

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

IN RE: RISPERDAL® LITIGATION :  
March Term, 2010, No. 296 :  
PHILLIP PLEDGER, by BENITA PLEDGER, as Guardian of his Person and Conservator of his Estate, Plaintiffs, : APRIL TERM 2012  
v. :  
JANSSEN PHARMACEUTICALS, INC. :  
JOHNSON & JOHNSON COMPANY :  
and Janssen Pharmaceutical Research and Development, L.L.C. Defendants : NO. 01997

WEDNESDAY, FEBRUARY 4, 2015

**VOLUME VIII  
MORNING SESSION**

COURTROOM 425  
CITY HALL  
PHILADELPHIA, PENNSYLVANIA

B E F O R E: THE HONORABLE RAMI I. DJERASSI, J.,  
and a Jury

REPORTED BY:  
JUDITH ANN ROMANO, CRR  
CERTIFIED REALTIME REPORTER  
OFFICIAL COURT REPORTER

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1 (Pledger v Janssen, et al.)  
 2 (Hearing is reconvened at 9:52 a.m.  
 3 with all parties present.)

4 THE COURT: Good morning, everybody.  
 5 We do have the jury now and we are ready to  
 6 proceed.

7 Where are we, by the way? We are in  
 8 the middle of the direct examination as if on  
 9 cross of Mr. Gilbreath?

10 MR. KLINE: Yes, Your Honor.

11 THE COURT: Do you have the witness  
 12 here?

13 MR. KLINE: I believe Janssen has him  
 14 here.

15 THE COURT: Before we start, Marianne  
 16 has reminded me to mark the --

17 MR. KLINE: Are you talking about these  
 18 charts up here? I have them marked. Shall we  
 19 do them?

20 THE COURT: It would be best to do it  
 21 before the jury comes in.

22 THE COURT CRIER: So this chart will be  
 23 Plaintiff's Exhibit 63.

24 (P-63 is marked for identification.)

25 MR. KLINE: That's the chart that has

1 (Pledger v Janssen, et al.)  
 2 exhibits.

3 THE COURT: Whatever is satisfactory to  
 4 the court reporter.

5 MR. KLINE: I think that would work for  
 6 them.

7 THE COURT CRIER: Your Honor,  
 8 Plaintiff's Exhibit 63 is an easel chart with  
 9 the heading 3-11-03, and it has a division  
 problem on it.

10 (P-64(A) through (D) are marked for  
 11 identification.)

12 THE COURT CRIER: Plaintiff's Exhibit  
 13 64(A), (B), (C) and (D) are sales calls of  
 14 Mr. Gilbreath to Dr. Mathisen's office.

15 (P-65 is marked for identification.)

16 THE COURT CRIER: Plaintiff's Exhibit  
 17 65 is the easel chart with milliliter math on  
 18 it.

19 THE COURT: I want to be clear now on  
 20 the record that should any of these documents  
 21 be used during closing argument they must be  
 22 the original documents, no photographs. Okay?

23 MR. KLINE: Sure. I just meant photos  
 24 for the --

1 (Pledger v Janssen, et al.)

2 365 into 1205 equaling 3.3 years.

3 THE COURT: Why don't you organize it  
 4 and come up here.

5 (Pause.)

6 THE COURT: Just take the notes down  
 7 and as soon as these individual things are  
 8 marked, we will review them at the lunch hour.  
 9 I don't want to keep the jury waiting.

10 MR. KLINE: Your Honor, what I would  
 11 simply suggest is that when the jury comes in,  
 12 since they are the ones who also need to see  
 13 these, I will identify them right in front of  
 14 the jury.

15 THE COURT: Why don't we have them  
 16 marked ahead of time so we are not going back  
 17 and forth between Marianne and you.

18 MR. KLINE: I think she has them.

19 THE COURT: By the way, these  
 20 particular documents, where are they now, the  
 21 ones that have been marked now by both  
 22 counsel? They should be part of our court  
 23 reporter's records.

24 MR. KLINE: We plan to take a snapshot  
 25 of them and make them part of the book of

1 (Pledger v Janssen, et al.)

2 THE COURT: For our court reporter.

3 But the reason we are taking note of these now  
 4 is so there is no objection later to the use  
 5 of these things, because they have been marked  
 6 and they are part of the evidence and they  
 7 have been seen by the jury, and we don't want  
 8 a hassle during closing arguments. And so  
 9 that means we need the originals. So I am  
 10 just wondering, where are the originals?

11 THE COURT CRIER: I am going to take  
 12 them.

13 THE COURT: And Ms. Sullivan had a  
 14 couple, too.

15 THE COURT CRIER: Yes.

16 THE COURT: All right, let's go.

17 (JASON GILBREATH, having and previously  
 18 sworn, resumes the witness stand.)

19 (The jury enters the courtroom at  
 20 10:01 a.m.)

21 THE COURT: All right, be seated. Good  
 22 morning, everybody. We are now going to  
 23 resume the direct examination as if on cross  
 24 of Mr. Gilbreath by the Plaintiffs.

25 What that means is that this is a

(*Gilbreath - As on Cross*)

witness who is on the Plaintiff's case, all right, this is a witness on the Plaintiff's case so it should be evaluated according to the Plaintiff's proof.

So, Mr. Kline, you may proceed now with your direct examination.

---

AS ON CROSS-EXAMINATION

---

BY MR. KLINE:

Q Your Honor, good morning. Members of the jury, good morning all, and good morning, sir. Second night in our city.

A It's a great city.

Q I couldn't agree with you more. We left off with your sales calls, and I have been preparing a chart listing them all and I would like to continue.

My first goal is to go back and cover a few visits. Having the benefit of last night, I picked up a few more samples that you dropped off that were not previously found by you and me, so I might want to go there for starters, that's my goal.

A Okay.

Q And then my hope is to go through those and

(*Gilbreath - As on Cross*)

For example, 80 .5s would be --

MR. MURPHY: Objection, Your Honor, is this a question? This is just testimony.

