulatory approval. Isn't that your opinion? Yes or no?

17 A. I'm sorry. Can you read it again, or could I see it?

18 Q. Isn't it true that -- my question is this: Do you agree  
19 with the following statement whether or not it's in your  
20 report or otherwise: Over the course of the class period,  
21 Puma's valuation was entirely based on the probability that  
22 the drugs under development, primarily the one at issue in  
23 this case, would obtain regulatory approval. Do you agree  
24 with that statement or not? Yes or no, please?

25 A. I think you're taking -- I think if you look at the

1 sentences around there, it's --

2 MR. CLUBOK: Your Honor.

3 THE WITNESS: -- regulatory.

4 THE COURT: No. I'm going to allow an explanation  
5 and not require a simple yes or no. There's some complexity.

6 THE WITNESS: Without regulatory approval, it would  
7 have little value. But in addition to regulatory approval  
8 and the probability of regulatory approval was estimates of  
9 the size of the market, estimates of how many people would  
10 actually take it. And I believe that's explained in the  
11 report.

12 So I think you're taking that out of context if  
13 you're eliminating the section of how expected revenue and  
14 how many people would actually be taking the drug and how  
15 many people would continue to take the drug for a whole year.  
16 You're eliminating that, and I would have to say that that,  
17 too, is --

18 THE COURT: Okay. Let's go on to the next  
19 question.

20 BY MR. CLUBOK:

21 Q. You have in front of you --

22 THE COURT: When you say I would say, it's a --  
23 sometimes -- let me finish. That sometimes is a point to  
24 move on to a new question. Let's move on to a new question.

25

1 BY MR. CLUBOK:

2 Q. You have in front of you a copy of your market  
3 efficiency report, correct? Do you have it in front of you,  
4 a copy of it?

5 A. I don't.

6 Q. Okay. Sorry. Sir, you have documents there in front of  
7 you --

8 A. It's two depositions and the analyst reports.

9 Q. Okay. I'll give you a copy, then. So to be fair to  
10 you, when you just gave that answer, you were doing it  
11 without the benefit of actually having the report in front of  
12 you; is that correct?

13 A. That's right.

14 Q. Okay. And I wasn't -- well, I want to be fair. So I'm  
15 going to give you a copy of your market efficiency report  
16 dated March 15, 2017. Do you now have a copy of your own  
17 report in front of you?

18 A. I do.

19 Q. I'm going to refer you to paragraph -- I'm sorry, page  
20 29, paragraph 93, which is the one that I was reading from.

21 Given your statement about context, after you've  
22 had a chance to look at that, I'm going to actually go back a  
23 paragraph to paragraph 92.

24 MR. CLUBOK: Your Honor, we have marked for  
25 identification purposes now this market efficiency report of

1 Professor Feinstein as Exhibit 1108.

2 **(Exhibit 1108 marked for identification.)**

3 BY MR. CLUBOK:

4 Q. I'm going to give you a chance to read everything under  
5 a heading entitled earnings announcement events considered.  
6 And you have paragraphs 92, 93, and 94. Do you have -- have  
7 you had a moment to look at that?

8 A. Yes.

9 Q. Okay.

10 A. So you did take it out of context.

11 Q. Well, let's put it into the context that it was written.  
12 It is true that while the importance of a company's financial  
13 results is well documented in the academic literature, the  
14 literature also recognizes that for certain companies, recent  
15 past financial results may not affect valuation nearly as  
16 much as information concerning the long-term growth prospects  
17 deriving from a company's pipeline of new products.

18 Do you agree with that statement?

19 A. Yes.

20 Q. And you also agree, then, for such companies market  
21 participants would be expected to focus more on events or  
22 other factors that affect future earnings, e.g., receiving  
23 regulatory approval for a new product. Agree?

24 A. Yes.

25 Q. And then you would also agree that Puma is one such



1 company for which news affecting future earnings in the  
2 prospects of the company's new product pipeline would have  
3 been far more important than its recent past financial  
4 results reported in earnings announcements. Do you agree  
5 with that?

6 A. Absolutely true.

7 Q. And you note -- or this is a fact. Fact. Throughout  
8 the class period, the company -- meaning Puma -- had no  
9 marketable products and no revenues, correct?

10 A. That's right.

11 Q. And by the way, that fact that Puma had no revenues or  
12 no products that it was selling in 2014 to 2015, that was  
13 widely disclosed by Puma, correct?

14 A. Right.

15 Q. Every investor who purchased Puma during the class  
16 period knew full and well that they were working to develop a  
17 drug but that it hadn't yet been developed, right?

18 A. Which is the context for the next sentence, the one that  
19 you're interested in.

20 Q. Exactly, and this is what we're getting to.

21 So you would agree that over the course of the  
22 class period, given all of that that we've just described,  
23 Puma's valuation was entirely based on the probability that  
24 the drugs under development, primarily the one at issue in  
25 this case, would obtain regulatory approval, correct?

1 A. So what that means, if I may, is that without regulatory  
2 approval, this company would have no value. That's what it  
3 means.

4 Q. Exactly.

5 A. It doesn't mean that there aren't other factors like the  
6 size of the market that also impact value. What it means is  
7 that without regulatory approval, it would not have any  
8 value.

9 Q. And what, if anything, did you do to determine whether  
10 Norfolk took into account the prospects for Puma getting  
11 regulatory approval of neratinib in connection with the  
12 decision to purchase stock? What, if anything, did you do on  
13 that specific subject?

14 A. I'll tell you. I read all the information that was  
15 available to all investors, including Capital, and saw what  
16 information there was and how that information would bear on  
17 getting regulatory approval. So I saw what information was  
18 available to her to answer that specific question.

19 Q. But you don't know what Skye Drynan was betting on in  
20 terms of whether Puma would or would not get regulatory  
21 approval when she made decisions in connection with the  
22 purchase of Puma stock during the class period; isn't that  
23 fair?

24 A. I knew what the market knew. I knew what information  
25 the market had. Which information she focused on, to

1 answer your question, no. But I knew what information she  
2 had that the market had.

3 Q. But you don't know what she specifically relied on,  
4 fair?

5 A. I don't know what she was thinking it. There are  
6 thousands of investors.

7 Q. And you don't know what any of them were specifically  
8 thinking, true?

9 A. My understanding is as a general principle in finance,  
10 that investors rely on the efficiency of the market.

11 Q. But you haven't asked any single investor in connection  
12 with Puma purchases during the class period; isn't that true?

13 A. We've been through this. I didn't survey investors.

14 Q. Is that a yes to my question?

15 A. Yes, I did not survey investors.

16 Q. Yes, you did not even speak with any investor; isn't  
17 that true?

18 A. Of course.

19 MR. CLUBOK: Thank you.

20 THE COURT: Was that a wrap-up thank you?

21 MR. CLUBOK: Yes. I apologize, Your Honor. That  
22 was, I have no further questions at this time for this  
23 witness.

24 THE COURT: Let's then go to redirect if desired.

25 MR. GRONBORG: If I can just approach to hand you

1 an exhibit, the one we talked about.

2 Your Honor, this is in the large binder. Would you  
3 like a loose copy?

4 THE COURT: If it's in the large binder, believe  
5 me, I have enough copies. What number is it?

6 MR. GRONBORG: 768.

7 THE COURT: 768. Do you intend to admit it?

8 MR. GRONBORG: Yes, with the limiting instruction,  
9 Your Honor.

10 THE COURT: Is there any objection to 768?

11 MR. CLUBOK: Your Honor, this --

12 THE COURT: Is there an objection?

13 MR. CLUBOK: There is an objection.

14 THE COURT: Okay. Just a moment. It looks like  
15 I'll need to get it out. Go ahead.

16 I'm sorry. Is it really 768?

17 MR. GRONBORG: 768, yes.

18 THE COURT: 768 in my book is an e-mail dated  
19 May 13th, 2015.

20 MR. GRONBORG: It's an e-mail, but it's a report.  
21 The e-mail just forwards --

22 THE COURT: I'm -- is it an e-mail dated May 13,  
23 2015, on top?

24 MR. GRONBORG: Yes.

25 THE COURT: Okay. Let's continue.

1                   What's the objection?

2                   MR. CLUBOK: No objection to this document subject  
3 to a limiting instruction.

4                   THE COURT: All right. Thank you.

5                   Subject to the limiting instruction, 768 is  
6 admitted.

7                   **(Exhibit 768 received.)**

8 BY MR. GRONBORG:

9 Q. And, Professor, I'm just looking at your list of  
10 materials considered. I believe you were asked a question  
11 about whether or not you had ever spoken to anyone at T. Rowe  
12 Price; is that right?

13 A. I was asked that, yes.

14 Q. And you did not speak to anyone at T. Rowe Price; is  
15 that right?

16 A. Correct.

17 Q. But you did look at internal e-mails from investors and  
18 analysts, correct?

19 A. Yes.

20 Q. In looking at your list of materials considered, one of  
21 the items is TRP0418 through 0419. Do you recall that?

22 A. Yes.

23 Q. And does that correspond with the Bates numbers, the  
24 numbers on the lower right-hand side of Exhibit 768?

25 A. Yes.

1 MR. GRONBORG: And if we please could put  
2 Exhibit 768 up.

3 BY MR. GRONBORG:

4 Q. Do you understand that this is a T. Rowe Price internal  
5 report of the sort that we were discussing earlier?

6 A. Yes.

7 Q. And turning to the supporting analysis, did you review  
8 that supporting analysis?

9 A. What's in the report, yes.

10 Q. And specifically the supporting analysis, is that one of  
11 the things you reviewed to sort of determine what investors  
12 were thinking at and around the time of the May 13th, 2015,  
13 disclosures?

14 A. Yes.

15 MR. CLUBOK: If I just may object going forward to  
16 leading questions. I have no problem with him asking  
17 questions about this, but it just seems like we're getting to  
18 leading through hearsay.

19 THE COURT: Yes, those did seem to be inappropriate  
20 leading. Of course, experienced counsel knows that at times,  
21 with experts leading questions are appropriate. Here let's  
22 try not to.

23 BY MR. GRONBORG:

24 Q. And, Professor Feinstein, just looking at the supporting  
25 analysis under there, can you tell me what it is that you saw

1 that may have been, you know, relevant to your assessment of  
2 what investors and analysts were thinking following those  
3 May 13, 2015, disclosures?

4 A. Well, a number of things. One, they did not yet have  
5 the --

6 MR. CLUBOK: I'm sorry. I object, Your Honor, to  
7 highlighting before the witness answers. We objected to  
8 leading.

9 THE COURT: Highlighting before the witness  
10 answers --

11 MR. CLUBOK: That's a form of leading.

12 THE COURT: Wait. I was talking.

13 MR. CLUBOK: I'm sorry.

14 THE COURT: Just a moment. I was going to say  
15 that's a form of leading. So let's not highlight before he  
16 answers.

17 BY MR. GRONBORG:

18 Q. So we were talking about this report which is on the  
19 evening of May 13th?

20 MR. CLUBOK: And if I may, not even expand things.  
21 Really the witness should be testifying about this, not being  
22 cued by his lawyer as to what to focus on by using the  
23 graphics.

24 THE COURT: Agreed. But to be clear, after he  
25 answers, you can do it --

1 MR. CLUBOK: Yes.

2 THE COURT: -- but you can't do it before he  
3 answers.

4 Let's not talk over each other, folks. You should  
5 be listening to what the judge has to say. Go ahead.

6 BY MR. GRONBORG:

7 Q. And, Professor, this report, this is from the 8:26 p.m.  
8 on the evening of May 13th, 2015. And what did you take from  
9 the supporting analysis that was contained in this T. Rowe  
10 Price internal document?

11 A. A number of things. I mean, it starts out: Puma,  
12 painful as this is, I would not sell. We own a lot. So this  
13 investor has been through some pain, is what that says,  
14 meaning -- my understanding is that refers to the corrective  
15 disclosure that came out that night.

16 Another thing is it says towards the end of the  
17 third paragraph on the bottom: However, as usual, there are  
18 additional analyses that put the drug in a better light. So  
19 this is an indication that there are ways to slice and dice  
20 the data to make it look not so bad.

21 But what really stands out are these numbers, 4.1  
22 and 4.2, are absolute spreads in DFS. I know that that was  
23 not publicly disclosed. Therefore, this means there was  
24 communications between the company and some investors to try  
25 to boost the price and keep it from falling after the



1 May 13th ASCO corrective disclosure.

2 Q. Did you see any commentary here by T. Rowe Price, who  
3 is reading where they commented about the Kaplan-Meier  
4 curves?

5 MR. CLUBOK: Objection. Leading. He had given his  
6 answer --

7 THE COURT: Hold on. Simple objections are almost  
8 always sufficient. The objection is sustained.

9 BY MR. GRONBORG:

10 Q. Is there anything else that stood out to you in the T.  
11 Rowe Price's reviewing the materials that one of the  
12 investors was internally sending on May 13th?

13 A. Well, I mean, like I said, there's a lot here. And  
14 under supporting analysis, the second paragraph, it says  
15 below: I go through incremental data from the ASCO abstract,  
16 but the key messages for PMs -- portfolio managers -- are CEO  
17 was misleading. Possibly liar. So that's part of the  
18 analysis that goes into this.

19 Then number three in that same paragraph is about  
20 the Kaplan-Meier curves. So it had not yet been disclosed  
21 what the truth was about the Kaplan-Meier curves. That only  
22 came out at the ASCO conference.

23 So this investor is saying, we just got hit with  
24 two negative pieces of news, two negative corrective  
25 disclosures, information that was not what was represented to

1 us previously. And the risk going forward -- this is his  
2 words -- the risk going forward is that we're going to get  
3 hit with more. You know, we're soon going to find out  
4 whether the Kaplan-Meier curves are what they were  
5 represented to be or not.

6 Q. So the record is clear, you said this is what they said.  
7 Can you actually -- is that the exact words they used for  
8 point number three?

9 A. The exact words are: The risk from here is really that  
10 this two-year data gets worse at years three, four, or five.  
11 CEO has said the curves separate further, but go back to  
12 number one. Number one is that he's possibly a liar, is what  
13 this investor said.

14 So that's all part of the investment thesis.  
15 That's all part of the analysis. I mean, they're in a tough  
16 position, but they own a lot and they're hoping for the best.

17 MR. GRONBORG: No further questions.

18 THE COURT: All right.

19 How much time on recross?

20 MR. CLUBOK: Less than five minutes.

21 THE COURT: Less than five?

22 MR. CLUBOK: For sure.

23 THE COURT: Okay. Proceed, then.

24 **RECROSS-EXAMINATION**

1 BY MR. CLUBOK:

2 Q. If we could put that document back -- actually, we don't  
3 need to put the document up.

4 Sir, you know what an omission is, right?

5 A. Yes.

6 Q. When you were giving your analysis or whatever you were  
7 giving with respect to this document, you read from a  
8 sentence that -- well, let's put the document back up.

9 You read from a sentence that was paragraph -- that  
10 had numbers in it, parentheses 1, 2, 3, and you -- when you  
11 read to the jury or described to the jury your reaction and  
12 what you took from this, you quoted from 1 and you quoted  
13 from 3, but you omitted what was in 2 when you gave your  
14 answer; isn't it true?

15 A. Sure: It says the data itself is good enough.

16 Q. Right. Sure, when you were explaining your  
17 interpretation of what someone at T. Rowe Price supposedly  
18 was thinking on May 13th, 2015, you omitted that what they  
19 said was, but the data itself is good enough. That's what  
20 you omitted when you answered the questions when Robbins  
21 Geller's lawyer was asking you that, true?

22 A. Well, when I was reading back --

23 Q. Is that true?

24 A. True.

25 Q. Okay. By the way, the recommendation -- well, the

1 decision is made at this point based on the data that was  
2 presented in the abstract that T. Rowe Price would not sell  
3 but would continue to own the stock, correct?

4 A. That's right. That's what they said: Painful as this  
5 is, I would not sell.

6 MR. CLUBOK: Let's get Exhibit 34 up if we can.

7 BY MR. CLUBOK:

8 Q. Exhibit 34 is an internal e-mail -- I'm sorry, an  
9 internal report by Skye Drynan at Capital with respect to  
10 Puma stock, right?

11 A. Yes.

12 Q. And that's dated May 14th, 2015. For Skye Drynan and  
13 Capital, based on all the information in the report, their  
14 recommendation is not just to hold but in fact to buy more  
15 stock; isn't that right?

16 A. Well, can you also expand the first paragraph?

17 Q. Just is that right? Yes or no, sir?

18 A. Yes. She was buying on the dips, it seems.

19 Q. And it's because she thought the stock was undervalued  
20 that day based on her review of the data; isn't that true?

21 A. That's why I wanted you to expand the first paragraph.  
22 I can't answer that without seeing the rest of the document.

23 Q. As you sit here today, based on all the work you've done  
24 in this case and all that you've been paid and all the time  
25 you spent here at trial, as you sit here today, can you

1 answer this question? Isn't it true that Skye Drynan, after  
2 doing analysis following the ASCO abstract release,  
3 determined that notwithstanding what the market price was,  
4 she believed the stock was undervalued and that's why she  
5 bought on behalf of Norfolk?

6 MR. GRONBORG: Objection. Foundation.

7 THE COURT: Cross-examination of an expert.

8 Overruled.

9 THE WITNESS: You said notwithstanding what the  
10 stock price is, but that's the most important part. The  
11 price dipped. It dropped. It dropped \$41 a share. That's  
12 why she's buying. And that's what's in the paragraph behind  
13 your bullet there.

14 BY MR. CLUBOK:

15 Q. Isn't it true that Skye Drynan thinks that the stock  
16 price is wrong and that the true value of the company is  
17 higher than what she can buy it for on May 14th? Isn't that  
18 what she believes?

19 A. It's --

20 Q. Isn't that what she believes? Yes or no?

21 A. I would like to see what's behind that highlight in  
22 order to answer that question.

23 MR. CLUBOK: I would like the witness to be  
24 instructed to answer my question based on the work he's  
25 already done.

1 THE COURT: I'll give you the option. Yes, no, or  
2 you don't know?

3 THE WITNESS: All right. Let's hear the question  
4 again, then.

5 MR. CLUBOK: May I ask that the court reporter read  
6 back the question? And this is my last question.

7 THE COURT: Yes.

8 (Record read)

9 MR. CLUBOK: All right. I'll ask it again.

10 BY MR. CLUBOK:

11 Q. Sir, wasn't it the case that on May 14th, in substance  
12 Skye Drynan had chosen not to rely on the market price but  
13 instead had valued Puma higher than the market price and that  
14 is why she justified buying the stock at that day? Isn't  
15 that true based on the work you've done in this case and what  
16 you know about it?

17 A. It's not true. She relied on the market price. Market  
18 price was an important part of her determination, and that's  
19 what the words are that you're hiding there.

20 Q. To be clear, she took advantage of the market price  
21 because she thought the market price was not accurately  
22 reflecting the true value of the stock; isn't that correct?

23 A. Well, you're getting into more detail about her thought  
24 process. I could speak to what she wrote in her report. She  
25 said she thought the price was too low after the dip, so she

1 bought. She thought she'd make money at this point. She  
2 didn't have all the facts.

3 Q. Because she thought the company was -- she thought the  
4 value of the company was higher than just what the market  
5 price was, correct?

6 A. Based on the information she had, she thought the price  
7 would go up.

8 Q. That's not my question.

9 A. I thought it was.

10 THE COURT: Let's --

11 MR. CLUBOK: That's good enough. Thank you.

12 THE COURT: Redirect.

13 MR. GRONBORG: No more questions.

14 THE COURT: All right.

15 Sir, you may step down. Thank you, sir.

16 All right, folks. We went a little over, so we're  
17 going to return at 1:45, please. See you all at 1:45.

18 Thank you.

19 Remember, don't discuss the case. Certainly don't  
20 research the case, and please keep an open mind.

21 (Open court - jury not present)

22 THE COURT: All right.

23 Folks, Mr. Gronborg and Mr. Clubok, good cross --  
24 good expert examination, direct and cross. Thank you for  
25 that. But let's not talk over each other and listen to what

1 might be coming from the bench. It could be helpful.