MR. KLINE: I am getting back to where we were.

THE COURT: That's overruled. You may generally lay a foundation, but I am aware of time issues involved in this trial.

MR. KLINE: I know, Your Honor, I just want to put it back where we are: And the 160 .25s equal 80 .5s, and that's where we are. That's all I was trying to do.

BY MR. KLINE:

Q Now I want to go back and pick some things up as efficiently as we can. I would like to display 62(J), which takes us back to 9-12-03. I simply want to go to the samples. This would be for 9-12-03. Do you have it?

A Yes.

MR. KLINE: All right, we are allowed to display. I would -- do you need the Bates number? Okay, it was a switching issue.

Q For 9-12-03, we had picked up the 30 milliliter solution, the 300 milligrams equivalent

(*Gilbreath - As on Cross*)

ask you some other questions.

A Of course.

Q Thank you, sir. We were in the middle of a number of exhibits. We talked about milligrams, math, milligrams with milliliters, and I marked that 65 for the jury's benefit. And I had marked a chart of sales calls under the 64 exhibit number, now bearing 64(A), the visits 5-3-02, 8-8-02, 9-9-02, 11-19-02, and 3-11-03. And we are going to go back to just a few of them. New stuff, not old stuff.

And then 64(B) now has a sticker and I marked that as the chart of 8-5-03, 8-26-03, 9-12-03 and 10-14-03, 11-17-03.

And then 64(C) I marked the visits of 12-9-03, 1-13-04, 2-12-04, 3-2-04, 4-5-04, 5-18-04. And we were currently working on 62(D), which is 6-1-04 and 6-3-04, and we had left off with a discussion of you dropping off 20 M-tabs, and we were consistently doing it, as a recollection here, to put it in perspective, when we had .25 milligrams we were counting up the number of tablets in the packet, and then if they were .5 milligrams we were breaking down the .25 equivalent, which are the numbers out in the right-hand column.

(*Gilbreath - As on Cross*)

of the drug, and we did not pick up that you also dropped off ten .25 packs. Do you see it?

A I do see that.

Q I think we just collectively missed it maybe. But ten .25 milligrams, 1X7. So that would be 70 more .25s dropped off to Dr. Mathisen for when we do a final total here. Would you agree?

A Yes.

Q Moving right along, also, if I can pull up P-62(L), which was the visit of 11-17, also on our display chart 64(B).

On 11-17, you and I had picked up that you had dropped off five .5 milligrams doses, 1X7 packs, and we did not pick up that there was an additional group of samples you dropped off that day. Do you see them there, sir?

A I do.

Q And you dropped off some M-Tabs, correct?

A Yes, that's indicated in the record.

Q And those are .5 milligrams, half milligrams, correct?

A That is correct.

Q And let's see what you dropped off. You dropped off five 4x20s?

(Gilbreath - As on Cross)

1 A Yes.  
 2 Q So that would be 20 times five. That would be  
 3 a hundred .50s, correct?  
 4 A One hundred .5s, yes.  
 5 Q When I put on this chart 50, 50s are  
 6 .5 milligrams?  
 7 A I apologize, yes.  
 8 Q I just want to make sure we all know the lingo  
 9 I adopted here.  
 10 So in .25s, that would be the  
 11 equivalent of a hundred more .25 doses, if they were  
 12 broken into .25 doses, correct? Quarter doses,  
 13 correct?  
 14 A Yeah.  
 15 Q Okay. So we picked up that one which I missed  
 16 yesterday. So for 2-12-04, which is?  
 17 THE COURT: P-62(O).  
 18 Q Yes, P-62(O), the calculation is in my hand  
 19 chart in front of me, 64(C), and bear with me, this  
 20 is 2-12-04, and we have -- we picked up five  
 21 4x1x20s, if we can highlight that quickly, what we  
 22 picked up. Those appear to be M-Tabs, correct, sir?  
 23 A Yes.  
 24 Q The dissolvable tablet in the mouth?

(Gilbreath - As on Cross)

1 .25 milligrams, if it were broken down into that  
 2 dose. Correct, sir?  
 3 A Repeat that one more time, please.  
 4 Q Yes, it would be 70 .25s in that packet, 30  
 5 .50s equaling 70 .25s -- I am sorry, oh, no, I am  
 6 wrong.  
 7 Seven times ten is 70. They are 1X7s,  
 8 so they are ten packs of seven, it's 70 .50 tablets,  
 9 if you broke them in half equaling 140 .25s,  
 10 correct?  
 11 A Yes.  
 12 Q And 62(S), which is 6-1-04. I don't think we  
 13 got to 6-1-04 yet yesterday. Correct, Mr. Gomez?  
 14 MR. GOMEZ: We did.  
 15 THE COURT: 62(S).  
 16 Q 62(S) is displayed to the jury, and I am  
 17 working on my chart 64(D), having previously made  
 18 the entry on 64(C).  
 19 So 64(D) on 6-1-04, we had picked up  
 20 that you dropped off ten .5 milligrams, 1X7s, which  
 21 would be 70 of .50s, broken in half would be 140 of  
 22 .25s. We also did not pick up yesterday on 6-1-04,  
 23 Exhibit 62(S), that there were also five  
 24 .25 milligrams in an 1X7 pack, correct?  
 25

(Gilbreath - As on Cross)

1 A Yes.  
 2 Q But we missed a bunch more. Do you see that?  
 3 A I do see two additional entries.  
 4 Q And we are going to add for 2-12, ten of  
 5 .25-milligram 1X7s, so that's an additional 70 .25s,  
 6 correct?  
 7 A Yes.  
 8 Q And by the way, in .25-milligram dosages,  
 9 correct?  
 10 A In .25-milligram dosages, yes.  
 11 Q Right. And we also missed five M-Tabs in  
 12 .5 milligrams, and those were 4x1x20s. So that  
 13 would be 20 times five equals a hundred of .5s, or  
 14 in .25s, that would be 200 more .25s, correct? If  
 15 they were broken in half.  
 16 A Yes.  
 17 Q Okay. 62(Q). 62(Q) is 4-5-04. We had picked  
 18 up five 1X7s unscored. And we had our discussion  
 19 about unscored, just to put it in context?  
 20 A Yes.  
 21 Q And you also dropped off that day, ten .50s in  
 22 1X7. Correct?  
 23 A Yes.  
 24 Q So that's 35 .50s, equaling 70 of

(Gilbreath - As on Cross)

1 A Yes.  
 2 Q So that would be an additional 35 of .25s that  
 3 you dropped off that day, correct?  
 4 A Yes.  
 5 Q And on 6-30, that would be P-62(T) -- correct,  
 6 Mr. Gomez?  
 7 MR. GOMEZ: Correct.  
 8 MR. KLINE: Is this now a new display?  
 9 The jury, I do not believe, has seen this one  
 10 before, correct?  
 11 THE COURT: 62(T) was shown.  
 12 MR. KLINE: Okay, I lost track.  
 13 THE COURT: 6-30-04.  
 14 MR. KLINE: Yes, thank you.  
 15 Q 6-30-04, we picked up the 20 M-Tabs, you also  
 16 in addition to the 20 M-Tabs dropped off five .25s  
 17 in a 1X7 pack. So that's an additional thirty-five  
 18 .25s, correct?  
 19 A Yes.  
 20 Q Okay, now, we are moving forward to 7-27-04.  
 21 You were back again within a month, correct?  
 22 A Yes, about a month.  
 23 Q 62(U), we are marking as 62(U), the sales call  
 24 of 6-30-04.  
 25



(*Gilbreath - As on Cross*)

1 matter of fact, what we have seen here today, or  
 2 yesterday, is how the policy of -- in these exhibits  
 3 which are 64(A), (B), (C) and (D), we show how you  
 4 meticulously followed the policy of not giving drugs  
 5 to an unqualified pediatrician, correct, sir?

6 MR. MURPHY: Objection, argumentative.

7 THE COURT: Sustained.

8 Q So when the policy changed, sir, it was about  
 9 the middle of 2004, correct, about?

10 A I don't recall the exact date, but that sounds  
 11 appropriate.

12 Q And there was discussion in the company, of  
 13 which you were aware as a sales representative, that  
 14 it was important to actually follow the rules.

15 Correct, sir?

16 A Yes. We always --

17 Q That's not my question. My question is -- we  
 18 will judge whether the rules were followed.

19 A Okay.

20 Q The question, sir, is was there a policy put  
 21 into effect, a new policy put into effect in 2004,  
 22 that's all I need to know, about actually following  
 23 the rules? Yes or no?

24 MR. MURPHY: Objection, asked and

(*Gilbreath - As on Cross*)

1 A It was pre-populated, meaning there were a  
 2 menu of options to select what was discussed with  
 3 the physician.

4 Q Okay, and so what was discussed was the  
 5 "flexible dosing for easy titration including oral  
 6 disintegrating formulation," correct?

7 A Yes, that's what was selected.

8 Q And that was the discussion that you had with  
 9 Child Neurologist Mathisen that day, correct?

10 A Yes, it's indicated in the record.

11 Q And then you saw him again on 9-8-04. And you  
 12 didn't drop off any samples, correct?

13 A Correct.

14 Q By the way, at this point did you know, sir,  
 15 that it was in the works by Janssen to try to get  
 16 approval for an indication for children with autism?  
 17 Did you know that was in the works?

18 A I don't know if I knew at this time. I mean  
 19 we became aware of it at some time, but I don't know  
 20 if it was at this juncture or not.

21 Q Well, when the company was trying to get a new  
 22 indication, would you as a salesperson back then,  
 23 generally know what the company was up to and what  
 24 indications were coming next?

(*Gilbreath - As on Cross*)

1 answered.

2 THE COURT: I don't understand the  
 3 answer. Go ahead and ask it again.

4 MR. KLINE: I will withdraw it. If it  
 5 was asked and answered I withdraw it. Let's  
 6 go to 8-17-04.

7 Q 8-17-04, which is Exhibit 62(V), it's up  
 8 there, it's listed as another professional call.  
 9 With a presentation only, correct?

10 A Yes.

11 Q And, sir, there is a message that you actually  
 12 typed in this time, correct?

13 A Actually, as I recall, I did not physically  
 14 type that in. There was a time where drop-down  
 15 menus were actually included to capture the majority  
 16 of the discussion, you know, what was the item  
 17 presented.

18 So this was not typed in at this time.  
 19 It was free text up until a period of time, but this  
 20 one was not free-handed in there, it was a  
 21 drop-down.

22 Q Did you call it pretext?

23 A I am sorry?

24 Q I didn't hear the word you said?

(*Gilbreath - As on Cross*)

1 A No, generally only when it was near term, like  
 2 12 months or less, would we know about it. But I  
 3 don't recall exactly what time we became aware of  
 4 the pursuit of an indication for this.

5 Q Well, this is within 12 months of the company  
 6 going to the FDA. Do you know if you knew or you  
 7 didn't know?

8 A I don't think I knew. I mean at some point I  
 9 did, I just don't know when it was right now. I  
 10 really don't know.

11 MR. KLINE: Okay, 62(W). Is that  
 12 9-8-04?

13 (P-62(W) is marked for identification.)

14 Q No samples again, correct, sir?

15 A That's correct.

16 Q Right. Because by this time, sir, by this  
 17 time, you knew that you weren't supposed to drop off  
 18 samples to a doctor like Dr. Mathisen, correct, sir?

19 MR. MURPHY: Objection, Your Honor,  
 20 argumentative.

21 THE COURT: Overruled.

22 Q Is that correct, sir? That's why this changed  
 23 all of a sudden?

24 A That's not correct. It was appropriate to

(Gilbreath - As on Cross)

1 drop samples off with Dr. Mathisen at his request  
 2 all along because he told me initially and all along  
 3 that he saw adults with schizophrenia.  
 4 Q I didn't ask you all along, I didn't ask you  
 5 at his request. I said, now you knew, sir, we have  
 6 been watching you drop off samples in the hundreds  
 7 of doses, at one point over a thousand doses. Now  
 8 all of a sudden there were no samples being dropped  
 9 off. What changed?