2 All right. We'll see you at 1:45.

3 MR. COUGHLIN: Your Honor, before we leave, this  
4 Kopcho deposition issue, we thought we had resolved the  
5 issue.

6 THE COURT: Hold on. Tell me the point and then  
7 give me all the backup you want.

8 MR. COUGHLIN: The point is that we thought we had  
9 it down to about six objections.

10 THE COURT: The point is -- I think you want me to  
11 read something.

12 MR. COUGHLIN: Yes.

13 THE COURT: Okay. I'd like to hear that and then  
14 all the background. Your Honor, I would like you to read  
15 something. Now give me the background.

16 MR. COUGHLIN: Your Honor, I'd like you to read the  
17 Kopcho deposition with the marked objections. We have it --  
18 the yellow tabs are what we thought we were down to. The  
19 blue tabs were added last night at 11:30. So we'd ask you to  
20 read --

21 THE COURT: Yellow and blue tabs?

22 MR. GRONBORG: Yellow and blue tabs.

23 THE COURT: When do you need it done?

24 MR. COUGHLIN: I would like it -- I think we can do  
25 it -- I think you can have it all the way to tomorrow. We



1 can play the depo in rebuttal.

2 THE COURT: When would you like to have it done?  
3 At 1:45 or later this afternoon or tomorrow?

4 MR. COUGHLIN: I don't want to take up your lunch,  
5 so I would say that I would like you to have it done by  
6 tomorrow morning.

7 THE COURT: It clearly will be done tomorrow  
8 morning.

9 Thank you, all. See you at 1:45.

10 (Recess taken from 12:08 p.m. until 1:47 p.m.)

11 THE COURT: So the jury is here?

12 I've read all your briefing. Do you have anything  
13 else in writing? Your briefing is very complete. Of course,  
14 I've read your jury instructions. Do you have anything else  
15 in writing? What do you want to do now?

16 MR. CLUBOK: I would like to know if the plaintiff  
17 is resting his case.

18 THE COURT: That's what you want on the record?  
19 Is plaintiff resting?

20 MR. COUGHLIN: The plaintiff is resting.

21 THE COURT: Do you intend to file anything?

22 MR. CLUBOK: We do, Your Honor. We intend to file  
23 a motion for directed verdict.

24 THE COURT: How long is the motion?

25 MR. CLUBOK: About a name and three sentences.

1 THE COURT: And how long do you need in oral  
2 argument?

3 MR. CLUBOK: Zero time. We'll submit on the papers  
4 unless you want to give us oral argument.

5 THE COURT: Okay. I suggest you submit on the  
6 papers. I'll glance at it. You've made your record. That's  
7 all good and appropriate. So pass the papers up.

8 MR. CLUBOK: Thank you, Your Honor.

9 THE COURT: If I feel justice requires a written  
10 response from the defense, I'll let you know.

11 Okay. Thanks.

12 THE CLERK: Response from the plaintiff?

13 THE COURT: I think I might have said written  
14 response from the defense. If I need a written response from  
15 the plaintiff, I shall let you know.

16 THE CLERK: All rise.

17 (Open court - jury present)

18 THE COURT: Welcome back, folks. We're moving  
19 along.

20 And I will turn back to the plaintiff and say,  
21 plaintiff will call their next witness.

22 MR. COUGHLIN: Your Honor, the plaintiffs rest  
23 their case at this point.

24 THE COURT: We then turn to the defense and say,  
25 please call your first witness.

1 MS. TOMKOWIAK: Your Honor, the defense calls  
2 Professor Paul Gompers to the stand.

3 **Paul Gompers, Defendant's witness, sworn**

4 THE CLERK: If you will please be seated and state  
5 and spell your first and last name.

6 THE WITNESS: Paul Gompers. P-a-u-l, and the last  
7 name is spelled G-o-m-p-e-r-s.

8 THE COURT: Continue.

9 MS. TOMKOWIAK: Good afternoon, Your Honor. My  
10 name is Sarah Tomkowiak. I represent the defendants in this  
11 case. I hope I win for the most difficult last name of the  
12 day.

13 May I approach, Your Honor? We have a  
14 demonstrative to use with the witness.

15 THE COURT: Yes, you may.

16 MS. TOMKOWIAK: Your Honor, I've marked the  
17 demonstrative for identification purposes as Exhibit 1121.  
18 And then you'll see it has page numbers which are DDEM8  
19 through 46.

20 We'd like to publish that to the jury, if you will.

21 THE COURT: What do you wish to publish?

22 MS. TOMKOWIAK: I would like to use the  
23 demonstrative with the witness during his presentation.

24 THE COURT: All pages referenced?

25 MS. TOMKOWIAK: Yes, Your Honor.

1 THE COURT: Any objection?

2 MR. GRONBORG: No objection.

3 THE COURT: All right. You may. Thank you.

4 **DIRECT EXAMINATION**

5 BY MS. TOMKOWIAK:

6 Q. Good afternoon, Professor Gompers. Can you please  
7 introduce yourself to the jury.

8 A. Yes. So I'm Paul Gompers. I'm a professor at Harvard  
9 business school.

10 Q. Have you prepared anything to assist you testifying in  
11 court today?

12 A. Yes. So in preparation for today, I put together some  
13 slides that are based on the work that I did for my expert  
14 report.

15 Q. All right. So can you please tell the jury a little bit  
16 about your background, starting with your education?

17 A. So I attended Harvard College where I majored in  
18 biology, and I received my degree in 1987. From there I went  
19 on to study at Oxford University on a Marshall fellowship  
20 where I received a master's in economics. I then came back  
21 to Harvard and did the Ph.D. in business economics, which is  
22 a joint program where you do both the MBA as well as the full  
23 Ph.D. in economics. And I received my Ph.D. in 1993.

24 Q. And what did you do pursue after school?

25 A. Immediately after school I actually ran professionally

1 for six years. So I was All-American at Harvard where I ran  
2 track and cross country. I actually set the world junior  
3 record in the marathon.

4 So I ran professionally for six years and had the  
5 honor of representing the U.S. on a number of national teams  
6 including as an alternate on the 1988 Olympic team in the  
7 marathon.

8 Q. And then could you walk the jury through your  
9 professional career after that?

10 A. Yeah. Walk instead of run, yeah.

11 Q. Exactly.

12 A. Sorry. Bad pun.

13 So after I got my Ph.D., I took up an assistant  
14 professor position at the University of Chicago graduate  
15 school of business. I had an appointment in the finance and  
16 policy units. I then came back to Harvard business school in  
17 1995 first as an assistant professor and then as an associate  
18 professor and was promoted to the rank of full professor in  
19 the year 2000.

20 In addition, in 1995 I received an appointment to  
21 the National Bureau of Economic Research, which is the  
22 leading independent economic think tank in the United States.  
23 We publish lots of reports and hold conferences. And perhaps  
24 the most dubious distinction we have is that when the U.S.  
25 goes into a recession, it's we at the national bureau who

1 tells us we're in a recession -- and when we come out as  
2 well.

3 Q. Just a reminder, talk slightly slower than you run.

4 So let's talk about your responsibilities as a  
5 professor of business administration at Harvard. What are  
6 your responsibilities?

7 A. Well, there are three main responsibilities. The first  
8 and most important is our research. So over the last  
9 24 years at Harvard business school and before that at  
10 Chicago, I have done research on issues related to financial  
11 economics, things like market efficiency, the incorporation  
12 of information in the stock prices, the raising of capital by  
13 innovative young companies, the investors in those young  
14 companies like Venture Capital.

15 That research has been published in numerous  
16 peer-reviewed journal articles. I've got several dozen  
17 top-tier journal articles which I've published. In addition,  
18 I've written a number of books. I actually have my fifth  
19 book coming out in February through Anthem Press.

20 I've also written more than 80 case studies, so we  
21 teach by the case method. And we actually investigate and  
22 interview companies and gather data. So for the courses that  
23 I've taught, I've published more than 80 individual case  
24 studies.

25 The second area of responsibility is teaching. And

1 over my time at Harvard business school, I've taught courses  
2 at the MBA, the Ph.D., executive education, at undergraduate  
3 levels. Those have ranged in topics again from corporate  
4 finance, capital markets, fundraising for entrepreneurial  
5 firms.

6 Then the third area is one of administrative  
7 responsibilities. So when you're promoted to full professor,  
8 you're generally expected to pull your weight and engage in  
9 administrative activities.

10 So over the years I've been the director of  
11 research allocating research budgets for faculty. I've been  
12 the head of the second year of the MBA curriculum. And most  
13 recently and currently I'm still the course head for the  
14 required course in entrepreneurial management.

15 Q. When you were talking about your research, you mentioned  
16 the phrase peer-reviewed. What does that mean?

17 A. So peer-reviewed is the process by which when you've  
18 completed your research and typically you present it at a  
19 number of university end conferences, that you then submit it  
20 for potential publication.

21 The research is then reviewed to determine whether,  
22 first of all, it employs the standards of the profession.  
23 Then secondly, whether or not the importance of the research  
24 is high enough or large enough that it warrants publication  
25 in that type of a journal.

1 Q. And have you reviewed articles written by your peers?

2 A. Yes, absolutely. Again, over the years I've again  
3 referee for, you know, more than a dozen journals. I've  
4 actually been an editor or associate editor for a number of  
5 the top finance and economics journals.

6 Q. Have you won any awards for your academic research?

7 A. Certainly. So a number of my papers have won awards for  
8 -- in the journals in which they're published as the most  
9 impactful papers in those journals. As well as, I've  
10 received awards on my research from professional groups for  
11 the importance of the research.

12 Q. Have you founded any companies?

13 A. Yes. In 2002 I co-founded an investment management  
14 company called Spur Capital Partners.

15 Q. And what is your role at Spur Capital Partners?

16 A. So I'm a non-executive director. So I own 25 percent of  
17 the firm, but I'm not involved in the day-to-day activities  
18 of the firm. But I am involved in all the investment  
19 decisions that Spur Capital Partners undertakes.

20 Q. And generally speaking, what does Spur Capital Partners  
21 do?

22 A. So Spur Capital Partners raises money from institutional  
23 investors, primarily U.S. endowments, foundations, and family  
24 offices. Over six funds we've raised nearly a billion  
25 dollars, and with that money we've invested it in venture



1 capital funds.

2 So that money goes in to the investors who invest  
3 in young software companies, internet companies, and  
4 biotechnology life science companies. So we don't directly  
5 invest in those companies. We invest in the funds or the  
6 investors who actually find and invest in those young  
7 emerging technology companies.

8 Q. Have you previously served as an expert witness in legal  
9 matters?

10 A. Yes.

11 Q. And has the Court ever qualified you as an expert?

12 A. Yes. Every time that I've been offered, I've been  
13 qualified to testify as an expert.

14 Q. In what fields have you been qualified to testify as an  
15 expert?

16 A. They're the areas where I do research. So financial  
17 economics, things like market efficiency, the incorporation  
18 of information into prices, valuation of public and private  
19 companies, as well as other types of litigation between  
20 venture capital firms, private equity firms, or corporate  
21 litigation.

22 Q. And you've worked on matters with my law firm,  
23 Latham & Watkins, before, right?

24 A. A couple of times, yes.

25 Q. And who retained you in this matter?

1 A. I was retained by Puma, the defendant in this matter.

2 Q. Okay. And are you being paid for the work that you are  
3 doing in this matter?

4 A. I am.

5 Q. Who is paying you?

6 A. Puma.

7 Q. What is your hourly rate?

8 A. It's \$975 per hour.

9 Q. And does your compensation depend in any way at all on  
10 the substance of your testimony or the outcome of this case?

11 A. No.

12 Q. Generally speaking, what work have you done in this  
13 matter?

14 A. So I was asked to review the expert reports of  
15 Dr. Feinstein and Professor Trueman and to offer rebuttal  
16 opinions and evaluate their work. So I reviewed their  
17 reports, supporting material, and other documents.

18 Q. And did you apply the same standards in reviewing  
19 Professor Feinstein's and Professor Trueman's work that you  
20 would do as a peer reviewer as you just described?

21 A. Yes. If I was a referee, it's the same set of standards  
22 that I applied in reviewing their work.

23 Q. Did you listen to Professor Trueman and Professor  
24 Feinstein testify in court?

25 A. I did.

1 Q. Okay. So let's talk about your opinions. Can you  
2 please tell the jury the opinions that you formed in this  
3 matter?

4 A. So when one evaluates the work of Professor Feinstein,  
5 if you look at first of all his loss causation analysis, his  
6 loss causation is just flawed and unreliable. It doesn't  
7 meet the standards that one would expect from our profession,  
8 financial economics.

9 Similarly, if you look at his damages analysis,  
10 that damages analysis is equally flawed. It doesn't -- it  
11 doesn't rise to the level of what we would consider the  
12 standards of research in financial economics.

13 Then finally I was asked to evaluate the capital  
14 raised that Puma undertook in January of 2015 and to -- to  
15 just use the same methodology that Dr. Trueman used. And on  
16 two alternative dates, one in September of 2014 and one in  
17 March of 2015, Puma would have actually had to issue far  
18 fewer shares to raise the same amount of money given the  
19 stock price in that time period.

20 Q. So let's turn first to your opinion that Dr. Feinstein's  
21 loss causation analysis is flawed and unreliable. So we  
22 heard a little bit about loss causation earlier this morning,  
23 but in your own words what does loss causation mean?

24 A. So loss causation means proving, finding evidence that  
25 there is a direct link between the fraud that's committed,

1 the misstatements or omissions that a company makes, and the  
2 losses that were suffered by an investor.

3 So you need to employ techniques to be able to  
4 provide evidence that there was a direct link between those  
5 two things.

6 Q. Okay. And so you talked about techniques. Can you walk  
7 the jury through the type of economic analysis that is  
8 required to prove loss causation?

9 A. Sure. So the first step is actually, you know, to  
10 identify the fraud. So, what were the misstatements or  
11 omissions that the company made when it's alleged to have  
12 committed fraud? You need to very specifically identify  
13 those.

14 From there you need to turn and determine: What  
15 information did the company know? When did it know it? And  
16 what could it have said? So what information would disprove  
17 the fraud, show that the company had said something that  
18 wasn't true? So that's finding what we would call the  
19 corrective information.

20 So if we go and -- so the third one is once you've  
21 identified what information corrects the fraud, the  
22 corrective information, what's critical is to look on the  
23 dates that plaintiffs allege that that corrective information  
24 came out.

25 And I'm sure you've heard the plaintiffs talk about

1 corrective disclosure dates. So what you do is you look to  
2 see is the corrective information revealed on those  
3 corrective disclosure dates, and is that information new on  
4 those dates?

5 Then finally the sort of the next two steps really  
6 are the critical element here because the world is a complex  
7 place. It's unlikely that on any one day there's only one  
8 piece of information that comes out. So what is critical is  
9 to identify how much of any stock price movement is due to  
10 the information is corrective.

11 So you need to sort of determine the corrective  
12 part of the price movement, and you need to remove  
13 confounding information, things that are unrelated to the  
14 fraud or the corrective information.

15 Q. So you said the last two steps are the critical steps,  
16 so I want to pause briefly on that. Again, can you just  
17 explain to the jury as simply as possible the difference  
18 between the allegedly corrective information and confounding  
19 information?

20 A. Sure. So again, this is the reason you need to be very  
21 precise. So, you know, we'll -- we'll have a chance. I put  
22 some slides together to talk about the different pieces of  
23 information that came to the market on various days, but you  
24 need to identify very specifically which information corrects  
25 the fraud. What is the information that the company should

1 have told investors before that comes to the market and  
2 separate out other what -- I believe Professor Feinstein used  
3 the same term, confounding information, which is what  
4 information comes to the market at the same time but it's not  
5 corrective. It's unrelated to the fraud, but it's value  
6 relevant, meaning it changes investors' expectation for the  
7 prospects for that company.

8 So the key element here is to distinguish between  
9 corrective information and confounding information.

10 Q. Now, you keep talking about information that corrects  
11 the fraud, but I just want to be clear. Did you do any work  
12 here to determine whether there was actually in fact fraud?

13 A. No. So it's sort of alleged fraud. So again, when I go  
14 through the analysis, I am sort of assuming the plaintiffs'  
15 world in some sense and trying to -- if you assume the  
16 plaintiffs' world for a second, if you assume that there is  
17 some fraud or an alleged fraud, does the alleged corrective  
18 information account for the stock price movement?

19 Q. And what is your understanding of the alleged  
20 misrepresentations in this case?

21 A. So it's my understanding that on July 22nd Mr. Auerbach  
22 in a conference call with investors, he's alleged to have  
23 made misstatements about the early results or the preliminary  
24 results of the ExteNET trial for neratinib.

25 Q. So that's the first step in the loss causation analysis

1       that you described.

2               Let's go to the second and third step of that  
3       analysis. What is your understanding of what plaintiff  
4       alleges should have been disclosed in this case and when were  
5       those facts revealed to the market?

6       A.     So the plaintiff alleged two corrective disclosure  
7       dates. The first is May 13th when, after the market closed,  
8       the abstract for the ExteNET trial was published. So on --  
9       this is sort of May 13th when the abstract was published.

10            The plaintiff alleged that two specific corrective  
11       facts came to the market. I'll just call them fact one and  
12       fact two. The first, fact one, they claim that this is the  
13       first time that the market learned that the absolute  
14       difference in disease-free survival was 2.3 percent. So  
15       that's alleged corrective fact one.

16            Fact two is plaintiffs allege for the first time  
17       the market learned of the 39.9 percent diarrhea rate,  
18       grade-three or higher diarrhea rate. So that's fact two.

19            There's a second date that plaintiffs allege there  
20       was a corrective disclosure, and that was the ASCO  
21       conference. So during the ASCO conference, Dr. Chan made a  
22       presentation of the results of the ExteNET trial, and the  
23       plaintiffs claim that there were two additional facts which  
24       came to the market in her presentation.

25            First is fact three, which is the Kaplan-Meier

1 curves, the fact that between year one and year two the  
2 curves only separated by .1 percent and that there may have  
3 been some narrowing at the end.

4 So fact two is the actual Kaplan-Meier -- fact  
5 three is the Kaplan-Meier curves. And fact four is the  
6 revelation of a 16.8 dose discontinuation rate, meaning that  
7 because of diarrhea, 16.8 percent of patients had to  
8 discontinue their treatment of neratinib.

9 Q. And as part of your work in this matter, did you also  
10 review Puma's stock price in between July 22nd, 2014, and the  
11 ASCO conference in June 2015?

12 A. I did.

13 Q. Is this the stock price chart that you put together?

14 A. It is. So this -- this just looks from July 22nd  
15 through June -- July 22nd, 2014, to June 2nd, 2015, the stock  
16 price of Puma.

17 Q. And what in your opinion does this stock price chart  
18 show?

19 A. So I've written a number of papers on newly public  
20 companies, many of them biotechnology companies like Puma,  
21 looking at their stock performance up to five years after the  
22 IPO. I think Puma went public in, like, 2012, so it's a  
23 recent public company.

24 It's not surprising that the stock is very  
25 volatile. This is a company who currently had no revenue at



1 the time, whose future prospects depended entirely on the  
2 potential approval of neratinib through the ExteNET trial and  
3 ultimately what that might generate for revenue.

4 So this looks like many young emerging technology  
5 companies.

6 BY MS. TOMKOWIAK:

7 Q. Now, Dr. Feinstein testified this morning that he tested  
8 every day on this chart to see if there was a statistically  
9 significant price reaction on that particular day. What was  
10 your reaction to that?

11 A. So the interesting thing about that is that he looked at  
12 individual days until it was important for him to look at two  
13 days. So he looked at June 1st and June 2nd. In other cases  
14 as well he's looked at two days. So it's interesting that he  
15 hasn't looked at potentially other multiple-day windows in  
16 terms of the stock price.

17 Q. And is that -- looking at, you know, sort of multi-day  
18 effects or multi-day windows, is that something that you've  
19 seen him do in other cases?

20 A. Yes.

21 Q. Now, Professor Feinstein said he performed an event  
22 study. Are you familiar with how event studies are  
23 performed?

24 A. Yes. So a number of my papers that I've published have  
25 been -- the basic analysis has been an event study. I also

1 -- I also taught -- I developed and taught for 12 years a  
2 Ph.D. course at Harvard on empirical methods in finance. We  
3 actually spent two whole days discussing the proper  
4 methodology. So I taught the Ph.D. students for 12 years on  
5 how to do event studies.

6 Then finally in a number of the legal matters I've  
7 worked, I've utilized event study analysis.

8 Q. So can you please explain to the jury and walk them  
9 through your slide here and describe what an event study is?