10 A I only suggest that he didn't request them,  
 11 because I would have provided them had he requested  
 12 them as I always had.

13 Q I am going to suggest something different to  
 14 you. I am going to suggest that the company  
 15 admonished people and told them there was a new  
 16 policy here?

17 MR. MURPHY: Objection, Your Honor,  
 18 it's not a question.

19 THE COURT: As far as the term  
 20 "admonish", I am going to sustain that. Ask  
 21 him another way, get an answer and let's move  
 22 on.

23 Q The company cracked down, correct, sir?

24 A Not in my opinion it was a crack down, we had

(Gilbreath - As on Cross)

1 Q No samples again, correct?  
 2 A That is correct.  
 3 Q Fifteen times previously you had given  
 4 samples, and now three times in a row you don't.  
 5 Correct?

6 A Three times at the end, that is correct.

7 Q Would you agree with me, sir, that something  
 8 changed other than Dr. Mathisen all of a sudden not  
 9 wanting the medicine?

10 A No, not in my recollection anything changed.  
 11 I don't know -- the only thing I can read into this  
 12 is that he simply didn't request them.

13 Q You don't have any -- go ahead, finish?

14 A If I had samples at the time and he had  
 15 requested them, I would have provided them as I had  
 16 all along.

17 Q But you have no recollection, correct?

18 A Correct.

19 Q No note, correct?

20 A Correct.

21 Q No record, correct?

22 A Correct. Not from these records but --

23 Q Just an explanation, correct?

24 A I don't know if I understand an explanation.

(Gilbreath - As on Cross)

1 had the policy in place all along, it was just a  
 2 formal way to capture it at this point.

3 Q And the company knew they were in trouble,  
 4 correct?

5 MR. MURPHY: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q And you saw him one more time, 62(X).

8 (62(X) is marked for identification.)

9 Q Did you read the newspapers at that time, sir?  
 10 Were you reading the newspapers?

11 MR. MURPHY: Objection.

12 THE COURT: I am going to caution  
 13 counsel here.

14 MR. KLINE: Okay.

15 Q The last one, I think, and then we are  
 16 going -- and he handed him over to another -- I  
 17 think to Ginger. This is 10-18-04. And if I can go  
 18 back to the other two previous ones. (Pause.)

19 MR. KLINE: Chris, he doesn't have (X).  
 20 It may be out of order. Bear with us. Thank  
 21 you all for being patient.

22 Q For (X) it's a presentation only, on 10-18-04,  
 23 correct?

24 A Yes.

(Gilbreath - As on Cross)

1 What do you mean by that?

2 Q So let's now look at this last one that you  
 3 did, and you say that, your message drop-down on  
 4 your presentation, this is about the presentation,  
 5 correct?

6 A Yes.

7 Q It says, "Risperdal flexible dosing for easy  
 8 titration including orally disintegrating  
 9 formulation (Risperdal M-Tab)." Correct?

10 A Yes.

11 Q Now I would like to do a call out of 62(V),  
 12 (W) and (X), for these three dates.

13 Sir, three times in a row, on this  
 14 date, this date, and this date, being 8-17-04,  
 15 9-18-04, and 10-18-04, you, in addition to dropping  
 16 off no samples, claim to have given the same exact  
 17 presentation. Correct?

18 A The same record was selected, yes.

19 Q When you say the same record was selected,  
 20 this says what you would have talked to him about,  
 21 correct?

22 A Yes. It's one of the things, yes.

23 Q This is a serious question: do you think Dr.  
 24 Mathisen had a learning disability and he didn't

(Gilbreath - As on Cross)

1 pick it up the first time?

2 A I am not aware of Dr. Mathisen having a  
3 learning disability, no.

4 Q You didn't talk to him three different times  
5 about Risperdal's flexible dosing for easy  
6 titration, did you, sir? That doesn't make any  
7 sense. Can we agree?

8 A No, that would have been one of the things  
9 that we spoke about. In every interaction we used  
10 the guidance included in the FDA-approved label as  
11 well as the approved materials that were supplied.  
12 So this was probably not the entire balance of the  
13 discussion but it was on the select menu.

14 Q In two days, sir, how many times have you said  
15 the FDA's approved label and the FDA's-whatever you  
16 keep saying? How many times have you said that, do  
17 you think?

18 MR. MURPHY: Objection, Your Honor,  
19 it's argumentative.

20 MR. KLINE: It's a question.

21 THE COURT: That's a question, I will  
22 permit that.

23 Q How many times do you think you have in front  
24 of this jury recited those same words that you

(Gilbreath - As on Cross)

1 eventually was established December 13, 2004. Does  
2 that sound familiar to you?

3 A I don't know exactly the date that it was  
4 established but --

5 Q Does it sound it would have been around  
6 December, sir?

7 A I really don't know.

8 Q And did you know that beginning immediately at  
9 that point you needed to ask the current or  
10 perspective customers a qualifying question? Do you  
11 remember that, sir?

12 A Yes, the Qualifying Customer Initiative was  
13 where we asked a physician what we had asked all  
14 along, do you see patients that meet the  
15 qualifications of the label.

16 Q But you see, sir, you don't usually need a  
17 policy to enforce if that's what was happening all  
18 along, usually in a company and including one that  
19 you have now made your way up the ranks, correct?

20 MR. MURPHY: Objection, Your Honor.

21 THE COURT: That's sustained as to what  
22 the company usually does.

23 Q Sir, after the qualifying customer policy went  
24 into effect, and you do agree with me that a

(Gilbreath - As on Cross)

1 recited in your last answer? How many times?