10 A. Yes. So some of this may be familiar from what  
11 Professor Feinstein talked about earlier. The first thing is  
12 you identify an event. What is it that you're looking at?  
13 What's the day and what's the particular information that you  
14 to estimate a value for?

15 The second piece is what we call a regression  
16 analysis. It's just a statistical tool. And again,  
17 Professor Feinstein talked about the need to take out the  
18 market and the industry. So stocks might move up because the  
19 market went up. Puma might go up because biotechnology  
20 stocks go up.

21 So what the regression analysis does is it allows  
22 you to identify the firm-specific component of a daily stock  
23 price movement. So we know that that was what happened to  
24 Puma apart from the market in the industry. Then you use the  
25 statistical regression analysis to estimate, is that day

1 statistically significant? Was it caused by something that  
2 you believe was real as opposed to just noise?

3 The third element is perhaps the most important  
4 one, which is to assess what is the new value relevant  
5 information that comes out on that day. And as I mentioned,  
6 there's -- there's complexity when -- for example, when a  
7 research study gets published, there's lots of pieces of  
8 information. So you need to identify the corrective and the  
9 confounding information.

10 One of the things you need to do to assess price  
11 impact is to say, did the market think that that information  
12 was better than expected? Was it positive? So if it was  
13 positive, it shouldn't account for a stock price decline.

14 And if they view that information as negative to  
15 relative to what they expected, that would cause the stock  
16 price potentially to go down. So you need to assess relative  
17 to what the market thought.

18 Q. Did you conduct this type of analysis to evaluate  
19 Professor Feinstein's opinions in this case?

20 A. So while I didn't do my own regression analysis, which  
21 is again essentially a simple tool to teach how to run a  
22 statistical program. That third point is exactly what I did  
23 in my expert report in terms of examining how Professor  
24 Feinstein went about looking at what was new information and  
25 whether or not that information could account for the stock

1 price movement.

2 Q. So I want to turn to Professor Feinstein's opinion  
3 regarding the causes of Puma's stock price decline following  
4 the ASCO meeting in June 2015.

5 Did you review the presentation that Dr. Chan made  
6 at ASCO on June 1st, 2015?

7 A. I did.

8 Q. And is this the presentation that you reviewed?

9 A. Yeah, so this is all the slides. So the ASCO  
10 presentation essentially lasted 12 minutes, and these are  
11 each of the slides that Dr. Chan went through.

12 One of the things that you can just see by looking  
13 at all the slides even though they're pretty small is that  
14 there's a lot of numbers. There's a lot of information here  
15 that Dr. Chan went through in the presentation.

16 Q. Can you identify for the jurors the information that  
17 Professor Feinstein points to as the cause of Puma's stock  
18 price decline?

19 A. Yes. So there's two slides that have the corrective  
20 information here. The first is the second one down on the  
21 right. So if we just -- yeah. So this is the graph of the  
22 Kaplan-Meier curve that Dr. Chan went through, which is what  
23 I called fact three earlier. It's the disclosure of the  
24 actual rate of being disease free over time.

25 So the way to think about this, this is like the

1 accumulation over time of how many patients in the treatment  
2 arm in orange and the placebo arm in the blue remain disease  
3 free up through two years.

4 Q. Okay. And then did you identify any other information  
5 that Professor Feinstein pointed to as the cause of Puma's  
6 stock price decline?

7 A. Yeah. So if we go to the bottom slide, the second from  
8 the left, there's this little piece of information here which  
9 is a slide that's talking about adverse events. And what  
10 I've highlighted with the red box is just the 16.8 percent  
11 dose discontinuation rate.

12 So what Professor Feinstein assumes or sort of his  
13 opinion is that those two red boxes account for the entirety  
14 of the stock price decline on June 1st and June 2nd.

15 Q. Did you form any opinions regarding Dr. Feinstein's  
16 analysis?

17 A. Oh, yes. He has no basis to conclude that either fact  
18 three or fact four is the cause of any part of the stock  
19 price decline on June 1st or June 2nd.

20 Q. So what documents did you review in order to form that  
21 opinion?

22 A. So I reviewed both of Dr. Feinstein's report in the loss  
23 causation damages phase, all of his backup. I reviewed all  
24 of Professor Trueman's material as well. In addition -- and  
25 that included all of the analyst reports and news stories.

1           In addition, I did my own search to see whether or  
2 not fact three and fact four were mentioned anywhere else in  
3 terms of any publication. Were there any discussions of fact  
4 three or fact four?

5 Q.    So you mentioned analyst reports, and we've heard a lot  
6 about that throughout this trial. Can you explain to the  
7 jury what the role of an analyst is?

8 A.    So typically right now we're going to be talking about  
9 sell-side analysts. So the sell-side analyst typically is  
10 charged with following a company, following the news, the  
11 research about it, and then writing reports about  
12 recommendations about where they think the company is going.

13       They'll make recommendations or estimates of future  
14 revenue and earnings. They'll make recommendations for  
15 buying or selling the stock. So their job is really to  
16 closely follow those companies and disseminate that  
17 information to investors.

18       In an industry like biotechnology, most of the  
19 analysts have technical backgrounds like Ph.D.'s and life  
20 science or MDs. So they understand the industry.

21 Q.    Did you review every single analyst report that was  
22 issued following the ASCO meeting?

23 A.    I did.

24 Q.    And how many of those reports discuss either fact three,  
25 which I think you defined as the Kaplan-Meier curves, or fact

1 four, which you defined as the discontinuation rate due to  
2 diarrhea?

3 A. So after the ASCO meeting on June 1st, there were nine  
4 analyst reports published. Only three of them have any  
5 mention of the Kaplan-Meier curve, and only one has any  
6 mention of the discontinuation rate due to diarrhea.

7 Q. And do any of the analyst reports that you reviewed  
8 provide any support for Dr. Feinstein's conclusions regarding  
9 the causes of Puma stock price decline?

10 A. No. I mean, when -- when you go through -- when you  
11 read those analyst reports and you read their discussion of  
12 the Kaplan-Meier curves or the dose discontinuation rate, in  
13 order for you to believe that they moved the stock price  
14 down, you would have to believe that the analyst would speak  
15 negatively about them. Oh, that's bad. Or, that's, like,  
16 worse than we had expected.

17 And quite the contrary, most of the -- in fact,  
18 when you read through it, the discussion seems actually quite  
19 positive when they look at the Kaplan-Meier curves and  
20 they're not even concerned about the dose discontinuation.

21 Q. So you said that you looked at every analyst report that  
22 was issued regarding Puma -- I should be clear, after ASCO.  
23 I'd like to take a look at those reports now.

24 What does this slide show?

25 A. This is just every page of those nine analyst reports.

1 So you can see that there's lots of discussion in those  
2 analyst reports about lots of things. So that's just every  
3 single page.

4 Q. And you said that you identified a discussion of the  
5 Kaplan-Meier curves or the 16.8 percent discontinuation rate  
6 in four of those reports, right?

7 A. That's correct -- three for the Kaplan-Meier curve and  
8 one for the dose discontinuation rate.

9 Q. Okay. I'd like to walk through those four reports now.  
10 Let's start with the ones that reference the  
11 Kaplan-Meier curves.

12 A. Sure. So the first one should be a UBS report, if we  
13 pull that up. So, yes. So this is a UBS report that  
14 talks -- it has a mention of the Kaplan-Meier curves. So if  
15 we just -- thank you for highlighting it.

16 So the analyst here at UBS, I mean, his words are  
17 curve separation impressive. The Kaplan-Meier curves  
18 separated within three months and stayed more or less  
19 parallel at that point except for the hormone-receptor  
20 positive subgroup which appeared to widen over time.

21 So this seems inconsistent with information that  
22 would cause the stock price to decline because this seems to  
23 be a positive interpretation of this data.

24 Q. Okay. And for the record, that is Exhibit 764.

25 Can you identify the next report which discussed



1 the Kaplan-Meier curves?

2 A. So that should be RBC, Royal Bank of Canada, analyst  
3 report, if we can pull that up. Again, if we just sort of  
4 highlight the language that this analyst uses. So again, so,  
5 you know, the top line headline is, you know, ExteNET curves  
6 separate. Then down at the bottom there's more discussion  
7 and it says, you know, again, the difference in disease-free  
8 survival between the two arms is maintained over time.

9 So again, when you read through this, it just  
10 doesn't seem like the analyst is commenting negative on this.  
11 In fact, if anything, I read this as a positive  
12 interpretation of the Kaplan-Meier curves.

13 MS. TOMKOWIAK: Your Honor, for the record, that is  
14 also Exhibit 764.

15 BY MS. TOMKOWIAK:

16 Q. Can you identify the next analyst report that you  
17 reviewed that identified some discussion of the Kaplan-Meier  
18 curves?

19 A. Yes. So there's a Leerink analyst report, so this is  
20 that report. Again, this is one -- this is the third one  
21 that mentions the Kaplan-Meier curves. And I believe there's  
22 a couple callouts here. So again, the first one, again it  
23 talks about overall we believe the full data presentation for  
24 the ExteNET trial of neratinib in the extended adjuvant  
25 setting of HER2-positive breast cancer, et cetera, with

1 clearly separated disease-free curves that persist and widen  
2 somewhat.

3 So again, this doesn't seem to be a negative  
4 discussion. And I believe there's one additional callout  
5 here. So here the analyst is comparing the ExteNET trial for  
6 neratinib to the HERA trial, which was for Herceptin, which  
7 at the time was the drug of choice for what neratinib was  
8 trying to do.

9 And this analyst talks about in the HERA trial for  
10 Herceptin, the curves were already coming back together  
11 before three years, while in ExteNET the separation appears  
12 to persist and widen somewhat over time.

13 Again, this -- this analyst doesn't seem to be  
14 talking negatively about Kaplan-Meier curves. In fact,  
15 again, if anything, it seems to be positive.

16 Q. And that is Exhibit 969.

17 Then let's go to the final report that you  
18 mentioned, the only report that discussed the 16.8 percent  
19 discontinuation rate.

20 A. Yes. So there's a Cowen report, upper left. So this  
21 Cowen report is the only one to discuss the 16.8 percent  
22 discontinuation rate. And I believe there's a couple  
23 callouts here. So again, you know, the sort of beginning of  
24 the paragraph is safety was in line with previous trials.  
25 Then it, you know, talks about what was actually fact two,

1 which was revealed on May 13th.

2 But then it goes on to say 16.8 percent required  
3 dose discontinuation, and then goes on to talk about how  
4 Dr. Chan believed that that can be managed with Imodium.

5 And I believe -- is there a second callout on this  
6 as well?

7 Q. I believe there's not.

8 A. Okay.

9 Q. And that is also Exhibit 764.

10 Professor Gompers, did you identify -- in all of  
11 the materials that you reviewed and all of the analyst  
12 reports that you reviewed, did you identify any other report  
13 that even mentioned the Kaplan-Meier curves or the  
14 16.8 percent discontinuation rate?

15 A. No, and I did a search. I searched for any particular  
16 mention and didn't find any other discussion of fact three or  
17 fact four.

18 Q. And did you identify any report that mentioned or even  
19 contained the phrase dropouts?

20 A. No.

21 Q. Did you identify any report that mentioned the word  
22 withdraw?

23 A. Not in the context of the trial, no.

24 Q. Do any of the analyst reports that you reviewed support  
25 Professor Feinstein's loss causation opinions?

1 A. No. When you read through the discussion of what the  
2 alleged corrective information is, there's just no basis to  
3 conclude that that can account for the stock price decline.

4 Q. Now, Professor Feinstein testified this morning about a  
5 concept called analyst bias. Are you familiar with that  
6 concept?

7 A. Yes. I've had the opportunity to be both referee and an  
8 editor on some of the journal articles which had been  
9 published on the topic.

10 Q. What is analyst bias?

11 A. Analyst bias largely refers to the phenomenon back in  
12 the late '90s, early 2000s. So those of us who are old  
13 enough to remember the internet bubble, so we can remember  
14 how firms would go public after a month and raise hundreds of  
15 millions of dollars.

16 During that time period there were a number of  
17 papers that showed that analysts had a bias in terms of their  
18 recommendations for buying and selling the stock.

19 So analysts on average 90 percent of the time would  
20 recommend that you should buy a stock and only ten percent of  
21 the time would recommend that you sell the stock.

22 And I think Professor Feinstein mentioned some of  
23 the reasons, which was trying to court business to issue  
24 securities. What Professor Feinstein didn't tell you was  
25 that in 2002 there was a settlement between then New York

1 Attorney General Elliot Spitzer and the underwriters and the  
2 analyst groups that required a Chinese wall.

3 The research since then has shown that the analyst  
4 bias in terms of recommendation and forecast is essentially  
5 mostly gone away. So analyst bias is certainly not a big  
6 problem in 2014 and 2015.

7 Q. So can any of the positive analyst reactions that you  
8 identified possibly be attributed to analyst bias?

9 A. No. And furthermore, you know, there are some areas  
10 where the analysts talk about what some of the concerns are  
11 with the ExteNET trial. But it's certainly the case that  
12 it's not possible that analyst bias could account for the  
13 fact that they describe fact three and fact four in a  
14 positive way.

15 Q. Did you see any evidence that any analyst was under, to  
16 quote Professor Feinstein, tremendous pressure to spin news  
17 about Puma in a positive light?

18 A. No.

19 Q. So let's go back to the causation analysis. So I think  
20 we've talked now a little bit about the allegedly corrective  
21 information, and I want to turn now to the discussion of the  
22 confounding information.

23 Did you identify any confounding information  
24 revealed for the first time on June 1st?

25 A. Yes.

1 Q. What did you identify?

2 A. So when I went through the analyst reports and also  
3 Dr. Chan's presentation itself, there were at least four  
4 areas of information that I saw that was confounding and may  
5 have contributed to the stock price.

6 So if you look, the first is what are called the  
7 node-negative subgroup results, that those didn't sort of  
8 show that the market may not have been as big as people  
9 thought. There were some limitations to the data in terms of  
10 the study design and what was presented.

11 There was some issues with the doctors' reactions  
12 as well as the fact that after the market closed on June 1st,  
13 there was an investor meeting that Puma held in which they  
14 issued additional information about the ExteNET trial.

15 Q. And I should have asked you, but can you just remind us,  
16 what do you mean by confounding information?

17 A. So confounding information is information which is value  
18 relevant. And the thing you need to remember is that you  
19 don't buy a stock because it's like a work of art that you  
20 hang on your wall.

21 You buy a stock because you think it's going to pay  
22 you future dividends, that there is cash flow that's going to  
23 come from that stock. So value relevant information is  
24 information that changes what you think this company might be  
25 able to generate from revenue and cash flows in the future.

1 Q. Did Professor Feinstein account for any of this  
2 confounding information that you've listed on the right in  
3 performing his analysis?

4 A. Well, I know he testified that he looked for sort of  
5 other information. But when I looked through all of his  
6 analysis in both of his reports and in his testimony today, I  
7 see nothing in which he did the kind of detailed analysis  
8 that I did.

9 In order to do the kind of confounding information  
10 analysis, you have to go through and do the kind of thing  
11 that I did. And nothing I reviewed in Dr. Feinstein's  
12 production or what he wrote indicates that he did this.

13 Q. In fact, I think I heard Professor Feinstein testify  
14 that he applied a screen to this type of information based on  
15 your review, do you see any of that type of analysis. Based  
16 on your review, do you see any of that type of analysis, any  
17 type of analysis that would comport with the standards that  
18 are acceptable to a financial economist?

19 A. I've seen no evidence that there was a screen done, no  
20 analytical analysis done. So, no, I see no evidence.

21 Q. Okay. So that I want to discuss each of those pieces of  
22 confounding information in detail. If we go back to the ASCO  
23 presentation --

24 MS. TOMKOWIAK: For the record, this is  
25 demonstrative 29.

1 BY MS. TOMKOWIAK:

2 Q. So you first mentioned the node-negative subgroup  
3 results. Where were those results first revealed?

4 A. So those were first revealed in Dr. Chan's sort of  
5 presentation. So if you go to the sort of slide in the -- on  
6 the far left, number three. Yep. So this is what Dr. Chan  
7 did here is she divided up the results into different  
8 categories of patients.

9 So in the middle here there's a set where she looks  
10 at the status of the patient's nodes. And what this analysis  
11 shows, if you just blow it up, is the fact that the patients  
12 who were node-negative did not have any statistically  
13 significant reaction to the drug.

14 There was no difference between the treatment arm  
15 and the placebo arm, and you can just see that because the  
16 yellow band is very wide and it goes through -- I mean,  
17 hazard ratio of one. It's probably too technical, but it's  
18 not statistically significant.

19 Q. Did any analyst react to this information?

20 A. Yes.

21 Q. Okay. So if we go to demonstrative 31.

22 A. Yes.

23 Q. What was their reaction?

24 A. So this is the Cowen analyst report. So the Cowen  
25 analyst noted that for the target patient, something like 70



1 to 80 percent of patients were node-negative. So the fact  
2 that the results of ExteNET didn't show statistically  
3 significant effects on them, that the market was likely to be  
4 constrained to the 20 or 30 percent of patients who were  
5 node-positive.

6 So the market may have been smaller. Cash flows  
7 and revenues may be smaller in the future. So I believe  
8 there's a callout here. So, yeah, this is just the top line,  
9 ExteNET as advertised but questions remain on FDA strategy  
10 and market opportunity.

11 And just down a little farther, again, so it says  
12 based on today's presentation, there may be some debate.  
13 Then the third point here is that the relevance for -- for  
14 node-negative is probably low.

15 And then finally, they don't expect that this is --  
16 that this will be a drug of choice except for 20 to  
17 30 percent of the patients.

18 Q. Could the node-negative subgroup data have had any  
19 impact on Puma's stock price?

20 A. Yes. It's certainly value relevant. If you think that  
21 the market is now going to be smaller, your expected revenues  
22 and cash flows would be smaller. So that have a negative  
23 effect on the stock price.

24 Q. Did Professor Feinstein consider how the release of the  
25 node-negative subgroup results may have had an impact on

1 Puma's stock price?

2 A. In his rebuttal report, he said the market was expecting  
3 the node-negative results to be inconclusive, and therefore,  
4 it shouldn't have any effect on the stock price.

5 Q. Do you agree with that opinion?

6 A. No.

7 Q. If I could turn to Exhibit 1121 at slide 32.

8 Why don't you agree with that opinion?

9 A. So this is just the same Cowen analyst. The thing you  
10 need to remember is that there's a difference between  
11 something likely happening and it actually happening. So  
12 let's say that you think there's a 90 percent chance that it  
13 is going to fail in the node-negative patients. Well, when  
14 you learn that there's a hundred percent chance that it  
15 failed, the stock price still moves. So it's what we call in  
16 finance a materialization of a known risk.

17 So just because you expect something to happen,  
18 once it does happen, unless it was an absolute certainty, the  
19 stock price will move in response.

20 Q. So the next piece of confounding information that you  
21 mentioned was the limitations of the data. And what did you  
22 mean by that?

23 A. So there was a slide in Dr. Chan's report where she's  
24 talks about some of the limitations of the data based on the  
25 study, design, and the like. And so if we just pull up her

1 slide from the ASCO presentation --

2 Q. Sure.

3 MS. TOMKOWIAK: And for the record this is  
4 Exhibit 1121 at slide 33.

5 BY MS. TOMKOWIAK:

6 Q. Go ahead.

7 A. So in the bottom in the middle there's a slide that  
8 Dr. Chan talks about the limitations. She talks about the  
9 relatively short-term follow-up of the data. The study only  
10 had two years' worth of data.

11 The second was that because of the nature of the  
12 study, there was no overall survival results. Then the final  
13 one was something that she talked about, because of the study  
14 actually changed a bit over time. There were amendments. So  
15 there were a number of patients who dropped out just because  
16 the study design had changed over time. And so she talks  
17 about the data limitations in the ExteNET trial.

18 Q. Now, after Dr. Chan's presentation, another doctor,  
19 Dr. Shanu Modi, also discussed the ExteNET trial results.

20 Dr. Gompers, did you review Dr. Modi's  
21 presentation?

22 A. I did.

23 Q. And did you identify any confounding information in that  
24 presentation?

25 A. I did, yes.

1 MS. TOMKOWIAK: If we could look at Exhibit 1121 at  
2 slide 35.

3 BY MS. TOMKOWIAK:

4 Q. What did you identify?

5 A. So what's interesting here is Dr. Modi, this is sort of  
6 her summary slide about does she think neratinib should now  
7 be the therapy of choice, and she's got her scales of sort of  
8 justice or approval here. And she notes that there's a  
9 positive disease-free survival. She knows that the DFS data  
10 is good.