2 A I really haven't kept count.

3 Q Would it surprise you if it was more than ten  
4 when we go back to the transcript before closings?

5 A No, it's common --

6 Q Common parlance? That's how you talk?

7 A Yes.

8 Q Okay. I get it. Now, let's finish a couple  
9 of things here. Bear with me.

10 Now, sir, I am going to suggest  
11 something to you, maybe we can do it without a lot  
12 of exhibits and things. On December 13 of 2004,  
13 there was a memo. Did you go over it prior to your  
14 testimony here today, sir, in preparation? I would  
15 just like to know, then I will know if you are  
16 familiar with it.

17 A I don't have a specific recollection of that,  
18 no. It's possible during the deposition preparation  
19 and this, but I don't have a recollection of it as I  
20 sit here right now. If I see it I may recognize it.

21 Q You know there was a thing called Qualifying  
22 Customers Initiative, correct?

23 A Yes.

24 Q And this is what was the formal policy that

(Gilbreath - As on Cross)

1 qualifying customer policy went into effect, do you  
2 agree with me on that?

3 A Yes.

4 Q And can we agree it was in December of 2004?

5 A We had asked the question all along.

6 Q I heard you say that over and over, sir. You  
7 asked it over and over again to Dr. Mathisen, you  
8 said, Dr. Mathisen, on the day that you handed him  
9 1592 doses of the drug, you asked him that question.  
10 I have heard you say that.

11 A I don't know if I asked him the question that  
12 day, but I asked him periodically, yes.

13 Q You did. And everyday you went there, sir,  
14 the sign didn't change on his office door, did it?

15 A I don't really recall his sign on his door.

16 Q Pediatric Neurologist. If you don't recall.

17 A Okay.

18 Q And, sir, this qualifying the customer policy  
19 that you say was just something you did anyway, the  
20 fact of the matter is that after that policy went  
21 into effect, you stopped seeing Dr. Mathisen.

22 Correct?

23 MR. MURPHY: Objection, Your Honor.

24 THE COURT: Overruled.



(Gilbreath - As on Cross)

Now what he actually, after he had custody of those samples, who he provided those to were explicitly his --

Q His business. His business?

A Yes.

Q Right. I get it.

And to follow up on that question, sir, so on this day when you gave him 13 bottles containing --

THE COURT: What day was that, counsel?

MR. KLINE: 12-9-03.

Q When you gave him 13 bottles of 592 .25-milligram doses, what he did with them was his business, correct, sir? Yes or no?

A Yes, it was the discretion of every prescriber. Once samples left our custody they were in the custody of the prescriber to do with in their professional medical judgment.

Q And could you agree with the statement I made, once you handed him those 30 bottles, what he did with them was his business; correct, sir?

MR. MURPHY: Objection. Asked and answered.

Q Is that a correct statement?

(Gilbreath - As on Cross)

A I cannot dispute that, no. I don't have them in front of me, but I know there was a gap.

Q And by the way, sir, the term that you used for these were "sales calls," correct?

A They were used interchangeably. Physician visit, sales call, that's the same thing.

MR. KLINE: I want to mark this as the next exhibit number. P-66, no sales calls time period.

(P-66 is marked for identification.)

Q By the way, sir, I believe we have learned from another witness that approval for autism was 10-6-06, approval, with the new label. And you became familiar with that new label, didn't you?

A I did.

Q And you knew that that new label had a pediatric indication. Correct?

A It was for treatment of irritability associated with autism disorder, yes.

Q And you also knew it contained different warnings than were previously on the package insert, correct?

A Yes. There was an updated label with the -- supportive of the newly approved use.

(Gilbreath - As on Cross)

THE COURT: I believe that question is related to the previous question.

A Would you repeat the question?

Q I will, the fourth time.

MR. MURPHY: Exactly.

Q Once the 1592 doses got in the hands of the child neurologist, what he did with them was his business; can you agree, yes or no?

A It was his business, yes, and --

Q That's what I needed to know.

A And I would also submit, though, every physician had the responsibility of that because I have no bearing on what a physician -- how they use sample medication after it leaves my custody because we can't weigh in on individual patient cases of any kind or of any age.

Q Yes, I have the answer, sir.

Now, no visits, according to the records, and tell me if you have any evidence to contradict this, sir. By the way, you went through the call notes, you sat down, I think you told me with three lawyers, went through the call notes. You saw no call notes from 11-18-04, no visits, from 11-18-04 through 10-30-06. Correct?

(Gilbreath - As on Cross)

Q I know it was an updated label, I know it was supportive of the new use. My question was a completely different one. It had new warnings on it, correct, sir?

A It had new safety information which included warnings and precautions and any other clinical trial data as well.

Q I didn't ask about clinical trial data or any other stuff. I asked you if it had new warnings on it?

MR. MURPHY: Objection, Your Honor, he answered the question.

THE COURT: I am going to direct the witness to answer just the question. Otherwise we will be here for a little.

Q It contained new warnings?

A Yes. I don't have the label in front of me, but, yes.

Q You darn well know that it contained 2.3 incidence of gynecomastia, correct?

MR. MURPHY: Objection, Your Honor. That's argumentative.

THE COURT: That's sustained as asked.

MR. KLINE: What can't I ask?



(*Gilbreath - As on Cross*)

anything having to do with Risperdal. Do you want me to do that now? There was no answer to the question.

MS. SULLIVAN: The better instruction is to disregard all comments by counsel. It's not evidence.

THE COURT: That goes for you as well. I will do that any time.

MS. SULLIVAN: This was a blatant and knowing violation --

THE COURT: I will do that any time.

MS. SULLIVAN: Did you read the newspaper about violations of the law --

THE COURT: I know you have been very quiet so far, Mrs. Sullivan, but I will do that at any time for both counsel to disregard all the side comments that were made as part of your compounded questions for both counsel.

MR. MURPHY: That would satisfy me, Your Honor.

THE COURT: I will do it right now.

MR. MURPHY: I appreciate it.

THE COURT: We will take a recess for ten minutes.

(*Gilbreath - As on Cross*)

MR. KLINE: Your Honor, thank you.