11 But on the weight side she talks about that there  
12 is no overall survival data, that it makes it sort of  
13 difficult to think about because of that.

14 Q. Did Professor Feinstein consider Dr. Modi's presentation  
15 at all in forming his opinions?

16 A. No.

17 Q. Could the limitations of the two-year ExteNET data have  
18 had an impact on Puma's stock price?

19 A. Well, it's certainly value relevant if doctors and  
20 market participants thought that it might delay the approval  
21 of neratinib or affect the ultimate approvability of the  
22 drug. So certainly it would affect potential revenue and  
23 cash flow.

24 Q. So the third piece of confounding information that you  
25 mentioned was the doctors' reaction at ASCO. What did you

1 mean by that?

2 A. There was a short question-and-answer period after  
3 Dr. Chan and after Dr. Modi presented, and a number of the  
4 doctors asked very pointed questions and had negative  
5 comments.

6 MS. TOMKOWIAK: If we can go to Exhibit 1121 at  
7 slide 36.

8 BY MS. TOMKOWIAK:

9 Q. Are these the doctors that you were just referencing?

10 A. That's correct. A number of them talked about  
11 limitations of the data, but none of them talked directly  
12 about fact three or fact four. So they talked negatively  
13 about the drug and its prospects for at least immediate  
14 approval, but none of them said, the reason I'm negative is  
15 because of fact three or fact four.

16 Q. Again, fact three being the Kaplan-Meier curves and fact  
17 four being the 16.8 percent discontinuation rate?

18 A. Yes.

19 Q. Could these doctors' reactions have had an impact on  
20 Puma's stock price?

21 A. Well, certainly. If it influences, again, people's  
22 expectation that the drug would get approved eventually or  
23 how many patients would be prescribed the drug, of course  
24 it's value relevant.

25 Q. Did Professor Feinstein consider how this information

1 may have impacted Puma's stock price?

2 A. No.

3 Q. Did any of the analyst reports that you reviewed comment  
4 on the limitations of the data or the doctors' reactions at  
5 ASCO?

6 A. Yes.

7 Q. Okay.

8 MS. TOMKOWIAK: If we can take a look at a few of  
9 those. For the record, this is Exhibit 1121 at slide 37, and  
10 it's referencing a report that is in the record as  
11 Exhibit 764.

12 I should say I believe it's in the record. I have  
13 a note here that there are no objections to it, so it may not  
14 be in the record.

15 BY MS. TOMKOWIAK:

16 Q. What did you identify in this analyst report?

17 A. So this is the Cowen report which we've had up twice  
18 already. So if you -- yeah, just highlight down here at the  
19 bottom that, you know, there was debate afterwards. The  
20 major criticism -- at least there's a second bullet point  
21 here which talks about the need for longer-term follow-up,  
22 the fact that it was only a two-year study and much of the  
23 discussion was around the short-term nature of the trial.

24 Q. Okay. And did any other analysts comment on the data  
25 limitations or the comments made by the doctors at ASCO?

1 A. Yes. This is sort of a similar sort of thing where it  
2 talks about Dr. Modi and others had a strong desire to see  
3 sort of additional data over time. And then -- and may need  
4 to sort of submit additional data, again creating potentially  
5 some risks. Okay. So if we go to the next analyst report,  
6 this is that UBS analyst report that we talked about earlier.

7 MS. TOMKOWIAK: And for the record, this is  
8 Exhibit 1121 at slide 38. And it's referencing Exhibit 764.  
9 BY MS. TOMKOWIAK:

10 Q. Go ahead.

11 A. So again, if we go into the analyst report, we can sort  
12 of highlight the discussion that this analyst has just about  
13 the doctors' comments. So again, what's interesting is that  
14 this analyst is -- is commenting on the scales that we just  
15 saw and says that, you know, perhaps the DFS rate, you know,  
16 is real and the scales may tip towards yes.

17 But then there's some additional discussion down  
18 here which talks about while the discussion was on balance  
19 positive, there was some comments that maybe the data is not  
20 quite adequate, given the short-term follow-up. And it may  
21 be nonactionable from the FDA's perspective.

22 Q. And again, did Professor Feinstein consider how this  
23 information may have impacted Puma's stock price?

24 A. No.

25 Q. So the fourth and final piece of confounding information

1 that you mentioned was an investor meeting?

2 A. Yes.

3 Q. When did that meeting take place?

4 A. It took place I think at 8:00 p.m. Eastern time after  
5 the market closed on June 1st.

6 Q. Okay. And did any of the analyst reports that you  
7 reviewed discuss that investor meeting?

8 A. They did, yes.

9 MS. TOMKOWIAK: If we can take a look at one of  
10 those reports. This is Exhibit 1121 at slide 39. And it  
11 references Exhibit 764.

12 BY MS. TOMKOWIAK:

13 Q. Can you walk us through this report?

14 A. Right. So this is again the RBC report that we saw a  
15 little bit earlier, and the analyst within the body of the  
16 report talks about looking forward to additional data being  
17 presented at the investor meeting.

18 So again, at 8:00 p.m. Eastern they're going to  
19 dive into the data set, look at additional data, because all  
20 they had was 12 minutes, and there was a lot of additional  
21 things that could have been discussed that they just couldn't  
22 in 12 minutes.

23 Q. And to be clear, you mean that Dr. Chan only had  
24 12 minutes during the ASCO meeting -- during the day to  
25 discuss the ExteNET data?



1 A. That's correct.

2 Q. Okay. Did Professor Feinstein consider how this  
3 investor meeting may have impacted Puma's stock price on the  
4 next day, June 2nd?

5 A. No. He didn't take into account that additional new  
6 value-relevant information could come in this investor  
7 meeting.

8 Q. So this investor meeting on June 1st has had an impact  
9 on Puma's stock price?

10 A. Certainly on June 2nd. So, you know, the fact that  
11 there's new information that comes to the market before  
12 June 2nd certainly could influence the stock price.

13 Q. Okay.

14 MS. TOMKOWIAK: So I'm on Exhibit 1121 at slide 40.

15 BY MS. TOMKOWIAK:

16 Q. So we've covered now your first opinion regarding  
17 Dr. Feinstein's loss causation analysis. I want to turn now  
18 to your second opinion regarding Dr. Feinstein's damages  
19 methodology.

20 What conclusions did you reach regarding Professor  
21 Feinstein's damages methodology.

22 A. That Professor Feinstein's damages methodology is flawed  
23 primarily because he doesn't demonstrate any methodology or  
24 any ability to separate out the various pieces of information  
25 and how much of the stock price movement was because of each

1 individual piece of information, some of which was allegedly  
2 corrective and some of which is certainly confounding.

3 Q. So using Exhibit 1121 at slide 41, can you explain a  
4 little bit more what you mean by he failed to isolate the  
5 price impact of the corrective disclosures versus the  
6 confounding information?

7 A. So, for example, on March 14th he doesn't -- he doesn't  
8 tell us how much of the price reaction is due to a disclosure  
9 of fact one, which is the 2.3 percent difference in  
10 disease-free survival, or fact two, which is the 39.9 percent  
11 diarrhea rate.

12 So if one of those is ultimately found not to be  
13 liable, how much is accounted for by fact one or fact two?  
14 Similarly on June 1st and June 2nd, there's a lot of  
15 information, some of which is allegedly corrective. Others  
16 is confounding and he doesn't have any way to tell us how  
17 much is due to which piece of information.

18 So if we go to the next slide --

19 MS. TOMKOWIAK: For the record, this is Exhibit  
20 1121 at slide 42.

21 THE WITNESS: So this may be a little -- a little  
22 tongue in cheek, but essentially what Dr. Feinstein has done  
23 is to throw all the information into a blender and  
24 essentially sort of created a nice little smoothie without  
25 telling us how much is any one particular component.

1 Q. So do Professor Feinstein's opinions then support any  
2 amount of damages following the ASCO meeting?

3 A. No. There's nothing he's done that can attribute any  
4 stock price decline to fact three or fact four.

5 Q. Okay. So we've covered your opinions regarding  
6 Dr. Feinstein's work. I want to turn now to your opinions  
7 regarding Professor Trueman. So we're on Exhibit 1121 at  
8 slide 43.

9 What were you asked to do with respect to Professor  
10 Trueman's analysis?

11 A. So I was asked to look at how many shares Puma would  
12 have had to issue if they had issued shares on two different  
13 dates. So if you remember, yesterday Dr. Trueman, Professor  
14 Trueman, had this slide where he showed Puma raised capital  
15 on January 15th, 2015, and they raised \$218.5 million.

16 So this is just -- this is exactly Professor  
17 Trueman's slide.

18 MS. TOMKOWIAK: For the record this is Exhibit 1121  
19 at slide 44.

20 THE WITNESS: So his analysis was just a simple  
21 calculation where he says what would've happened if Puma had  
22 raised money six months earlier. And he says that if they  
23 issued the same number of shares, they would've received  
24 \$67.8 million, or to raise the same amount of money would  
25 have had to issue 3.7 million shares.

1           If they raise money six months later, they could  
2     have only raised 114 million, or would have had to issue  
3     2.19 million shares.

4           Now, what I did is I sort of said, okay. If they  
5     had raised money in September of 2014, how many shares would  
6     they have had to issue or how much money could they have  
7     raised?

8           So if you just go to the next slide.

9           MS. TOMKOWIAK: Sure. Now we're at Exhibit 1121 at  
10    slide 45.

11    A. This is the exact same calculation. So if we take the  
12    same methodology that Professor Trueman did and look in  
13    September of -- of 2014, that on September 18th, using the  
14    same calculation that Professor Trueman did, if they issued  
15    the same number of shares, they would've raised \$316 million  
16    or they would've only had to issue 794,000 shares to receive  
17    the same amount of money.

18           If we go two months later to March of 2015,  
19    similarly if they had issued the same number of shares, they  
20    would have raised \$287 million. Or to raise 218 million,  
21    they would have had to only issue 875,000 shares.

22    Q. So then in your opinion, does Professor Trueman's  
23    analysis support any theory that Puma timed its January 2015,  
24    stock offering to minimize dilution?

25    A. No, because if they had actually wanted to do that, they

1 could have had other dates in which they could've raised  
2 money at higher prices and issued fewer shares, so suffered  
3 less dilution.

4 MS. TOMKOWIAK: Thank you. Final slide here is  
5 slide 46 of Exhibit 1121. It summarizes your opinions.

6 BY MS. TOMKOWIAK:

7 Q. My final question, Professor Gompers, goes back to  
8 Professor Feinstein's work. If Professor Feinstein was one  
9 of your students or peers and you were reviewing his work,  
10 what grade would you give him?

11 A. Well, if it was a peer and I was the referee, I would  
12 reject it. I mean, it just doesn't meet the standards of our  
13 profession.

14 MS. TOMKOWIAK: Thank you. I have no further  
15 questions.

16 THE COURT: Cross? Well, wait a minute. Why don't  
17 we go ahead and break and return at 3:05, folks. We'll see  
18 you all at 3:05.

19 Thanks.

20 (Recess taken from 2:51 p.m. until 3:07 p.m.)

21 THE CLERK: All rise.

22 (Open court - jury present)

23 **CROSS-EXAMINATION**

24 BY MR. GRONBORG:

25 Q. Good afternoon, Professor Gompers.

1 A. Good afternoon.

2 Q. Over the past ten years, how many times have you  
3 testified in depositions or at trials in a case like this?

4 A. In a case like this, are you talking about specifically  
5 a 10(b)(5) matter or just any?

6 Q. Let's just start with any.

7 A. I don't have an exact count, but 60, 70 maybe.

8 Q. And were you a paid expert in all of those cases?

9 A. Yes.

10 Q. In any of the cases that involved securities fraud, did  
11 you ever testify on behalf of any of the individuals who  
12 claimed they were defrauded by somebody?

13 A. No. I've never been asked.

14 Q. Have you testified in cases where the government, the  
15 Securities and Exchange Commission has claimed that there was  
16 a violation of the federal securities laws?

17 A. Yes.

18 Q. Have you ever testified on behalf of the Securities and  
19 Exchange Commission?

20 A. No.

21 Q. You've only testified on behalf of the people who were  
22 charged by the Securities and Exchange Commission with  
23 securities fraud?

24 A. Yes.

25 Q. How many cases is it now where you've offered a critique

1 of Professor Feinstein's work?

2 A. I don't have an exact count. There's a number.

3 Q. More than ten?

4 A. I -- I just haven't reviewed, so it's a number.

5 Q. Well, how much money have you made critiquing Professor  
6 Feinstein's work?

7 A. I don't know.

8 Q. Outside of the litigation context, have you ever  
9 critiqued his work?

10 A. Before litigation I didn't even know who Professor  
11 Feinstein was. I didn't see him at conferences. I'd never  
12 read any of his papers.

13 Q. And you said you don't know how much money you've made  
14 critiquing him in various litigations around the country?

15 A. No.

16 Q. You testified that every Court has qualified you. Did I  
17 get that right?

18 A. Yes.

19 Q. But a number of Courts have criticized you in opinions;  
20 haven't they?

21 A. So some Courts have --

22 Q. Just a yes or no would be appreciated.

23 A. Yes.

24 Q. In the Petrobras Securities Litigation, were you an  
25 expert there?

1 A. Yes.

2 Q. And did you provide critique of Professor Feinstein's  
3 work in that case?

4 A. I provided an evaluation of --

5 Q. Just a yes or no would be appreciated.

6 A. I don't think critique is the right word. I evaluated  
7 his work.

8 Q. And the judge there wrote an opinion: The Supreme Court  
9 has rejected Gompers' absolutist view of market efficiency.  
10 Isn't that right?

11 A. I did not read the Petrobras opinion.

12 Q. You didn't read the opinion about the opinions you were  
13 offering?

14 A. No.

15 Q. Do you ever read judges' critiques of your opinions?

16 A. No, because I apply the standards of my profession.  
17 It's not a legal standard. But given, you know, 27 years as  
18 a financial economist and a tenured professor, I offer  
19 opinions which are consistent with the peer-reviewed academic  
20 literature.

21 Courts do what they do for perhaps legal reasons.  
22 They don't influence the standards of financial economics.

23 Q. And none of the attorneys who you have worked with have  
24 ever pointed out that the judge wrote: The Supreme Court has  
25 rejected Gompers' absolutist view of market efficiency?



1 A. I have no knowledge of the Petrobras opinion.

2 Q. And you also offered a number of evaluations of  
3 Professor Feinstein's work in the Groupon Securities  
4 Litigation in Illinois; is that right?

5 A. Yes.

6 Q. And do you recall the judge there said with respect to  
7 your attempts to criticize Professor Feinstein's opinions on  
8 loss causation -- and I'll quote: As another District Court  
9 observed and rejected a similar argument made by Dr. Gompers,  
10 defendants rely on factors that are not legally relevant.

11 Do you remember that?

12 A. Again, I don't take it upon myself to read legal  
13 opinions.

14 Q. Okay. And nobody has ever pointed out to you this is  
15 what judges have been saying about you?

16 A. I just don't read legal opinions.

17 Q. You've been involved in a number of cases where my firm  
18 here has been opposing counsel; is that right?

19 A. Yes.

20 Q. All right. And did that include those where we've  
21 represented the California Teacher's Retirement Association?

22 A. I don't recall.

23 Q. Were we involved in a suit involving Enron?

24 A. Many years ago, yes.

25 Q. Were you on the Enron side of that suit or the investor

1 side of that suit?

2 A. I believe I was on the accounting firm side.

3 Q. Defendant's?

4 A. Yes.

5 Q. Do you know that the Robbins Geller firm represents the  
6 California Employees Retirement System?

7 A. No.

8 Q. Or that we represent the Los Angeles Country Employee  
9 Retirement System?

10 A. No.

11 Q. Do you look and see who the plaintiffs are in any of the  
12 cases that you're involved in?

13 A. Yes. When I read the complaint, I'll certainly look  
14 through and see who the named plaintiffs are in those  
15 matters.

16 Q. And did you also recently testify in a case involving  
17 Goldman Sachs?

18 A. Yes.

19 Q. And were you on -- were you hired by Goldman Sachs in  
20 that case?

21 A. Yes.

22 Q. And was our firm on the other side of you there?

23 A. Again, I don't recall, but potentially, yes.

24 Q. Do you recall who the plaintiffs were in that case?

25 A. I can't remember who the named plaintiffs were in the

1 case.

2 Q. Do you recall it was the State of Arkansas and the State  
3 of West Virginia pension funds?

4 A. I'll take that as a representation. I don't commit the  
5 plaintiff names to memory.

6 Q. Now, did you do an event study, is that right, for this  
7 case?

8 A. I did the most important step of the event study, which  
9 was evaluating the information. I didn't run my own  
10 regression.

11 Q. I'm talking about what you did. Did you work with other  
12 people in this case?

13 A. Yes. I had a research team supporting me.

14 Q. Is that organization called Cornerstone?

15 A. Yes.

16 Q. You said that you bill yourself out at a rate of \$975 an  
17 hour, right?

18 A. That's correct.

19 Q. And through today, how many hours have you worked on  
20 this matter?

21 A. I don't -- I don't recall exactly. I think I've billed  
22 roughly \$80,000 in total through today.

23 Q. But that's not the only money that you're getting from  
24 this case; is it?

25 A. No, it's not.

1 Q. So the people at Cornerstone, you get a percentage of  
2 what Cornerstone gets paid in the case?

3 A. So I receive 15 percent of the billable hours that they  
4 get paid for.

5 Q. And how much has Cornerstone been paid in this case?

6 A. I don't know.

7 Q. When do you get your 15 percent?

8 A. So I get an aggregate payment for an entire year. It's  
9 not disaggregated by the matters on which I work.

10 Q. So you're not going to get paid until after your  
11 testimony in this case?

12 A. I'm typically paid twice a year in terms of the  
13 attribution, once halfway through the year based on what  
14 Cornerstone has received and then sometime in sort of the  
15 January time frame.

16 Q. But you don't know how much they're going to pay you  
17 with respect to the work that was done for this case?

18 A. No.

19 Q. Did you have your people at Cornerstone check the  
20 conclusions from Professor Feinstein's regression analysis?

21 A. I had them replicate Professor Feinstein's regression to  
22 see if there were any flaws in, like, his statistical  
23 analysis.

24 Q. Did they identify any flaws in his statistical analysis?

25 A. No.

1 Q. And when you say his statistical analysis, are you  
2 talking about the residual returns and the statistical  
3 significance numbers that you saw were discussed earlier  
4 today?

5 A. Yes. So the implementation of the regression analysis  
6 in particular with his chosen market index and his chosen  
7 industry index to see whether or not there were any issues  
8 with those calculations, and we did not identify any. There  
9 was none identified in his calculations.

10 Q. And you personally, did you do your own separate  
11 regression analysis to try and identify what the residual  
12 return was in Puma's stock on any given day?

13 A. I did not write the statistical code. I did not write  
14 the programs to do it, but I did review the analysis.

15 Q. Did you have someone do that for you?

16 A. Yes.

17 Q. And were those numbers any different than what Professor  
18 Feinstein identified?

19 A. We did not find any errors in Professor Feinstein's  
20 regression code or regression output.

21 Q. And you issued a report in this case; is that right?

22 A. Yes.

23 Q. And did that report include a complete statement of all  
24 of your opinions?

25 A. As of the time that I wrote my report, yes. And I

1 believe that in my deposition, I talked about the  
2 disaggregation for the May 13, 2014. But that would be the  
3 only addition outside of my report.

4 Q. Did your report include the basis for all of your  
5 opinions?

6 A. Yes.

7 Q. You had a list of materials considered? Did you  
8 identify there all of your materials considered?

9 A. Yes.

10 Q. Did you try and consider all the materials that  
11 Professor Feinstein considered?

12 A. Oh, certainly. Everything that Professor Feinstein  
13 included in his production I reviewed.

14 Q. How about everything he identified in his list of  
15 materials considered?

16 A. I'm assuming he produced everything in that list of  
17 materials.

18 Q. I want to turn if I could to one of the -- one of your  
19 slides.

20 MR. GRONBORG: I think for the record it is DDEM11.  
21 You can look at it on the screen or if you have it in front  
22 of you.

23 BY MR. GRONBORG:

24 Q. So you identified these as the steps of a loss causation  
25 analysis; is that right?

1 A. Yes.

2 Q. So in your -- in the work you did, did you individually  
3 go and identify what misrepresentations were made on  
4 July 22nd, 2014?

5 A. No. I'm -- I'm just --

6 Q. No is fine.

7 A. No.

8 Q. Okay. Did you determine what information could and  
9 should have been disclosed on July 22nd, 2014?

10 A. No.

11 Q. Did you make any effort to try and determine what  
12 information Alan Auerbach had on July 22nd, 2014, when he  
13 made the statements in this case that are alleged to be  
14 false?

15 A. I'm just taking what plaintiffs allege as what should  
16 have been disclosed as to what Professor Feinstein looked at.

17 Q. So you did not go and try and determine what information  
18 Alan Auerbach had on July 22nd, 2014, when he made the  
19 statements he did?

20 A. No. I was asked to evaluate what Professor Feinstein  
21 did.

22 Q. Okay. At any point did you try and determine whether or  
23 not the statements he made were false or misleading or  
24 omitted material information?

25 A. I was asked to look at whether or not Professor

1 Feinstein was able to evaluate whether what he and the  
2 plaintiffs assumed were the alleged corrective information  
3 caused the stock price decline.

4 So that's what I've done, to evaluate whether or  
5 not his analysis demonstrates loss causation. So these are  
6 the steps that Professor Feinstein would have to go through,  
7 and essentially I'm like a referee. If Professor Feinstein  
8 had submitted his paper to a journal, I'm going through  
9 evaluating whether or not he's done these steps  
10 appropriately.

11 Q. So that's no?

12 A. That's correct.

13 Q. Now, you say determine whether alleged corrective  
14 disclosures revealed any new corrective information. Did you  
15 do that step?

16 A. No.

17 Q. Did you identify whether or not the actual DFS rates for  
18 the ExteNET trial were disclosed on May 13th, 2015?

19 A. I certainly reviewed both the press release and the  
20 transcript of Mr. Auerbach's conference call.

21 Q. You also reviewed the disclosures, right?

22 A. Yes. And for the purposes of my report, what I did is I  
23 evaluated whether or not with Professor Feinstein  
24 assumptions --

25 Q. Sorry to stop you.



1 A. That's okay.

2 MR. GRONBORG: Your Honor, I'd move to strike after  
3 the no.

4 BY MR. GRONBORG:

5 Q. And I'm sorry. You've probably seen we're trying to get  
6 through the day as fast as we can.

7 Did you --

8 THE COURT: So I'm always intrigued here. Did you  
9 want a ruling on that, or do you make the ruling? You moved  
10 to strike and you didn't --

11 MR. GRONBORG: I sort of did that time, yeah.

12 THE COURT: Okay. The motion to strike is granted.

13 MR. GRONBORG: Thank you.

14 BY MR. GRONBORG:

15 Q. Now, did you identify that the actual DFS rates for the  
16 primary end point of the ExteNET trial were disclosed on  
17 May 13th, 2015?

18 A. I did see that they were disclosed on May 13th.

19 Q. And did you see the actual 39.3 percent grade-three  
20 diarrhea rate for the ExteNET trial was disclosed on May 13,  
21 2015?

22 A. Yes.

23 Q. And on June 1st, 2015, did you see that the actual  
24 Kaplan-Meier curves for the primary end point of the ExteNET  
25 trial were disclosed in the middle of the day?

1 A. Yes.

2 Q. And on June 1st did you see that the 16.8 percent  
3 discontinuation rate due to diarrhea was disclosed for the  
4 first time in the middle of the day on June 1st?

5 A. Yes, I did see that it was disclosed.

6 Q. And did you also see that for the first time it was  
7 disclosed on June 1st, 2015, that only 61 percent of people  
8 were able to stay on neratinib for a full year?

9 A. I did see the disclosure about the dose discontinuation.

10 Q. And next on your list, you say estimate any price impact  
11 from the corrective information alone. So are you offering  
12 an opinion in this case identifying what, if any, price  
13 impact there was from the corrective information?

14 A. My opinion is that there is no evidence that the  
15 corrective information on June 1st, fact three and fact four  
16 on the Kaplan-Meier curves and the dose discontinuation rate  
17 due to diarrhea, that there's no evidence that that caused  
18 the stock price decline.

19 Q. Are you offering an affirmative opinion --

20 A. No.

21 Q. -- with respect to the price impact of any information?

22 A. I'm not offering any affirmative opinion about what  
23 caused the stock price to decline.

24 Q. And then the last of these five steps that you say  
25 somebody needs to take is remove price impact of confounding

1 information.

2 Did you offer any opinion where you removed any  
3 price, stock price due to any particular piece of confounding  
4 information?

5 A. No. I did not quantify it.

6 Q. I think you identified four different pieces of  
7 confounding information. For any one of those four pieces of  
8 confounding information, did you quantify what, if any, stock  
9 price decline was caused by that?

10 A. No.

11 MR. GRONBORG: I'd like to pull up Exhibit 1111.  
12 It's Professor Feinstein's demonstrative regarding the July  
13 22nd, 2014.

14 BY MR. GRONBORG:

15 Q. With respect to all the results on this chart, are you  
16 saying that you found no errors in any of these results?

17 A. Well, so there's no error in the close-to-close  
18 evaluation. What Dr. Feinstein has not done is he hasn't  
19 looked at what the stock price reaction was to the press  
20 releases themselves versus the conference call. So --

21 Q. Have you done that?

22 A. I've certainly looked at the intraday prices to see how  
23 much of it was in response to the press releases and how much  
24 was in response to the conference call.

25 Q. You didn't offer any opinion on that; did you?

1 A. No.

2 Q. There's nothing in your report at all about the stock  
3 price movement on July 23rd; is there?

4 A. That is correct.

5 Q. And you're not disputing that the residual return, the  
6 company-specific stock price, change on that day was \$166.72;  
7 are you?

8 A. According to Dr. Feinstein's model, that is the residual  
9 return.

10 Q. And according to your check on his model, that's the  
11 residual return, right?

12 A. That is correct.

13 MR. GRONBORG: Let's pull up next slide three  
14 regarding May 13th and May 14th, 2015.

15 BY MR. GRONBORG:

16 Q. Again, you have no reason to dispute Professor  
17 Feinstein's conclusion that the residual return was negative  
18 \$40.96 on May 14th, 2015; is that right?

19 A. Yes. According to his model the residual return is  
20 negative \$40.96.

21 Q. And according to your model, too, right?

22 A. I haven't run my own independent model. I just  
23 replicated his model to see if there were errors in it.

24 Q. According to your replication that found no errors, you  
25 got the same result, right?

1 A. Professor Feinstein's model does show a negative \$40.96  
2 residual return.

3 Q. You agree that that is statistically significant at a  
4 99.9 percent level?

5 A. Yes.

6 Q. Do you agree that that means that with 99.9 percent  
7 certainty, you can conclude that the \$40.96 a share was the  
8 result caused by some company-specific information?

9 A. Yes. It's highly likely that something company specific  
10 caused that stock price movement.

11 Q. I'm not going to go back to the elmo, but I seem to  
12 recall one of your slides. You used fact one and two. I  
13 think you used those for DFS and grade-three diarrhea. You  
14 didn't have anything else on May 13th, 2015, besides fact one  
15 and fact two on your little display; did you?

16 A. No.

17 Q. Okay.

18 MR. GRONBORG: Let's pull up slide -- Exhibit 1111,  
19 page 5. It's the June 1st through 2nd, 2015, stock price  
20 movement.

21 BY MR. GRONBORG:

22 Q. Again, is it right you don't have any basis to -- no  
23 statistical numbers to dispute the residual return of a  
24 negative \$46.24 over that June 1st to June 2nd period; do  
25 you?

1 A. Again, it's -- it's what comes from Professor  
2 Feinstein's regression analysis, yes.

3 Q. And your check on that analysis concluded that these  
4 numbers seemed right; is that correct?

5 A. Based on his chosen market and industry index, yes.

6 Q. So there was a \$46.24 residual return at a statistical  
7 significance level of 99.9 percent, right?

8 A. According to his model, yes.

9 Q. And according to your check on his model, you didn't  
10 find anything different; did you?

11 A. I didn't run my own model.

12 Q. Do you agree that the Kaplan-Meier curves for the  
13 primary end point of the ExteNET trial, that they were not  
14 disclosed prior to June 1st, 2015?

15 A. I didn't see any evidence that they were disclosed prior  
16 to June 1st.

17 Q. Did you see any evidence that the 16.7 percent  
18 discontinuation rate due to diarrhea was disclosed before  
19 June 1st, 2015?

20 A. I think you actually mean 16.8 percent. But, no, I did  
21 not see any disclosure of that.

22 Q. And did you see any disclosure of the fact that  
23 39 percent of people had to discontinue the drug before the  
24 end of a year? Did you see any disclosure of that prior to  
25 June 1st, 2015?

1 A. So -- no. I think what we saw was that there was -- the  
2 61 percent completed the full 12-month dosage. So that's  
3 just the converse.

4 Q. And you didn't list that in your list slide of disclosed  
5 facts; is that right?

6 A. No, that was not listed because again it wasn't one of  
7 Professor Feinstein's original alleged corrective facts.

8 Q. You have been here. You understand that is one of the  
9 alleged corrective facts?

10 A. Well, I understand that there is some argument about  
11 that now, but in his original report Dr. Feinstein talks  
12 about something like a 27.6 percent dropout rate as the true  
13 fact.

14 Q. You were here for his testimony. You saw in his slides  
15 he does identify that as one of the corrective facts,  
16 correct?

17 A. Well, I see it as a sort of a new corrective fact, yes.

18 Q. But it's not one of the items that you considered as a  
19 corrective fact; is that true?

20 A. It wasn't in his expert report.

21 Q. I'm asking if you considered it as one of the corrective  
22 facts.

23 A. Again, I could only evaluate what Professor Feinstein  
24 had in his expert reports and stated in his deposition.

25 Q. So did you consider that as one of the corrective facts?

1 A. No.

2 Q. Now, we saw some of the discussion about the  
3 Kaplan-Meier curves. You looked at some of the analyst  
4 reports about that. But in your evaluation, do you think  
5 Kaplan-Meier curves that stay separated is the same thing as  
6 Kaplan-Meier curves that are separating?

7 A. So I -- could you be a little more precise with your  
8 question? What do you mean by separated versus separating.

9 Q. Do you understand what the difference is between  
10 Kaplan-Meier curves that are separated and separating?

11 A. So do you mean continuing to separate?

12 Q. What is your understanding of the difference between a  
13 Kaplan-Meier curve that is separating over time and one that  
14 just stays separated?

15 A. So it would likely get -- the difference in disease-free  
16 survival would get bigger over time.

17 Q. You're talking about if it was separating?

18 A. Yes.

19 Q. But if it was just staying separated, what do you  
20 understand that would mean?

21 A. Well, I don't think that has any direct connotation on  
22 whether or not it's widening or narrowing. The question is,  
23 is it separated and remains parallel or is it widening? So  
24 separated means just that --

25 Q. Let me catch you right there on that. Do you understand



1 there's a difference between separating and just staying  
2 parallel?

3 A. So -- that is correct. But your original terms are  
4 about --

5 Q. Which do you understand would be better for a trial like  
6 ExteNET? Would it be better if the Kaplan-Meier curves were  
7 separating, or would it be better if they were just staying  
8 parallel?

9 A. Again, I haven't been asked to offer an opinion. I'm  
10 not a biostatistician or a doctor.

11 Q. So you don't know whether --

12 MS. TOMKOWIAK: Objection, Your Honor. Could the  
13 witness can be permitted to finish his answer?

14 THE COURT: At this point in the cross, you may ask  
15 your next question.

16 BY MR. GRONBORG:

17 Q. So you don't know whether it would be better for  
18 Kaplan-Meier curves to be separating, getting further apart,  
19 or for them to be staying parallel over time?

20 A. Certainly if the difference in disease-free survival is  
21 growing over time, then that would indicate likely -- again,  
22 I'm not a medical doctor, nor have I been asked to offer the  
23 opinion -- that the difference would be wider between the  
24 treatment arm and the placebo arm.

25 Q. And would that be better than if there was no change?

1 A. Again, I can't opine. I'm not a doctor and I haven't  
2 done clinical trials.

3 Q. Well, you did quote -- I believe one of the analyst  
4 reports you looked at was quoted as saying -- this was after  
5 the disclosure to the Kaplan-Meier curves on June 1st, that  
6 they were staying more or less parallel.

7 Do you remember that?

8 A. Yes.

9 Q. Do you see any analyst report saying that is what they  
10 expected prior to June 1st, 2015?

11 A. Certainly there were analyst reports. I mean, the  
12 headline of the Cowen report said ExteNET as expected.

13 Q. And prior to then did the Cowen report ever say that  
14 they expected the Kaplan-Meier curves to just be staying  
15 parallel, prior to June 1st?

16 A. No, not that I saw.

17 Q. You looked at the July 22nd, 2014, transcript of the  
18 statements that Mr. Auerbach made, right?

19 A. Yes.

20 Q. In that transcript did he say that the expectation was  
21 that the Kaplan-Meier curves would be just parallel?

22 A. Again, we'd have to go to the exact language.

23 Q. Do you know what the exact language is?

24 A. I've seen the exact language. I have not committed it  
25 to memory.

1 Q. Do you have a recollection that he said staying  
2 parallel?

3 A. I think he -- that there was some analyst who was  
4 discussing Kaplan-Meier curves from a different study, and I  
5 believe the response of Mr. Auerbach was something like  
6 that's about correct. I'm not sure he stated specifically  
7 what the separation was in the ExteNET trial.

8 Q. You thought it was an analyst who was citing to the  
9 Kaplan-Meier curves in a different study?

10 A. There was a question that Mr. Auerbach was asked.

11 Q. Do you recall Mr. Auerbach giving the example of  
12 Kaplan-Meier curves that are going six percent, seven  
13 percent, eight percent?

14 A. Again, that's roughly what I remember. Again, we can go  
15 to the exact language of the conference call.

16 Q. Well, does six percent to seven percent to eight  
17 percent, do you think that was the equivalent of staying  
18 parallel?

19 A. They're certainly different.

20 Q. Which do you think would be better?

21 A. Again, I'm relying on how the analysts are evaluating  
22 the Kaplan-Meier curves. I haven't been asked to offer an  
23 opinion on the Kaplan-Meier curves.

24 Q. Well, you thought staying parallel was the analyst  
25 saying that's a good thing; is that right?

1 A. Certainly the language in the analyst reports does not  
2 indicate that they viewed them as negative.

3 Q. Was it the same language they used before June 1st?

4 A. I evaluated all of the analyst reports. And when you  
5 read through them, the analyst reports do not indicate a  
6 negative interpretation of the Kaplan-Meier curves.

7 Q. So you reviewed all of them. Can you identify me a  
8 single analyst before June 1st, 2015, who said that they  
9 expected the Kaplan-Meier curves to just be staying parallel?

10 A. No.

11 Q. Did you see any analyst report that said the expectation  
12 was that the Kaplan-Meier curves were going to be continuing  
13 to separate?

14 A. I -- again, I haven't memorized the analyst reports.

15 Q. You haven't memorized those. The ones from before  
16 June 1st, 2015?

17 A. No, but I've looked through to see how in response to  
18 the ASCO meeting the analysts responded to that information.  
19 So did they view the information as positive or negative?  
20 You have to look contemporaneously. What did they say about  
21 it in their reports?

22 Q. You have to look at what they said before; don't you?

23 A. You can look at how they described it in the reports  
24 after the meeting.

25 Q. Did you compare what the disclosure was with those

1 Kaplan-Meier curves with what Mr. Auerbach had said on July  
2 22nd, 2014?

3 A. I did not do that comparison.

4 Q. Did you make any effort to decide whether what came out  
5 on June 1st, 2014, about the Kaplan-Meier curves was more  
6 negative or more positive than what had been said in  
7 July 2014?

8 A. From the perspective of looking at --

9 Q. Could you just answer yes or no. Did you do that  
10 comparison?

11 A. No.

12 Q. With respect to the discontinuation rate, do you think  
13 that a 16 -- round it up. We'll go to 17 percent --  
14 discontinuation rate due to diarrhea is better or worse than  
15 a five to ten percent discontinuation rate?

16 A. It -- it's a higher number. The five to ten percent was  
17 referring to dropouts, and there's a difference between  
18 dropout and discontinuation rates.

19 Q. You said it's a higher number. In this case with  
20 respect to how many people have to discontinue a drug due to  
21 diarrhea, is higher better or worse?

22 A. Generally I would think it would be worse, but again I'm  
23 not a doctor.

24 Q. And with respect to that fact that there were 31 percent  
25 of people who could not stay on the drug for a year, do you

1 think that's better or worse than five to ten percent?

2 A. Again, not being able to stay on the drug would  
3 generally be worse, but again I don't have an opinion. I  
4 haven't evaluated it.

5 Q. It's not something you've looked at?

6 A. I'm not a doctor.

7 Q. But did you do a comparison of the information that was  
8 disclosed on June 1st, 2015, regarding discontinuation rates  
9 and how many people could stay on the drug for a year with  
10 what was said on July 22nd, 2014?

11 A. That wouldn't be what you want to do to look at what the  
12 price impact of a given piece of information on June 1st was.  
13 So, no.

14 Q. I thought one of your loss causation analysis points was  
15 determine whether alleged corrective disclosures revealed any  
16 new corrective information, right?

17 A. But in order to look at price impact, you have to see  
18 how the market reacts on that day to that information.

19 Q. That's step four. But step three -- you didn't do step  
20 three, though, right, comparing the information that was  
21 disclosed to what had been said earlier? Is that right?

22 A. No. I've been asked -- I've been asked to look at what  
23 plaintiffs are alleging about what was corrective and to see  
24 when that corrective information was revealed, has Professor  
25 Feinstein shown evidence that that's what caused the stock

1 price to decline. But you have to look --

2 Q. You've not determined whether alleged corrective  
3 disclosures revealed any new corrective information, right?

4 A. I am taking what plaintiffs are alleging and --

5 Q. Yes or no, please. Did you do that?

6 A. I'll taking what plaintiffs allege.

7 Q. So you did not compare the information that came out on  
8 June 1st, 2015, regarding the discontinuation rates and  
9 determine whether it was better or worse than what had been  
10 said on July 22nd, 2014; is that right?

11 A. That's not how you would do loss causation.

12 Q. Did you do that or no?

13 A. No.

14 Q. Okay. Now, you testified you relied a lot on analyst  
15 reports, and you testified about analyst bias and you talked  
16 about how analyst -- there was a Spitzer settlement, so the  
17 analyst bias had gone away by 2014-2015. Do I have that  
18 right?

19 A. It's been largely diminished, yes. And certainly the  
20 analyst bias is in the research on buying stock  
21 recommendations as well as forecasted revenue and earnings.

22 Q. Did you testify in the 2014 criminal trial of Mathew  
23 Martoma?

24 A. I did.

25 Q. And he was a hedge fund trader charged with insider

1 trading; is that right?

2 A. That's correct.

3 Q. Did you testify on his behalf?

4 A. Yes.

5 Q. Now, do you -- in that case did you testify the -- and  
6 I'm going to quote -- the vast majority of analysts typically  
7 have buy recommendations?

8 A. That's -- that would've been prior to 2002, yes.

9 Q. That was 2014 when you testified in that case; is that  
10 right?

11 A. I would have to go back. But certainly the academic  
12 evidence is clear that the --

13 Q. Can we pull that up? I want to focus on what you said  
14 at that trial.

15 So you see there the top highlighted line, it says  
16 the vast majority of analysts typically have buy  
17 recommendations. Do you recall testifying that?

18 A. I haven't reviewed the testimony. But if that's the  
19 testimony, that's what it is.

20 MR. GRONBORG: Can we show the page that starts,  
21 that shows it's Professor Gompers, the face page of the case.

22 BY MR. GRONBORG:

23 Q. Can you just tell us what was the date when that trial  
24 testimony was given?

25 A. It would've been January 29th, 2014.



1 Q. So 2014 is when you gave this testimony that the vast  
2 majority of analysts typically have buy recommendations; is  
3 that right?