BY MR. KLINE:

Q Home stretch, at least for me, sir.

A Okay.

Q During the break I did some math, and hopefully, we won't have to stand here with a pencil, we can check it at some point, but I am marking it as the next exhibit, P-67.

(P-67 is marked for identification.)

Q Sir, when we go through all of your exhibits, all of your sales calls, which were in the 64 Exhibit series, your sales calls to Dr. Mathisen in that period of time from 2002 through 2004, you visited him 21 times, correct, sir?

A Yes.

Q And if you were to break it down in .25-milligram categories, you provided 16,505 .25 doses to this child neurologist. Does that sound about right, without having to run through all the math? Would you trust me on it?

A I have not done the math, but I understood how you got there so I am in no position to dispute that.

Q Okay, sir, even if you looked at it in 1

(*Gilbreath - As on Cross*)

(A brief recess is taken.)

(The jury enters the courtroom at 11:14 a.m.)

THE COURT: All right, members of the jury, a couple of things I want to point out, actually tell you. We have a juror here who is a teacher at a charter school, I want to let you know some good news, that the board of trustees has voted to change its policy, and all persons who are on a jury shall be paid beyond the five days.

So our juror who is serving on the jury who is a teacher at the charter school in question has no worries. So that's nice to know.

The other thing is a reminder that questions by any attorney who is asking any questions at any time, that is not evidence. Just remember that. That is not evidence. Only testimony from the witness stand or other things that have been admitted pursuant to these rules over here, the Rules of Evidence, that's evidence. Questions are not. Okay?

All right, you may proceed.

(*Gilbreath - As on Cross*)

milligram, and we had a discussion about whether they were scored or unscored tablets, whether you could break the ones or not, whether you could bite the ones or not down, even if you look at this in 1 milligram tablets, you provided 4,126. That would be if some schizophrenic patient was taking four of the .25s rather than a child taking .25 out of the 1s. Even at that, you have 4,126 milligrams of this drug which you dropped off. Correct?

A I see how you got the math, yes.

Q Now, at the time, sir, and I am happy to show you a document or happy to just have an agreement on this, at the time, Janssen, on Risperdal prescriptions for individuals under the age of 18, you sales reps, sir, were being incentivized, on those prescriptions. Correct, sir?

A I do not know. I know there was a time when those were carved out. I don't recall exactly when that time was.

Q Yeah, that's the point. In December 13, 2004, and I am referring to -- I will mark Plaintiff's Exhibit No. 68.

(P-68 is marked for identification.)

MR. KLINE: I marked the chart



(*Gilbreath - As on Cross*)

1 we know that you left off on 10-18-04. That was  
2 your last sales call, right?

3 A Yes.

4 Q And, sir, you remained an elder care sales rep  
5 in this region until how long?

6 A I think it was January or February of 2006.

7 Q So I am going to mark in here on Exhibit 66,  
8 the label change was 10-30-06, and Gilbreath  
9 promotion -- what date?

10 A I think officially, February of 2006.

11 Q 2006. So we now know that from  
12 10-18-04 through 2/06, you remained as a sales rep  
13 in that region yet never went near Dr. Mathisen,  
14 correct?

15 A I did not see him after 10-18-04.

16 Q In any capacity, correct?

17 A Not to my recollection, no.

18 Q Do you have any notes or records that you  
19 tried?

20 A No.

21 Q And then what happened was in March of 2006,  
22 your having gotten your promotion 2/06, I am writing  
23 on P-66, "2/06 Gilbreath promotion."

24 On March 6, 2006, I have an E-mail -- I

(*Gilbreath - As on Cross*)

1 BY MR. KLINE:

2 Q Sir, let me show you an exhibit, before  
3 displaying it I will put it in your hands, P-69.

4 This comes March and it's an E-mail  
5 from you to Marc Marano. Who is Marc Marano?

6 A In March of 2006, he would have been my boss.

7 Q And this is, you are now leaving, and of  
8 course, in leaving there needs to be a smooth  
9 transition and get everybody put in the right  
10 places. That's what this is about, correct?

11 A I will have to read it, but it sounds  
12 reasonable.

13 Q Yeah. It says "Attached is a work-with letter  
14 for our session last Thursday and Friday. Hard copy  
15 to follow. You are off to a great start"?

16 A Yes.

17 Q Nice to hear.

18 A Yes.

19 Q "And I look forward to catching up with you  
20 soon. If you have any questions, don't hesitate to  
21 call." Marc Marano, and that's to you.

22 And then attached to this there is an  
23 E-mail from your boss to you dated 3-5-06?

24 A Yes.

(*Gilbreath - As on Cross*)

1 don't have a JJ RE number on this. And I will mark  
2 it as an exhibit, JJ RE-15727492.

3 Exhibit P-69. It is an E-mail with  
4 attachments, being handed to the Court. I will wait  
5 before I discuss it with the witness.

6 THE COURT: Any objection?

7 MR. MURPHY: We don't have it.

8 MR. KLINE: It's coming.

9 (P-69 is marked for identification.)

10 Q And by the way, while we are marking it and  
11 they are examining it, let me ask you a few  
12 questions. The pills themselves, have you ever had  
13 them in your hands, Risperdal pills?

14 A I don't recall having anything besides the  
15 sample packages in my hands.

16 Q You are well aware of the fact, whether scored  
17 or unscored, they could simply be either broken or  
18 just bitten. You are aware of that fact?

19 A Yes.

20 MR. MURPHY: Your Honor, with regard to  
21 what's been marked as P-69, it is again  
22 irrelevant, beyond the time period. That's my  
23 objection to it for the record.

24 THE COURT: Overruled.

(*Gilbreath - As on Cross*)

1 Q Do you see it?

2 A Yes.

3 Q And it is marked as part of P-69. For the  
4 technician's benefit it is JJ RE-15727493.

5 And it says, Rep Responsibilities?

6 A Yes.

7 Q "For the most part territory activity is  
8 complete. You have transitioned" -- and it's called  
9 a key appointment -- "key appointments, samples and  
10 programs to Ginger Owen in late February."