4 A. I think at the time -- and it's probably consistent at  
5 the time -- that roughly two-thirds are buy, one-third sell.  
6 Prior to Spitzer it probably would have been something like  
7 90, 95 percent buy and five or ten sell.

8 Q. Okay. So your testimony was right about the vast  
9 majority have buy recommendations, correct?

10 A. I think it's roughly two-thirds, yes.

11 Q. Do you see there -- why is that? Why did you say that  
12 the vast majority of analysts typically have buy  
13 recommendations?

14 A. Well, I mean, the testimony here is that they're in the  
15 business of selling stocks.

16 Q. And that's what you testified to in 2014; is that right?

17 A. Again, I would have to review the entire transcript to  
18 know the context for the question.

19 Q. Do you have any reason to doubt that that is what you  
20 said in court under oath?

21 A. No.

22 Q. Okay.

23 It's true, right, these sell-side analysts, they  
24 are in the business of selling stock? Isn't that right?

25 A. As I mentioned earlier, the analyst bias is in the

1 recommendations for buying and selling. The question about  
2 is whether or not in the evaluation of information and what  
3 moved the stock price down, there would be a bias. There's  
4 no evidence in the research that that's the case.

5 Q. My question is, are these analysts in the business of  
6 selling stock?

7 A. That's what this says, yes.

8 Q. You don't sell stock by saying negative things about it;  
9 do you?

10 A. Well, that's -- it's a buy recommendation. That's why  
11 they have a buy recommendation.

12 Q. My question is you're not going to sell a lot of stock  
13 if you say the news is bad; are you?

14 A. Well, the stock price already went down, and there was a  
15 discussion. So the question is, is there a bias in the  
16 evaluation in the information that they talk about being  
17 positive or negative.

18 Q. Well, if the stock price is going down but all the  
19 analysts are saying the news is great, that means there's a  
20 disconnect somewhere between what the analysts are saying and  
21 what investors are saying with their feet; isn't that right?

22 A. Certainly the analysts point to some negative  
23 information in response to the ExteNET trial.

24 Q. You're not saying that Puma's stock price didn't go down  
25 \$46 on June 1st and 2nd; are you?

1 A. I don't understand the question.

2 Q. Well, you're not saying that that negative residual  
3 return for Puma's stock price on June 1st through June 2nd,  
4 2015, was anything other than negative \$46.24, right?

5 A. That's what comes out of the Feinstein regression model.

6 Q. That's true regardless of how many good things analysts  
7 may or may not have said about the company, right?

8 A. Remember, the analysts are commenting after the stock  
9 price has gone down. So they're trying to ascertain why it  
10 went down, and they're commenting on what's negative and  
11 what's positive.

12 And certainly the analysts talk about both positive  
13 and negative aspects of the ASCO presentation.

14 Q. So of the six analysts whose reports that you considered  
15 over that June 1st through June 3rd, 2015, period, how many  
16 were sell-side analysts?

17 A. I believe there were nine analysts, and I believe  
18 they're all sell-side analysts.

19 Q. Well, nine reports, but there were six analysts, right?

20 A. Six individual analyst companies, yes.

21 Q. And six analysts at those six companies, right?

22 A. Correct.

23 Q. And of those six, how many were sell-side analysts?

24 A. They're all sell-side analysts.

25 Q. They were all people who are in the business of selling

1 stock; is that right?

2 A. They're in the business of following the stocks and  
3 giving recommendations for buying or selling.

4 Q. But had any of those analysts ever publicly recommended  
5 selling Puma stock before June 1st, 2015?

6 A. I haven't done that tabulation.

7 Q. Did any of them recommend selling Puma stock after  
8 June 1st, 2015?

9 A. Again, I haven't done a tabulation of their buy and  
10 sell.

11 Q. You didn't look?

12 A. I haven't done that.

13 Q. As the stock went from \$270 a share following the  
14 statements that were made on July 22nd all the way down to  
15 about \$90 a share in the 90 days after June 1st, 2015, did  
16 any of those analysts whose reports you were relying on, did  
17 any of them suggest that someone sell the stock?

18 A. I haven't looked at it.

19 Q. Now, you also testified that you didn't see any evidence  
20 of analyst bias; is that right?

21 A. No, I don't think that's what I said. I think what I  
22 said is that they certainly had positive and negative  
23 discussions. So certain things they commented on as  
24 potentially being negative towards neratinib as a drug.

25 Q. Did you investigate any potential bias among any of the

1 analysts whose reports you were relying on?

2 A. No.

3 Q. Did you look at -- did you talk to any of those  
4 analysts?

5 A. No.

6 Q. Did you survey them?

7 A. No.

8 Q. Did you talk to any of the investors, people who  
9 invested in Puma on or around June 1st, 2015?

10 A. No.

11 Q. Did you survey those investors?

12 A. No.

13 Q. Did you look at any of the e-mail communications that  
14 analysts and investors were sending on and around the  
15 May 13th and June 1st, 2015, period?

16 A. If I looked at it, I haven't looked at it over the last  
17 several months, no. So if it's not in materials considered,  
18 then I didn't look at it. I just don't recall reviewing any.

19 Q. So if it's not in your materials considered, you didn't  
20 review it; is that right?

21 A. That would be correct.

22 Q. Did your counsel tell you that investors in the company  
23 and these analysts had produced thousands of pages of  
24 internal e-mails?

25 A. No.

1 Q. Did they provide you with any internal e-mails from  
2 analysts or from investors?

3 MS. TOMKOWIAK: Objection, Your Honor. I just want  
4 to be clear that we're not Professor Gompers' counsel.

5 BY MR. GRONBORG:

6 Q. I'm sorry. Did Puma's lawyers -- you've worked with  
7 them during --

8 THE COURT: Does that mean --

9 MR. GRONBORG: Sorry. I'll withdraw the question.

10 THE COURT: Continue.

11 BY MR. GRONBORG:

12 Q. You worked with Puma's lawyers during the course of this  
13 engagement; is that right?

14 A. Yes.

15 Q. Did Puma or their lawyers at any point tell you that  
16 investors and analysts had produced thousands of pages of  
17 e-mails, including those regarding the company and the  
18 disclosures on May 13th and June 1st, 2015?

19 A. No.

20 Q. Did they let you search through any of those so you  
21 could make a determination yourself whether any of these  
22 analysts were biased?

23 A. No.

24 Q. Did they let you search through those to try to make any  
25 determination if any investors were identifying the specific

1 information that was being disclosed as a reason why the  
2 stock price was going down?

3 A. Again, I mean, what I should say is that I didn't do any  
4 search. I don't know if I actually had those, that  
5 information prior. Certainly nothing was withheld if I asked  
6 for any information. So it wasn't as if they were  
7 withholding information.

8 And from the perspective of understanding the way  
9 the market reacts to information, you need to look at --

10 Q. I just want to go back to the withheld part. But before  
11 that, do you need another bottle of water?

12 A. I have about a third of a bottle. If I go through it,  
13 I'll ask for another one. Thank you.

14 Q. All right. You said nothing was withheld, so that  
15 implies you got what you asked for; is that right?

16 A. That's correct. I was asked to evaluate Professor  
17 Feinstein's work, and if there were things I needed, I got  
18 them.

19 Q. I appreciate that. Did you ask for any e-mails between  
20 analysts and investors and Puma around the time of these  
21 May 13th and June 1st --

22 A. No. It wouldn't have been relevant for how the public  
23 market reacted to the information.

24 Q. Would it have been relevant to try and determine if what  
25 was in a public report was different from what these people

1       were saying privately?

2       A.     Well, certainly the fact that I saw negative and  
3       positive information, it wouldn't have been relevant.

4       Q.     It wouldn't have been relevant to you if what analysts  
5       were saying privately was different from what they put in a  
6       public report?

7       A.     Again, I -- I didn't see anything.  And to the extent  
8       that in their reports I did see that they were commenting on  
9       negative things that potentially could have weighed on the  
10      stock, I felt comfortable that they weren't attributing the  
11      stock price decline to the information that plaintiffs allege  
12      is corrective.

13      Q.     Now, when you say you didn't see anything, that's  
14      because you didn't ask for anything, right?

15      A.     That's correct.

16      Q.     You weren't given anything; is that right?

17      A.     That's correct.

18      Q.     Let me give you something now.  You'll see these are a  
19      number of e-mails from analysts whose names I believe you  
20      recognize, and investors.  If you just quickly --

21             MS. TOMKOWIAK:  Objection, Your Honor.

22             THE COURT:  State your objection.

23             MS. TOMKOWIAK:  All right.  This is hearsay, 802.

24             MR. GRONBORG:  Your Honor, at this point we're just  
25      determining whether or not he's seen any of these.



1 THE COURT: I actually don't perceive a question  
2 pending. Let's have a question before we have an objection.

3 BY MR. GRONBORG:

4 Q. Professor Gompers, prior to just now, have you seen any  
5 of these internal e-mails that were sent by analysts whose  
6 reports you quoted and by investors in Puma?

7 A. Not to the best of my recollection, no.

8 Q. Let's take a look at the first one, Exhibit 317.

9 MR. GRONBORG: To be clear, Your Honor, we're  
10 simply using these to determine what he saw and what  
11 information he had, not for the truth of the matter asserted.

12 THE COURT: What do you want me to do? You're  
13 looking at me.

14 MR. GRONBORG: I was anticipating the objection.

15 THE COURT: What?

16 MR. GRONBORG: I was anticipating the objection,  
17 but I'm going to ask the question --

18 THE COURT: I really don't do so well on  
19 anticipated objections. Let's get an actual objection to an  
20 actual question and then wait for my ruling.

21 Go ahead.

22 BY MR. GRONBORG:

23 Q. Professor Gompers, if you'll look at what is at the  
24 bottom, you'll see it's called plaintiffs' Exhibit 317?

25 A. Yes.

1 Q. And do you see that as an e-mail to or from Eric  
2 Schmidt?

3 A. It's to -- well, the top one is to Eric Schmidt, yes,  
4 and the -- yes, they're to Eric Schmidt.

5 Q. Do you remember who Eric Schmidt is?

6 A. He's the analyst at Cowen.

7 Q. And somebody who -- you quoted some of his reports,  
8 right?

9 A. Yes.

10 Q. And you see he gets -- where he says on May 13, 2015, he  
11 says: Are you --

12 MS. TOMKOWIAK: Objection, Your Honor. Objection.

13 THE COURT: And your objection is?

14 MS. TOMKOWIAK: He's reading hearsay into the  
15 record, Your Honor. 802.

16 THE COURT: Well, don't say -- I don't know  
17 incorrectly means. Hearsay, sustained.

18 BY MR. GRONBORG:

19 Q. And this e-mail, what it is right here, do you see any  
20 of the language that Mr. Schmidt is using here with respect  
21 to the information that's coming out on May 13th, 2015? Did  
22 any of that language appear in any of his reports?

23 A. I don't recall what he wrote after the May 13th abstract  
24 got published. Again, I would have to go back and compare  
25 the words, but I don't recall.

1 Q. Would you turn to Exhibit 1024. Do you see this is an  
2 e-mail from Matthew Cowen?

3 A. If you wait a second, I'm just trying to find out where  
4 the exhibit is.

5 Q. It will be the second one. If you look at the very  
6 bottom of the page, you'll see it says plaintiffs' trial  
7 Exhibit 1024.

8 A. I'm going page by page, sir. I do not seem to be able  
9 to -- do you know which page of this it is?

10 THE COURT: Is it in evidence?

11 MR. GRONBORG: It's not. It's in the binders. It  
12 has not been admitted into evidence at this point. Why don't  
13 we come back to that one.

14 BY MR. GRONBORG:

15 Q. How about, did you see Exhibit 703?

16 A. You're talking about the exhibit stickers on the top?

17 Q. No. Look at the bottom of the page.

18 A. The Bates stamp?

19 Q. No. In the very middle of the bottom of the page, it  
20 says plaintiffs' exhibit.

21 A. Okay.

22 Q. If you see 1024 or 703, let me know.

23 A. I see 1024.

24 Q. And you see that as an e-mail from Matthew Cowen to Alan  
25 Auerbach on May 14th, 2015?

1 A. Yes.

2 MR. GRONBORG: Actually, Your Honor, we would move  
3 to have Exhibit 1024 admitted into evidence. It's produced  
4 by Puma. It's correspondence involving Alan Auerbach.

5 THE COURT: Any objection to 1024?

6 MS. TOMKOWIAK: Yes, Your Honor. Hearsay.

7 THE COURT: Response?

8 MR. GRONBORG: Your Honor, this is a party  
9 admission. They produced the document.

10 THE COURT: It's a party admission because they  
11 produced it?

12 MR. GRONBORG: There is no response. There is no  
13 denial of the information.

14 THE COURT: You mean if you request from them all  
15 documents relating to a subject, their production makes it a  
16 party admission?

17 MR. GRONBORG: There's no --

18 THE COURT: Overruled on that point. Let's talk  
19 further. Tell me where I might find a copy of this.

20 MR. GRONBORG: 1024. It's in the large set of  
21 binders. I'm using those.

22 THE COURT: The objection is hearsay?

23 MS. TOMKOWIAK: Yes, Your Honor.

24 THE COURT: Sustained.

25 BY MR. GRONBORG:

1 Q. Did you see this e-mail prior to issuing your report?

2 A. Again, I have no recollection of seeing this e-mail.

3 Q. Do you have any recollection of any analyst after  
4 May 13th, 2015, writing in their report that they felt  
5 completely misled by Alan Auerbach?

6 A. I don't recall those words in an analyst report.

7 Q. Do you recall any analyst saying that they felt -- that  
8 investors felt completely misled following the disclosures?

9 A. Again, I don't have any direct recollection of those  
10 words after May 13th.

11 Q. Or June 1st, right?

12 A. Again, not those exact words, no.

13 Q. Take a look at Exhibit 703.

14 A. (Witness complies.)

15 Q. Do you know who Puma's largest outside investor was?

16 A. No, not as I sit here. No.

17 Q. Do you know who any of the outside investors in Puma  
18 were?

19 A. I mean, T. Rowe Price. And there are potentially -- at  
20 one I saw a table with the quarterly shareholders. But as I  
21 sit here, no.

22 Q. Were you in the courtroom earlier when Professor  
23 Feinstein was testifying about the T. Rowe Price  
24 correspondence --

25 A. Yes.

1 Q. -- at the time of these disclosures?

2 A. Yes.

3 Q. Including they said -- they referred to the CEO as  
4 misleading, possibly a liar. Do you recall that?

5 A. I saw the testimony.

6 Q. Had you seen that before you did issue your report?

7 A. If it was in Professor Feinstein's production, I saw it.  
8 Again, as I sit here, I just don't recall reviewing it.

9 Q. When you say the production, are you just referring to  
10 the documents that he produced to you, or his entire list of  
11 materials considered?

12 A. The documents he produced to us.

13 Q. And do you understand that that document was in the  
14 material that he considered?

15 A. Again, I haven't put them to memory, so I don't recall.

16 Q. So you didn't review all the materials that he put in  
17 his list of materials considered; is that right?

18 A. I reviewed what he sent over in terms of his production.

19 Q. Did you see any analyst report or any public report in  
20 which case they referred to Alan Auerbach following May 13th  
21 or June 1st as a liar?

22 A. Are you talking about T. Rowe?

23 Q. No. I'm referring to the public report that you did  
24 look at.

25 A. I have not seen that, no.

1 Q. Okay. So you didn't what, for example, what T. Rowe  
2 Price had in their private e-mails and internal reports with  
3 was in the public reports; is that right?

4 A. Right, because the private information wouldn't affect  
5 the stock price.

6 Q. But you were not just looking at what impacts the stock  
7 price, right? You were trying to assess what analysts  
8 thought was good or bad news, correct?

9 A. In trying to determine what pieces of information  
10 revealed on June 1st potentially moved the stock price, it  
11 was important to assess how that public information was  
12 assessed in the analyst reports. What did they consider to  
13 be positive and what did they consider to be negative?

14 Q. And again, as part of all of that, you did not go and  
15 try to determine what they thought was positive and what they  
16 thought was negative in their nonpublic correspondence,  
17 correct?

18 A. Again, that was not part of what I reviewed, no.

19 Q. Let's turn to this issue of confounding information that  
20 you talked about. I'll try and use one of your slides. I  
21 believe it is DDEM28. Do you recall this slide?

22 A. Yes.

23 Q. So on the right-hand side -- is on the left-hand side  
24 corrective information you're using facts three and four to  
25 refer to the actual Kaplan-Meier curves and then the

1 disclosures about of the actual discontinuation rate. Do I  
2 have that right?

3 A. That's correct.

4 Q. And on the right-hand side, you have these four pieces  
5 of what you call confounding information?

6 A. Yes. And the important point here is that on the left  
7 are what the plaintiff allege is the corrective information.  
8 So it's directly from what Professor Feinstein looks at.

9 Q. In your mind it doesn't include the fact, the disclosure  
10 that only 61 percent of people were able to complete a year  
11 on the drug, right?

12 A. Again, that wasn't in Professor Feinstein's reports.

13 Q. And you didn't consider that?

14 A. No.

15 Q. And on the right, this confounding information, when you  
16 were testifying about that, there was a word I noticed you  
17 kept using when you were asked questions about it. And you  
18 kept saying the word could, right? For each of these you  
19 said that could have caused a stock price reaction, correct?

20 A. That's correct.

21 Q. Okay. So for each one of these, the node negative  
22 subgroup results, your opinion is just that that could cause  
23 one, right?

24 A. Yes.

25 Q. Okay. The limitations of data, as you call it, your



1 opinion is just that that could have caused some negative  
2 stock price reaction?

3 A. Yes.

4 Q. The doctors' reactions, again you are just opining that  
5 that could have caused a reaction; is that right?

6 A. Yes.

7 Q. And the investor meeting, again are you just opining  
8 that that could have caused a reaction?

9 A. Yes.

10 Q. And now for each of these, did you in fact identify any  
11 specific stock price decline that was due to one of these  
12 confounding factors?

13 A. No.

14 Q. So node-negative subgroup results. You are not offering  
15 any opinion that that caused any specific stock price decline  
16 on June 1st or June 2nd?

17 A. That's correct.

18 Q. Limitations of data. You're not opining that any  
19 discussion about limitations of data caused any specific  
20 stock price decline on June 1st or June 2nd; is that right?

21 A. That's correct.

22 Q. The doctors' reactions. You're not opining that any of  
23 that caused any specific negative stock price reaction on  
24 June 1st and June 2nd, right?

25 A. That's correct.

1 Q. The same with respect to the investor meeting; is that  
2 right?

3 A. That's correct.

4 Q. And did you try and investigate whether or not -- for  
5 example, the doctor reactions, did you investigate whether or  
6 not those were at all related to the alleged fraud?

7 A. So I certainly read through the transcript of the  
8 questions, and none of the doctors mentioned fact three or  
9 fact four in their opinions. Much of the opinions was about  
10 the short-term nature of the data. But even when there were  
11 other questions about the drug, none of them were directly  
12 tied to fact three or fact four. There's no evidence that  
13 their reaction was tied to fact three or fact four.

14 Q. You didn't talk to any of these oncologists; did you?

15 A. No.

16 Q. You didn't survey the doctors who were at ASCO; is that  
17 right?

18 A. No.

19 Q. Turn to Exhibit --

20 THE COURT: Didn't survey; is that right. No. If  
21 you want to clear --

22 BY MR. GRONBORG:

23 Q. Did you survey the doctors who were making comments at  
24 the ASCO meeting?

25 A. No.

1 Q. Turn to Exhibit 639 for me if you would. It's the ASCO  
2 transcript.

3 A. Is it in what you gave me here?

4 Q. It should be in the folder, the binder that you have.

5 A. I have no binder.

6 MR. GRONBORG: If we could pull up Exhibit 639,  
7 first the cover page. Thank you.

8 BY MR. GRONBORG:

9 Q. Did you review a transcript of that June 1st ASCO  
10 meeting, including the question-and-answer session?

11 A. I did.

12 Q. If we could turn in Exhibit 639, which is already  
13 admitted, turn to page 2 of the transcript. Do you see the  
14 comment there from Dr. Gelber. You mentioned a limitation  
15 for the trial and a short follow-up. He goes on to say that  
16 it's actually fatal limitation for the results we saw today.

17 Do you see that?

18 A. Yes.

19 Q. Was that one of the negative reactions you were  
20 identifying?

21 A. Yes.

22 Q. Now, he goes on and says: I would consider the results  
23 nonactionable and that the early results of ALTTO done at  
24 that time showed an even larger advantage than we saw here  
25 today. Do you know what the significance of the ALTTO trial

1 is?

2 A. Again, no.

3 Q. Do you know what happened to the Kaplan-Meier curves in  
4 the ALTTO trial?

5 A. No.

6 Q. Do you know that in the ALTTO trial, the issue was that  
7 the Kaplan-Meier curves didn't keep separating and they came  
8 back together?

9 A. No.

10 Q. You didn't know that?

11 A. No.

12 Q. So when you were evaluating this comment and you thought  
13 it had nothing to do with the alleged fraud, you didn't know  
14 that what Dr. Gelber was talking about there were the  
15 Kaplan-Meier curves?

16 A. Well, the comment here is about the short-term  
17 follow-up.

18 Q. Yes. Did you understand, though, that the fatal  
19 limitation he was talking about was the fact that there was  
20 no indication that the Kaplan-Meier curves were separating?

21 A. Again, I have no basis to know one way or the other.  
22 Clearly what he's talking about is the limitation of the  
23 data, the short-run follow-up.

24 Q. You're speculating, so you have no idea, no way to know;  
25 is that right?

1 A. On the ALTTO trial itself, what he's talking about is  
2 the limitations of the short follow-up.

3 Q. By short follow-up, you're referring to the fact that  
4 the curves end at two years; is that right?

5 A. That's correct.

6 Q. They don't go out six percent, seven percent, eight  
7 percent; right?

8 A. That would be correct.

9 Q. All right. Let's turn to page 6. Do you see the  
10 comment there from Dr. Vogl? He says: Dr. Chan, this  
11 neratinib sounds like a terrible drug. How many people are  
12 still taking it after six months, and how many actually  
13 finished a year of the stuff? Do you see that?

14 A. Well, it's not on the screen quite yet.

15 Q. Do you recall that that's one of the negative comments  
16 that you identified?

17 A. Yes.

18 Q. In response to that, the question is when the  
19 information about only 61 percent of the people completed a  
20 year of the drug, that's when you get that response; is that  
21 right?

22 A. That's correct.

23 Q. And you didn't think that that question had anything to  
24 do with discontinuation rates?

25 A. So the question --

1 Q. Just yes or no, please.

2 A. Certainly the discontinuation rates are the response  
3 that Dr. Chan has to this where it's a response how many were  
4 taking it at six months. So certainly Dr. Vogl wants to know  
5 how many patients were still taking it at six months.

6 Q. So Dr. Vogl asks how many actually finished a year of  
7 the stuff. Did you compare that with the question that was  
8 asked of Mr. Auerbach on July 22nd, 2014, when he responded  
9 with his five to ten percent number?

10 A. Again, to the best of my recollection, that was a  
11 response to the dropout rate. But again, I -- as part of my  
12 review of Professor Feinstein's work, it wasn't necessary for  
13 me to go back and compare what plaintiffs allege was the  
14 corrective information to what was said on July 22nd.

15 MR. GRONBORG: Let's pull up Exhibit 103, which is  
16 actually the July 22nd, 2014, transcript. We're at the first  
17 question. We're on page 14 of 15. The first question is by  
18 Matt Roden, one of the analysts whose reports you've read; is  
19 that right?

20 A. Yes.

21 Q. Do you see in his first question where part of the  
22 question is: How many patients actually completed the year  
23 of therapy? Do you see that?

24 A. Yes.

25 Q. It's almost the exact same question Dr. Vogl asked on

1 June 1st, 2015; isn't it?

2 A. Yeah. But again --

3 Q. Do you think those are the same or no?

4 A. Well, Mr. Auerbach's question -- the answer is on --

5 Q. I'm just asking about the question.

6 A. Again, I didn't compare the question, but he's asking  
7 both about dropout rates at the beginning of the question and  
8 then --

9 Q. I'm just asking about the question: How many people  
10 actually completed the year of therapy? You see that was  
11 asked on July 22nd, 2014?

12 A. Yes.

13 Q. Dr. Vogl says: How many actually finished a year of the  
14 stuff? Do you see that?

15 A. Yes.

16 Q. Do you think those are asking different questions?

17 A. They're very similar questions.

18 Q. The answers were not very similar, though; were they?

19 A. Again, I didn't compare for -- what I did is I was  
20 assuming of what plaintiffs had originally claimed and what  
21 Dr. Feinstein claimed were the corrective information.

22 Q. All right. Thank you.

23 MR. GRONBORG: No more questions.

24 THE COURT: All right. Redirect.

25 **REDIRECT EXAMINATION**

1 BY MS. TOMKOWIAK:

2 Q. Professor Gompers, you were just asked a lot of  
3 questions about things that you did not do or you did not  
4 review in this case. If a peer submitted a paper to a  
5 journal and you rejected it, would you take it upon yourself  
6 to rewrite the article?

7 A. No. You outline the reasons why you're rejecting it,  
8 but you don't redo their analysis.

9 Q. And if a student in one of your classes submitted a  
10 paper and you graded that paper and you gave that student an  
11 F, would you then take it upon yourself to redo the student's  
12 work?

13 A. No. I would comment about why their paper was  
14 deficient, but I wouldn't go about rewriting it.

15 Q. You were also asked some questions about the cases in  
16 which you've offered expert testimony?

17 A. Yes.

18 Q. When you testify, do you have any personal interest in  
19 who wins or loses?

20 A. No.

21 Q. And now, you said you do not pay much attention to that  
22 or to legal opinions, so you probably don't know how many  
23 Courts have relied upon your opinions; do you?

24 A. No. I mean, when I get asked to do expert work, I use  
25 the knowledge and the experience I have from all the years in



1 my profession. Again Courts may do different things. I'm  
2 not going to alter what I do because of what a Court says.  
3 I'm going to apply the standards of financial economics.  
4 That's my role, to try to help the Court say what is the  
5 state of knowledge in financial economics.

6 So I don't read legal opinions. I'm not a lawyer  
7 or a law professor.

8 Q. So then you're probably not aware there is an opinion in  
9 2013 from the Southern District of New York, across the  
10 coast, in the IBEW Local 90 Pension Fund versus Deutsche  
11 Bank.

12 It was a case, an opinion from October 2013, and  
13 the judge there said, and I quote: The Court credits  
14 Gompers' testimony. Gompers is a highly qualified economist  
15 who has spent years studying, teaching, publishing.

16 Were you aware of that?

17 A. No.

18 Q. You were also asked several questions about the  
19 Kaplan-Meier curves and certain of the safety data from the  
20 ExteNET trial. Do you recall that?

21 A. Yes.

22 Q. Now, is a financial economist like yourself and like  
23 Professor Feinstein, are either of you qualified to opine on  
24 the shape of Kaplan-Meier curves?

25 A. No. That's the job of biostatisticians and doctors and

1 Ph.D. scientists.

2 Q. What about the safety profile of a breast cancer drug?

3 A. Again, it's the same thing. There's knowledge that you  
4 get by being a specialist in that area, and I'm certainly not  
5 qualified to evaluate that information.

6 Q. You were asked some questions about Professor Feinstein,  
7 the regression analysis that he performed?

8 A. Yes.

9 Q. Can a regression analysis measure the impact of  
10 confounding information?

11 A. No. All the regression analysis can do is tell you on a  
12 given day what was the total stock price reaction. It's  
13 impossible for that regression to apportion how much was due  
14 to one piece of information versus another.

15 Q. And finally, we talked a lot about this concept of bias.

16 A. Yes.

17 Q. And towards the end of your cross-examination, you were  
18 shown a comment from Dr. Richard Gelber that was following  
19 the ASCO presentation. Do you recall?

20 A. Yes.

21 Q. I believe he said that he hypothesized that neratinib  
22 might be nonactionable?

23 A. Yes.

24 Q. Are you aware that Dr. Gelber is a paid consultant by  
25 Roche?

1 A. No.

2 Q. You know Roche is another pharmaceutical company?

3 A. I do.

4 MS. TOMKOWIAK: I have no further questions, Your  
5 Honor.

6 MR. GRONBORG: No further questions for this  
7 witness.

8 THE COURT: Thank you, sir. You may step down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: The defense will call its next witness.

11 MS. TOMKOWIAK: Your Honor, we call Troy Wilson to  
12 the stand. We're just going outside to get him.

13 THE COURT: Very well.

14 **Troy Wilson, Defendant's witness, sworn**

15 THE CLERK: If you will please state and spell your  
16 first and last name.

17 THE WITNESS: Troy Wilson, T-r-o-y, W-i-l-s-o-n.

18 **DIRECT EXAMINATION**

19 BY MS. TOMKOWIAK:

20 Q. Good afternoon, Mr. Wilson.

21 A. Good afternoon.

22 Q. Can you please introduce yourself to the jury?

23 A. Yes. I'm Troy Wilson.

24 Q. What is your relationship to Puma?

25 A. I am a member of Puma's board of directors.

1 Q. Okay. I want to talk a little bit about what that  
2 means. But first, can you give the jury a little bit more  
3 information about yourself? Where did you go to school?

4 A. I went to college at Berkeley and I graduated with a  
5 degree in biophysics. I went to graduate school and got my  
6 Ph.D. in chemistry also from Berkeley.

7 Then I took a bit of a detour and went to law  
8 school at NYU. Graduated from there and became an attorney.

9 Q. And after that esteemed profession, what did you do  
10 next?

11 A. I didn't last very long as an attorney. I practiced for  
12 two years and then I joined Novartis, which is a large Swiss  
13 pharmaceutical company working in San Diego.

14 Q. And how long have you been involved in the biotechnology  
15 industry?

16 A. I have been working in the biotech industry for about  
17 two decades. I've been working in cancer drug discovery and  
18 development for the better part of ten years now.

19 Q. How did you get into cancer specifically?

20 A. So when I was -- just as I entered my career at  
21 Novartis -- this was in 2000 -- my mother was diagnosed and  
22 passed away very quickly from metastatic lung cancer. That  
23 was galvanizing, to say the least, and I had a unique  
24 opportunity to go into pharma and learn how to do drug  
25 discovery and development.

1 I've been, you know, working toward that goal ever  
2 since.

3 Q. What did you do after Novartis?

4 A. So I left Novartis after a couple of years and I started  
5 my first company. So I'm a serial entrepreneur. I've  
6 started a number of companies. All of them with one  
7 exception are all in the biotechnology space. They all make  
8 new medicines.

9 I'm currently running three companies. So I run  
10 Kura Oncology, which is a publicly traded company that  
11 develops drugs for the treatment of cancer. And I started  
12 that company.

13 I run Wellspring Biosciences, which is developing a  
14 drug candidate for the treatment of metastatic lung cancer,  
15 actually the kind which killed my mom. I started that  
16 company. And I'm running Avidity Biosciences which is  
17 developing treatments for boys with muscular dystrophy.

18 Q. Do you have any experience investing in the  
19 biotechnology industry?

20 A. I do. It's actually the only thing I have experience  
21 investing in. I rely on, you know, experts for everything  
22 else. As I mentioned, I started a number of companies. I  
23 invest in private companies. I invest in public companies.  
24 I do -- it's the only area where I feel comfortable that I  
25 actually have enough expertise because it's what I do for a

1 living, to invest. But I do a lot of it, yes.

2 Q. Can you describe the biotechnology industry, what type  
3 of investment it is?

4 A. Yeah. I mean, biotechnology is high-reward, high-risk.  
5 So, you know, fortunes can be made or lost --

6 MR. FORGE: Your Honor, I'm going to raise a 701,  
7 702 objection. I appreciate that Mr. Wilson has an  
8 expertise, but he's not been noticed as an expert.

9 THE COURT: Response?

10 MS. TOMKOWIAK: I'm not asking for his expert  
11 opinion, Your Honor. He's testified that he has personal  
12 experience investing in the biotechnology industry. I'm just  
13 asking him to describe that.

14 THE COURT: All right. The pending question is:  
15 Can you describe the biotechnology industry, what type of  
16 investment it is?

17 I believe this witness can give percipient  
18 testimony on that, but I certainly understand your objection.  
19 Don't be discouraged. Continue.

20 THE WITNESS: So in my opinion the biotech industry  
21 is high-reward, high-risk. You know --

22 THE COURT: Hold on. It's ironic how he started  
23 his answer. Based on that I'm going to grant the objection  
24 given the nature of the answer and strike that last answer.  
25 I'm going to grant the objection and strike that last answer.

1                   Next question, please.

2       BY MS. TOMKOWIAK:

3       Q.    All right.  Let's switch gears.

4       A.    Okay.

5       Q.    Let's talk about Puma.  So when did you first meet  
6       Mr. Auerbach?

7       A.    I first met Mr. Auerbach in 2010.  I invited him to  
8       lunch.

9       Q.    And what was your impression of him?

10      A.    Mr. Auerbach is a very smart, passionate, sort of driven  
11      kind of person.  Very much like myself, he was at that time I  
12      believe running his previous company, Cougar.  Cougar, you  
13      know, Cougar was well known in the industry for developing a  
14      drug for the treatment of prostate cancer, and I was at that  
15      time running Wellspring.  I actually --

16                   MR. FORGE:  Your Honor, object and ask that the  
17      witness respond to a question.

18                   THE COURT:  Next question, please.

19      BY MS. TOMKOWIAK:

20      Q.    Okay.  So you said that you had lunch?

21      A.    We had lunch, yes.

22      Q.    Okay.  And then following lunch, how did you come to  
23      join Puma's board of directors?

24      A.    Mr. Auerbach invited me to join the board of directors  
25      in 2013.

1 Q. Approximately how long was that after you had lunch?

2 A. A couple of weeks.

3 Q. And did you say yes?

4 A. I did.

5 Q. Why did you say yes?

6 A. I thought it was an opportunity for me to apply my  
7 expertise, my talents, to helping Puma advance neratinib.  
8 You know, I'm in this to treat patients, to develop  
9 medicines.

10 I had a lot of respect for what Mr. Auerbach was  
11 doing. I thought neratinib was a great drug and had a real  
12 potential. It was an exciting opportunity.

13 Q. So can you tell the jury a little bit more about your  
14 duties as director of a public company?

15 A. Sure. So as a member of the board of directors of a  
16 public company, or any company really, your role is an  
17 oversight role, a strategic role, a governance role.

18 You're not running the company. That's not your  
19 job. That's the role of the management, CEO and CFO and so  
20 forth. Your job is to make sure that the company has the  
21 right strategic plan, that the right people are in place,  
22 that you have enough money in the bank, you know, enough gas  
23 in the tank, if you will.

24 You do have certain -- you have a responsibility to  
25 ensure that the company has appropriate controls in place



1 particularly in the financial arena. So there are various  
2 committees. You review budgets. You review compensation and  
3 so forth.

4           Importantly, you don't run the company. Your job  
5 is really to make sure that you have the right leadership in  
6 place to run the company properly.

7 Q. Okay. So being a director is not your full-time job?

8 A. Not by any stretch, no.

9 Q. Do you take those duties seriously as a director of  
10 Puma?

11 A. I do, of course.

12 Q. Do you recall when Puma announced the topline results  
13 from the ExteNET trial?

14 A. I do, yes.

15 Q. What do you recall?

16 A. So I was -- I was on my honeymoon with my wife, and we  
17 were -- we were very excited. We were actually in Bora Bora,  
18 and we jumped in the water because it was a huge day for  
19 neratinib and a huge day for Puma. I was on vacation, but it  
20 was a really exciting day, I remember.

21 Q. Why do you say it was a huge day for Puma?

22 A. Because you could tell from the -- you know, I mean, I  
23 read only the press release. I was on vacation. But, you  
24 know, from the press release you could tell that somewhat  
25 unexpectedly the ExteNET trial had succeeded. That was

1 actually -- I don't know that any of us expected that.

2 You know, huge, pleasant surprise, but that meant  
3 that, you know, if we continued down the path and we did what  
4 the FDA would require us to do, there was a high likelihood  
5 we would get the drug approved.

6 You know, that's what -- people spend their whole  
7 lives in their industry and don't get that done. So that's a  
8 big day, particularly for women with metastatic breast  
9 cancer. There's a lot of patients in that space.

10 Q. In your experience running your own biotechnology  
11 company, have you been involved in deciding what to disclose  
12 when announcing topline clinical trial results?

13 A. I have, yes.

14 Q. How do you decide what information to disclose?

15 MR. FORGE: Your Honor, I'm going to object under  
16 701 and 702 grounds -- again, drawing upon his specialized  
17 experience places this in the expert category of testimony,  
18 and he is not a designated expert.

19 THE COURT: Overruled.

20 MS. TOMKOWIAK: You can answer.

21 THE WITNESS: So I think the question was how do we  
22 determine what to disclose in a press release. So, I mean,  
23 the first thing is there is no clear line. Right? You work  
24 with the internal -- as CEO you work with the internal team,  
25 you work with your lawyers, and you have to strike a balance.

1           You have to disclose enough information that a  
2     reasonable investor would have all the information he or she  
3     needs to know, but you don't want to disclose so much  
4     information that you prevent the data from later being  
5     published in a major medical conference.

6           The whole goal is you want to get the news out to  
7     as much doctors as possible. If you go too far and you  
8     release, for example, all of the information, sometimes those  
9     medical conferences will say, you know what? You've actually  
10    released all that information to the public, so we're not  
11    going to allow you to come and present your data.

12          That's, you know, that's the bad thing for the  
13    investigators who have spent their, you know, many years  
14    doing it. It's a bad thing for the company. It is a bad  
15    thing for the patients. So it's very much a balancing act,  
16    and it's a judgment call.

17    Q.    In your role as director of Puma, was there anything  
18    that you expected Puma to disclose in July 2014 that it did  
19    not disclose?

20    A.    No.

21    Q.    Mr. Wilson, are you aware that Puma held a conference  
22    call on July 22nd, 2014, to discuss the ExteNET trial  
23    results?

24    A.    I am aware of that, yes.

25    Q.    And have you participated in calls like that?

1 A. As CEO of a publicly traded company, I have participated  
2 in many calls like that, yes.

3 Q. And what is the purpose of a conference call like that?

4 MR. FORGE: Your Honor, I'm going to make the same  
5 objection under 701, 702. This is expert testimony that  
6 they're eliciting. The purpose -- Your Honor, the jury knows  
7 what's at issue in this case. So I would say 401 and 403  
8 also. It's for the jury to determine.

9 THE COURT: Just a moment.

10 MS. TOMKOWIAK: Be happy to respond, Your Honor.

11 THE COURT: Just a moment. You can ask him what he  
12 thinks the purpose of such a call is.

13 BY MS. TOMKOWIAK:

14 Q. What do you think the purpose of such a call like that  
15 is?

16 A. I think the purpose of a call such as that is to -- when  
17 you issue a press release, you do your best to, you know, to  
18 tell the story that you're trying to tell. But there's  
19 always questions, right, and different people can read the  
20 same sentence, the same paragraph, and have different  
21 opinions or different questions.

22 So I think the purpose of those calls is to provide  
23 a forum where investors and equity analysts who are  
24 specialized people who follow these companies and are meant  
25 to be really -- you know, follow them very closely, gives

1       them an opportunity to ask questions about what you have  
2       disclosed.

3               Sometimes they have models that they're making to  
4       try to assess, you know, is this a good investment or a bad  
5       investment. And it gives you an opportunity to enter into a  
6       dialogue with them and answer their questions.

7               THE COURT: All right. Is now a good time to  
8       break?

9               MS. TOMKOWIAK: Now is a perfect time to break.

10              THE COURT: Okay. Very good. It's 4:30.

11              Okay. Folks, tomorrow we are going to go from 8:00  
12       to 1:30 with two breaks during that time. So you'll be done  
13       at 1:30. And counsel have told me they will be done with the  
14       evidence at 1:30 tomorrow. We then need you back here  
15       Tuesday at 9:00 to hear their closing arguments.

16              So that's where we're at.

17              So we'll see you at 8:00 tomorrow. Thank you.

18              THE CLERK: All rise.

19              (Open court - jury not present)

20              THE COURT: You may step down, sir.

21              You all may be seated. Today I have the plaintiff  
22       at 2.5 and the defendant at 2.7, which is 5.2. So somewhere  
23       I lost three-tenths of an hour, but that's okay. Total I  
24       have plaintiff at 16.9 and defendant at 16.4.