11 Do you see that?

12 A Yes.

13 Q So when you left in late February of 2006,  
14 Ginger Owen is now in this position of key  
15 appointments, samples and programs, correct?

16 A Yes.

17 Q And then I have marked as 62(Y), the  
18 appointment of -- well, I will show it to counsel,  
19 62(Y). It's a call note, 10-30-2006.

20 MR. MURPHY: 10-30, counsel?

21 MR. KLINE: Yes.

22 MR. MURPHY: No objection.

23 (P-62(Y) is marked for identification.)

24 MR. KLINE: I would request to display

(Gilbreath - As on Cross)

1 it as per our usual custom.

2 Q This is 62(Y). We are now in October of 2006.  
 3 10-30-06. I am marking my hand tablet as 64(E),  
 4 which is a continuation of sales calls.

5 And what is Ginger's last name?

6 A Owen. O-W-E-N.

7 Q And we can look at it and see that there was a  
 8 presentation. By the way, on 10-30-06 -- do you see  
 9 it?

10 A I do.

11 Q The day the drug got an autism approval, the  
 12 saleslady was in Dr. Mathisen's office. Correct?

13 MR. MURPHY: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. MURPHY: It's not what the prior  
 16 testimony has been.

17 THE COURT: No, that's overruled. I  
 18 think it was during that month.

19 MR. KLINE: Oh, it was 10-6. Brain  
 20 rewind.

21 Q 10-6 to 10-30. New Question: It took the  
 22 Janssen sales force 24 days to get into Dr.  
 23 Mathisen's office after the autism approval,  
 24 correct?

(Gilbreath - As on Cross)

1 A It looks like she provided .25.

2 Q .25. Based on the new autism label, correct?  
 3 A I don't know what it was based upon. I know  
 4 it looks like she spoke about the autism label.

5 Q Well, the new autism label applied to  
 6 children, correct?

7 A Yes.

8 Q She gave him new autism information. Autism  
 9 information is about children now, it's the new  
 10 indication. There is no autism -- that's what it's  
 11 for, correct?

12 A No, it still had indication for schizophrenia,  
 13 it had indication for bipolar mania, and now autism.

14 Q But it says here that she talked to him about  
 15 autism. It says it right up there, sir. Do you see  
 16 it?

17 A Yes.

18 Q And talking about autism -- it says "the new  
 19 autism information", the new autism information is  
 20 for pediatrics, correct?

21 A The autism indication was in children and  
 22 adolescents.

23 Q Children and adolescents, right?

24 A Yes.

(Gilbreath - As on Cross)

1 A Yes.

2 Q Not having seen him in the time period we have  
 3 already discussed from 10-18-04 through 10-3-06.  
 4 Correct?

5 A Yes.

6 Q Do you know Ginger personally?

7 A I do.

8 Q Had she been an elder care rep?

9 A No, she was a CNS, Ginger was CNS.

10 Q But not pediatric?

11 A No. None of them were pediatric. We were all  
 12 adults.

13 Q And Dr. Mathisen, there is a little note there  
 14 about, that he was "so very happy" -- not just  
 15 happy, very happy -- "to see a Risperdal rep again.  
 16 He says he writes more Risperdal than anyone in the  
 17 state. Thanked him, gave him new autism  
 18 information." And of course, what else did she give  
 19 him?

20 A (No response.)

21 Q Samples? It says presentation and samples?

22 A Yes, I see that. I just didn't see the  
 23 specific sample. I apologize.

24 Q And what samples are given?

(Gilbreath - As on Cross)

1 Q And when she prescribed the medication, let's  
 2 compare with what she gave -- it doesn't say  
 3 anything about having any discussion with him about  
 4 schizophrenia, does it?

5 A No, it's not indicated in that box.

6 Q Right. So she is not there, you would agree,  
 7 talking about schizophrenia, she is there on the new  
 8 autism information?

9 A It says she provided it.

10 Q And if we go back to 64(A) -- let's see here  
 11 for a minute. On 5-30-02, do you see how she gave  
 12 .25 milligrams, 1x7, child dose, as described in the  
 13 label? Do you see that?

14 A It says she provided .25, yes.

15 Q Well, .25 was the new dosing suggestion for  
 16 starting children in that label. We don't have to  
 17 take it out again, do we, sir, can we agree?

18 A On the new label, yes.

19 Q Right. She is giving a .25 child dose 1x7  
 20 starter pack, correct?

21 A Yes.

22 Q Looking back at 64(A), just like Scott Hansen  
 23 did, when he gave ten starter packs of  
 24 .25 milligrams back in 2002, correct?

(Gilbreath - As on Cross)

1 A I don't recall exactly what Scott provided.  
 2 Q It says it right here, right here in front of  
 3 your eyes, ten .25s. We spent sometime doing it.  
 4 A I am sorry, I didn't know you were referencing  
 5 Scott Hansen's call.  
 6 Q Can we agree?  
 7 A Yes.  
 8 Q And when you first showed up, you gave ten  
 9 .25s, .25 1X7s, correct?  
 10 A Yes.  
 11 Q And the second time you showed up, you gave  
 12 five 1x7s, correct?  
 13 A Yes.  
 14 Q Of .25 milligrams, correct?  
 15 A Yes.  
 16 Q Just like she did when it's now approved with  
 17 new warnings on the label. Correct?  
 18 A Yes. I don't have the label in front of me,  
 19 but, yes.  
 20 Q A kid's dose, correct? A kid's starter dose?  
 21 A The .25 dose was in the label all along. It  
 22 was -- it's a provided strength is what I am saying.  
 23 Q Do we have to go back and see that the  
 24 indicating starting dose where we were way yesterday  
 25

(Gilbreath - As on Cross)

1 here until, you know, tomorrow, Mr. Gilbreath.  
 2 We just need the answers and then we can move  
 3 on.  
 4 THE WITNESS: Of course.  
 5 Q Do you remember where you were?  
 6 A Actually, I don't, I apologize.  
 7 Q What I was trying to --  
 8 A Oh, special population.  
 9 Q I was trying to see if you would agree with  
 10 me, okay?  
 11 A I don't know the actual scope of a special  
 12 population, but I do know it's referenced in the  
 13 label.  
 14 Q Sir, when a bottle of this medicine was  
 15 provided, like one of those 30 milliliter bottles?  
 16 A The oral solution?  
 17 Q Yeah.  
 18 A Yes.  
 19 Q What was that worth?  
 20 A Financially?  
 21 Q What would it cost at the pharmacy, yeah.  
 22 150 bucks?  
 23 A I don't know the cost at the time.  
 24 Q No idea?