25              We basically have five total hours tomorrow with

1 two 15-minute breaks. I would like to assign the five hours  
2 between the two so it comes out roughly equal. Do you have  
3 any -- have you done any work on that?

4 MR. COUGHLIN: Yes, we've already done that, Your  
5 Honor. It's not quite equal, pretty much.

6 THE COURT: Okay. Well, at 1:30 we need to stop.  
7 If someone uses up their time before 1:30, I need to stop  
8 them because they will be creeping into the other side's  
9 time.

10 So what do you suggest you do? Do you want to give  
11 me numbers as to how much remaining time each side has?

12 MR. COUGHLIN: We will.

13 THE COURT: Okay.

14 MR. FORGE: Your Honor, with the information that  
15 the Court gave today, the 2.7 versus the 2.5, I calculate the  
16 -- we've taken about 30 minutes more than the defendants  
17 have. So that five hours --

18 THE COURT: Not 30. To be honest, 2.4 -- 2.5 and  
19 2.7. So you've taken .2.

20 MR. FORGE: We had burned a little bit extra before  
21 then. We had used up more time before then.

22 THE COURT: Tell me what you would like done?

23 MR. FORGE: Okay. I think that it should be a half  
24 hour less for us than them. So I think we would be at 2:15  
25 and they would be at 2:45, Your Honor, for tomorrow.

1           THE COURT: I think that's perfect. Are we okay on  
2 that?

3           MR. CLUBOK: We are, Your Honor.

4           THE COURT: Okay. So we need conclusion of the  
5 evidence. And, plaintiff, you need to get your rebuttal in,  
6 which is a little odd if you should be saving for a rebuttal  
7 that you anticipate the defense objecting to.

8           MR. COUGHLIN: We did a couple things.

9           THE COURT: Let me also, before you say anything --  
10 well, go ahead and say it.

11          MR. COUGHLIN: We removed our objections to Skye  
12 Drynan, Your Honor, so they can go ahead and play that. Then  
13 we have the Kopcho. There is one issue and I don't --

14          THE COURT: Before you get to another issue, are  
15 you done talking about rebuttal and I don't need to worry  
16 about whether you're in good shape?

17          MR. COUGHLIN: I think we'll be all right.

18          THE COURT: Okay. I was presenting a problem to  
19 you about whether you wanted to save time for rebuttal only  
20 to have the defense object and me to sustain. But if you  
21 don't want me to deal with that, I've got enough to deal  
22 with.

23          Next point.

24          MR. COUGHLIN: Of course I would like to know that,  
25 when they put on Skye Drynan, whether we get to put on

1 Kopcho. So there are two issues. One, there's an issue  
2 that's been talked about throughout the trial, and it's the  
3 chart that was recreated that goes out three years and has --

4 THE COURT: Okay. You know, do you want me to  
5 address the rebuttal issue before we address the second issue  
6 you're raising?

7 MR. COUGHLIN: Yes.

8 THE COURT: So let's address the rebuttal issue.

9 MR. COUGHLIN: Okay.

10 THE COURT: What if you bring a witness to rebut  
11 and they object? Do you want me to make a ruling on that?

12 MR. COUGHLIN: Yes.

13 THE COURT: Can I make a ruling on that?

14 MR. COUGHLIN: I think you can.

15 THE COURT: I would also say that there's the  
16 possibility for plaintiff to reopen where I might express  
17 some generosity in that, given the way this matter has set  
18 up. Are you with me? I mean, I could allow you to reopen.

19 What is the defense objection?

20 MR. CLUBOK: Your Honor, the Kopcho deposition  
21 which you have reviewed for the objections is not proper  
22 rebuttal. It should have been included in their case in  
23 chief if they wanted to use it. They chose not to.

24 THE COURT: Okay.

25 Why didn't you include it in your case-in-chief?



1           MR. COUGHLIN: Because until and unless they put on  
2       Skye Drynan -- they said, yeah, we always anticipated doing  
3       that. We've had huge fights about her, about whether she was  
4       going to come here or not or whether they were going to play  
5       the depo or not. Okay? So we --

6           THE COURT: Okay. I'm going to interrupt you  
7       simply to say under all the circumstances, the need for the  
8       transcript to be reviewed, I think good-faith efforts on both  
9       sides on trying to get the transcript matter taken care of,  
10      some question about whether it's rebuttal or not -- all  
11      things considered and now aware of what it says and aware  
12      that the defense knows what it says, I will allow it either  
13      as rebuttal or a brief reopening of the plaintiffs' case.

14           That's my ruling.

15           MR. COUGHLIN: Thank you.

16           THE COURT: The next issue -- and by the way, I  
17      have my eye on the clock and ask you how many more issues do  
18      we have?

19           MR. COUGHLIN: Only one more.

20           THE COURT: Okay. And we perhaps have a response  
21      to the deposition rulings I've made.

22           So what's your next issue?

23           MR. COUGHLIN: My next issue is the chart that was  
24      recreated for purposes of the litigation. Mr. Bin Yao, who  
25      is coming in to testify tomorrow, we believe that the

1 defendants will offer that chart and it presents a number of  
2 problems for us, 701 and 702.

3 Mr. Bin Yao is a statistician at --

4 THE COURT: Do you have an exhibit number for that?

5 MR. COUGHLIN: Yes. It's 985, Your Honor. Do you  
6 have a copy of that?

7 THE COURT: I'm looking at the big binder I got,  
8 and guess what. 985 is not in it. I don't have a copy. I  
9 remain frustrated at the way the documents have been handled,  
10 completely contrary to my urgings.

11 So we explored 985 with which witness?

12 MR. COUGHLIN: Bin Yao.

13 MS. JOHNSON: We haven't yet.

14 THE COURT: Let me rephrase it. No, let me phrase  
15 it exactly the same. We've already explored 985 with what  
16 witness?

17 MR. COUGHLIN: Mr. Auerbach.

18 THE COURT: And the defense moved it in, and I  
19 sustained?

20 MS. JOHNSON: Correct.

21 THE COURT: Okay. What does this new witness add  
22 to overcome the objections that I thought were fairly strong  
23 with Mr. Auerbach?

24 MS. JOHNSON: The objection was foundation among  
25 others. Mr. Yao is the one who created, directed and created

1 at his direction with his team Exhibit 985.

2 THE COURT: I'm sorry. Forgive me, but you're  
3 saying Mr. Yao, and I was hearing another word. It started  
4 with a B.

5 MR. COUGHLIN: It's Bin Yao.

6 MS. JOHNSON: Bin is his first name --

7 THE COURT: Yao his last name.

8 MS. JOHNSON: -- and Yao is his last name.

9 THE COURT: Okay. So you now have the person who  
10 created this document?

11 MS. JOHNSON: With his team, yes.

12 THE COURT: And do you want it submitted as an  
13 exhibit or as a demonstrative?

14 MS. JOHNSON: An exhibit.

15 THE COURT: Okay.

16 Response?

17 MR. COUGHLIN: Your Honor, this document is a  
18 recreation, a statistical analysis of data at Puma done for  
19 the purpose of the litigation. This witness was never  
20 identified to us as -- he's not a percipient witness. Let's  
21 start with that.

22 THE COURT: Hold on. He's an expert witness?

23 MR. COUGHLIN: He's an expert at Puma, a  
24 biostatistician.

25 THE COURT: No. No. Let me ask the question again

1 and listen carefully to it and please answer it as accurately  
2 as possible. He's an expert witness?

3 MR. COUGHLIN: No.

4 THE COURT: Okay. Go ahead.

5 MR. COUGHLIN: Never identified to us as an expert  
6 witness, so we had no chance to rebut or Daubert him. Okay.  
7 He submitted a declaration with -- with summary judgment with  
8 this chart. Okay. Before that, it had just been produced to  
9 us with no witness.

10 He then performed an analysis which is an expert  
11 analysis on certain data, so he's really testifying as an  
12 expert, was never identified as an expert, and cannot testify  
13 under 701 as a lay witness to this. He was not a percipient  
14 witness. He did not have access to this data as of July  
15 22nd, 2014.

16 THE COURT: It's hard for me to make a ruling  
17 without knowing what he did to put this together. If he  
18 relied on expert testimony, if he relied on certain  
19 statistical numbers or statistical factors, then it moves  
20 into expert testimony.

21 If you grab numbers from a sheet of paper that he's  
22 aware of and put them on this paper, then it's not, with  
23 variations in between. What happened to produce this?

24 MS. JOHNSON: Mr. Yao works at Puma. He uses the  
25 locked data set in his regular course of business. He is not

1 an expert witness. He's not offering opinion testimony.

2 He took the locked data set that exists at Puma  
3 dated July 7, 2014, and ran the same types of analyses that  
4 he runs to submit papers, to submit data to the regulators,  
5 the same types of stuff he does in his job.

6 He ran and his team ran those analyses to produce  
7 what could have been produced as of the July 22nd, 2014, time  
8 period. I would note, Your Honor, that there has been  
9 confusion by counsel, I'm sure inadvertently, that plaintiffs  
10 do not have this July 7, 2014, locked data set.

11 Mr. Yao was personally involved in collecting the  
12 data set, the programming, the underlying statistical  
13 analysis that would enable plaintiff and its experts to use  
14 the data set. And he was personally involved in providing,  
15 helping us provide that to the plaintiffs.

16 So for those two reasons -- which happened, of  
17 course, over a year ago and was identified to plaintiffs  
18 as --

19 THE COURT: Did he just grab information from  
20 documents available around the company, or did he perform  
21 functions to create those numbers?

22 MS. JOHNSON: I would say it's in between, Your  
23 Honor. This is a data set that you grab numbers from. So  
24 it's not grabbing pieces of paper around the company but  
25 rather electronically. Same thing plaintiffs could do with

1 the data set. It takes programs to run, but it is what he  
2 does in his job. It is not an opinion from an expert.

3 THE COURT: Then it's a close call, and I'm going  
4 to have to hear the full explication from the witness to make  
5 a determination whether it moves into expert testimony.

6 It's not enough to say it's what he does because  
7 experts regularly do in their regular job what becomes expert  
8 testimony in a court. It's a matter of whether he is simply  
9 a percipient or whether it goes beyond that or whether it  
10 goes to a special knowledge.

11 So at this point, I think when the item is  
12 presented, you need to present it outside the presence of the  
13 jury and ask questions about how it was created. Then I'll  
14 make a ruling.

15 MR. COUGHLIN: That's fine, Your Honor. With the  
16 declaration of Bin Yao submitted in summary judgment, there  
17 are about 15 pages of analyses attached. I think if Your  
18 Honor had it tonight, then when Mr. Bin Yao comes in in the  
19 morning, it might help. It was submitted to the Court. It  
20 is Exhibit 284.

21 THE COURT: I must tell you, it might not get read.  
22 In fact, it won't get read between now and 8:00 tomorrow  
23 morning.

24 MR. COUGHLIN: I'll just keep it, then.

25 THE COURT: Okay. So that's my ruling. It's a

1 difficult and tough case. Tell me what your objections are  
2 going to be. I certainly have heard expert. Anything else?

3 MR. COUGHLIN: Well, yes. He was not -- he cannot  
4 testify as a lay witness --

5 THE COURT: I believe that would come under the  
6 heading expert. Next.

7 MR. COUGHLIN: 701. Yes, and expert. And we  
8 cannot recreate -- we have not been able to recreate this.  
9 They say we can recreate this, but they used a different --

10 THE COURT: That seems to go to expert. What's the  
11 basis of we can't recreate?

12 MR. COUGHLIN: It goes to the data that we have  
13 that we have been unable to --

14 THE COURT: That's not computing into evidentiary  
15 objections I might sustain. Any other evidentiary  
16 objections?

17 MR. COUGHLIN: Well, that is a -- that a disclosure  
18 objection.

19 THE COURT: There we go. Good. So tell me about  
20 the disclosure objection.

21 MR. COUGHLIN: Okay. We asked for the disclosure  
22 of anything like this that they were going to use under  
23 Rule 26. They did not make this disclosure. They have  
24 analyzed this using the FDA censoring rule. When the stuff  
25 -- the information they presented to the public was under the

1 Puma censoring rule. They have used --

2 THE COURT: Okay. So we have expert and we have  
3 failure to disclose the information. Any other objection?

4 MR. COUGHLIN: No, Your Honor.

5 THE COURT: Okay. Why is 985 not in the exhibit  
6 book?

7 MS. JOHNSON: It's in the later ones, Your Honor.

8 THE COURT: Why is it not in the exhibit book for  
9 trial exhibits?

10 MS. JOHNSON: I would say it is in the later  
11 exhibit books provided, but there are --

12 THE COURT: Look, I have an exhibit book for the  
13 first day of trial. It's not in it. I know that dozens of  
14 exhibits are being stuffed into books and given to me that  
15 aren't on the list.

16 I don't know that that complies with my requirement  
17 that exhibits be identified. So it wasn't in the exhibit  
18 book provided at the beginning of trial.

19 MS. JOHNSON: The answer --

20 THE COURT: Why not?

21 MS. JOHNSON: The answer is that there is another  
22 copy of the chart at Exhibit 818 in your binder.

23 THE COURT: The same exhibit?

24 MS. JOHNSON: It is very similar. It is  
25 substantially similar. I can explain the differences.



1 Mr. Yao would testify about those differences, but I'm happy  
2 to explain if that's relevant.

3 MR. COUGHLIN: It's relevant to us, Your Honor.  
4 I'd like to hear that because I've never heard the  
5 differences. We got -- on January 5th right before this  
6 trial started -- January 15th, the day of the trial, we got  
7 the latest. So I'd like to know the difference between those  
8 two exhibits also.

9 THE COURT: Okay. Let me just say the issue of  
10 exhibits keeps coming up. I had two fine law firms in front  
11 of me back in October, and I issued an order saying counsel  
12 should limit the number of exhibits submitted for the trial.

13 Ideally at least 80 percent of the trial exhibits  
14 submitted should be properly offered into evidence at trial.  
15 The Court encourages the party to submit a revised exhibit  
16 list to honor this recommendation. That was way back in  
17 December.

18 Folks, I really thought the parties with so much  
19 time being provided would have done something to come close  
20 to my suggestions. And I'm not just being arbitrary. I find  
21 that when that happens, counsel focus their examination.  
22 They don't just dump information on the jury, which I think  
23 has been happening in this trial, and it leads to a more  
24 focused, directed trial.

25 I must say in 13 years, I don't think I've seen

1 anything as disorganized in the production of exhibits  
2 despite the fact that the trial came two months after it was  
3 originally scheduled.

4 So if you perceive my frustration with the  
5 exhibits, that's one of them.

6 Now, I'm going to look at Exhibit 818. You say  
7 it's similar but not the same, and I am concerned about the  
8 fairness of them responding to this. You know, that's why  
9 you identify exhibits.

10 MR. CLUBOK: Your Honor, if I can just jump in,  
11 because I think this partially relates to the work that we  
12 were trying to do. 818 was used in the summary judgment  
13 brief. And as Mr. Coughlin was about to say, there was  
14 extensive discussion of summary judgment brief, declarations.  
15 It was well described in the summary judgment briefing.

16 We had 818 as one of our exhibits from early on.  
17 When we were in the process as we got ready for trial, we had  
18 meet and confers to work with the plaintiff to try to address  
19 objections to exhibits.

20 They pointed out an objection to 818 during that  
21 meet-and-confer process that we tried to respond to by  
22 slightly revising 818 to become what is 985 just to address  
23 their minimal objections. There was a question about a date  
24 that was listed, and there were some questions about 818 that  
25 they presented to us. And they said they were going to

1 object to 818 because of certain questions.

2 We responded to them. We came up with 985. They  
3 said it still doesn't satisfy us. We said why. They said  
4 because -- although I don't want to put words in their mouth,  
5 but my understanding of their objection was they believed  
6 incorrectly that they did not have the exact same data set  
7 and the exact same programming tools necessary to create this  
8 exhibit or ones like it.

9 We looked and checked the records. We know that it  
10 was all produced well over -- well, in December 2017. The  
11 data set was produced and the programming tools were  
12 produced. There was an additional -- in March 18th I believe  
13 the randomization code provided, all because the plaintiffs  
14 had asked during discovery for a copy of this snapshot which  
15 has become a big part of the case, whether the snapshot  
16 exists and whether we have provided it to plaintiffs. We did  
17 do so approximately a year ago.

18 THE COURT: I understand. Now we have to move on.  
19 I'm going to have to rule on this as I've described. We need  
20 to move on to the next issue. I must say that I am concerned  
21 that in a case filed in 2015, ready for trial in October,  
22 urgings from the Court, the parties just seem to have ignored  
23 the Court's rulings on how the trial should proceed, as they  
24 often ignore waiting for a ruling from the COURT on motions  
25 they make or comments from the Court.

1           The parties would do well to listen to the Court  
2           and do what the Court instructs, and I'm disappointed that  
3           hasn't happened.

4           Now, the final issue is the depositions. Are there  
5           any you would like to focus on specifically?

6           MR. CLUBOK: One very small issue, Your Honor. On  
7           the Kopcho, which we would appreciate you making your rulings  
8           or preliminary rulings, I think we've both been through it.  
9           At least from our part we understand all your rulings except  
10          for just one very minor ruling that I would like to address.

11          THE COURT: Would you be able to put it on the  
12          elmo?

13          MR. CLUBOK: Sure. Your Honor, the issue relates  
14          to page 124. I'm sorry, it's kind of hard to see this the  
15          way it's formatted here. It is page 124, Your Honor.

16          THE COURT: Just a moment. That O there is from  
17          me. Slide it over so I can see all your objections which are  
18          a little bit cut off, making it somewhat difficult.

19          MR. FORGE: What page?

20          MR. CLUBOK: I believe I'm on page 124.

21          THE COURT: It should be visible on your screen  
22          there.

23          MR. FORGE: The page number wasn't before. I have  
24          it now, Your Honor.

25          THE COURT: Good. So why cannot we ask this

1 witness, have you heard the Kaplan-Meier curves before?

2 MR. CLUBOK: That question is fine. We only --

3 THE COURT: Okay. So the -- so, all right. That  
4 question is fine. So let's go on to the next.

5 Question: Do you see these curves? If you look  
6 out to the far right where they end, do you see ours  
7 narrowing a bit down at the end there? The top one is coming  
8 down.

9 Answer: Yes.

10 Okay. What is your objection to him saying what  
11 his eyeballs are telling him?

12 MR. CLUBOK: Well, the -- this is Darcy Kopcho  
13 responding, and she is being asked to give -- this requires  
14 an expert opinion to interpret the curves as opposed to  
15 asking her for what it appears to her by the naked eye.

16 THE COURT: Okay. Which of the objections you have  
17 listed there which border on boilerplate are you really  
18 relying on? Is it 701?

19 MR. CLUBOK: 701, Your Honor.

20 THE COURT: All right. Also, she doesn't even know  
21 what she's looking at.

22 MR. CLUBOK: Exactly.

23 THE COURT: I'm not sure her opinion of whether  
24 they're coming together or not coming together differs at all  
25 in this context from the jury just looking at it, and I'm

1 inclined to agree now that that portion, that is, 19 through  
2 23, are expert.

3 MR. CLUBOK: Thank you, Your Honor.

4 THE COURT: Probably which made 16 through 18  
5 irrelevant.

6 What do you say about that? Why are you asking  
7 someone unfamiliar with the curves something that she has no  
8 particular expertise in saying whether they're coming  
9 together or not? We could -- why don't we call in a guy off  
10 the street and say, take a look. Are they coming together?

11 Why don't we call a hundred people off the street  
12 and ask that? Or why don't we just ask the jury to use what  
13 expert advice it has on it and come to its own conclusions  
14 that way?

15 MR. FORGE: I agree, Your Honor. That's fine. It  
16 was a deposition.

17 THE COURT: Oh, geez. Okay. Fair enough.

18 So we're set. All right, folks. We'll see you at  
19 8:00 tomorrow. And please be ready with your papers and  
20 everything at 1:30 to get into the jury instructions and the  
21 special verdict.

22 Thank you.

23 MR. COUGHLIN: Thank you.

24 (Proceedings adjourned at 4:53 p.m.)  
25

## CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN  
THE ABOVE MATTER.  
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE  
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE  
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/ Miriam V. Baird01/25/2019

MIRIAM V. BAIRD  
OFFICIAL REPORTER

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