(Gilbreath - As on Cross)

1 for adult schizophrenics was 1 milligram, four times  
 2 .25, and the starting dose for bipolar was  
 3 2 milligrams, eight times of .25. Do you recall  
 4 talking about that yesterday?  
 5 A Yes, I recall it from yesterday.  
 6 Q The company was making it in .25s, at that  
 7 time, correct?  
 8 A Yes, FDA had approved it in .25s.  
 9 Q But there was no indication as a starting dose  
 10 for any adult at .25?  
 11 A There were special populations in the label,  
 12 and once again, they used it in titration and things  
 13 like that.  
 14 Q I get it. Special populations are that narrow  
 15 band of people that may need some special  
 16 consideration, correct?  
 17 A Yeah, I don't know the definition of special  
 18 population per se but I --  
 19 Q You would expect it to be small, that's my  
 20 point.  
 21 MR. MURPHY: Objection, Your Honor, the  
 22 witness should be allowed to answer the  
 23 question.  
 24 THE COURT: Sustained. But we will be

(Gilbreath - As on Cross)

1 A Probably 100, \$200. I really don't know.  
 2 Q In terms of the value of what you were  
 3 dropping off, the value of these pills on some of  
 4 these days was literally a few thousand dollars;  
 5 correct?  
 6 A I would have to look at the pricing sheets  
 7 but --  
 8 Q That wouldn't surprise you?  
 9 A Yeah, if it was bought at a retail pharmacy,  
 10 it would be several dollars.  
 11 Q Sir, you actually weren't the first -- Scott  
 12 Hansen and you weren't the first sales reps in  
 13 Mathisen's office. You are aware of the fact that  
 14 back in 1997, when we have already heard in this  
 15 courtroom there was meager safety data, there was a  
 16 Janssen -- I am going to rephrase the question.  
 17 In 1997 to 1998, there was a sales  
 18 representative in the office of Dr. Mathisen of  
 19 Janssen dropping off samples, correct?  
 20 MR. MURPHY: Objection, Your Honor.  
 21 THE COURT: If you know. Do you know?  
 22 THE WITNESS: I don't. That was before  
 23 I even joined the company.  
 24 Q I know it was before you joined the company,

(Gilbreath - As on Cross)

1 sir, but you are telling me that you haven't  
 2 reviewed the documents of the prior sales rep even  
 3 to the point of sitting in this witness stand today?  
 4 A I can tell you I knew that Scott Hansen was in  
 5 there previously, but I am aware of no one else.

6 Q Really?

7 A Yes, really.

8 Q Let me see if I can refresh your recollection.  
 9 I need the full 62 exhibit in front of me, quickly.

10 A Okay, I am going to move on.

11 Sir, there are a couple of things I  
 12 want to pin down. Am I correct that you as a sales  
 13 rep back then were not allowed to share any  
 14 information about Risperdal, whether safety or  
 15 efficacy, if not approved by Janssen?

16 A That's correct. Or the FDA-approved label.

17 Q Nothing to do with the FDA-approved label. I  
 18 want to know, I am asking you the same exact  
 19 question you said yes to in your deposition, sir.

20 A You are not allowed to share any  
 21 information about Risperdal, whether safety or  
 22 efficacy, if not approved by Janssen. You said yes  
 23 to that question without any explanation. Would you  
 24 agree you said yes to that?

(Gilbreath - As on Cross)

1 THE COURT: Overruled. Again, this has  
 2 to do with just answer the question. Answer  
 3 the question so we can move forward.

4 A His was a busy office.

5 Q Yes. And when you waited in there in that  
 6 office, I want you to search your memory. The  
 7 office waiting room was full of parents and  
 8 children, almost all the time?

9 A I really don't remember the waiting room. I  
 10 don't even know if I went through the waiting room  
 11 to see him.

12 Q Do you know?

13 A I don't, actually.

14 Q Do you have any memory?

15 A No, not really.

16 Q So maybe you were in the waiting room,  
 17 correct?

18 A It's possible, but I don't have recollection  
 19 of that.

20 Q Sir, maybe I can save some time on redirect --

21 THE COURT: If there is going to be  
 22 any. I am not sure. I am not sure.

23 MR. KLINE: This is my cross, I mean on  
 24 redirect.

(Gilbreath - As on Cross)

1 MR. MURPHY: Objection, Your Honor,  
 2 it's argumentative.

3 THE COURT: I know you are trying to  
 4 save time, but if that's not going to work,  
 5 ask him the old-fashioned way.

6 Q Simple straight up, sir: You were not allowed  
 7 to share any information about Risperdal, whether  
 8 safety or efficacy, if not approved by Janssen,  
 9 correct?

10 A Correct.

11 Q When you would go to Dr. Mathisen's office,  
 12 sir, you would not always get to see him right away,  
 13 you would have to wait, correct?

14 A Yes. It's common that we would have to wait  
 15 sometimes and I am sure that was the case with Dr.  
 16 Mathisen.

17 Q And his office was a busy office, correct,  
 18 sir?

19 A Yes. I recall him being busy, but virtually  
 20 all doctors' offices are busy.

21 Q I didn't ask you that. Some doctors' offices  
 22 are not busy, you know that. Maybe only the ones  
 23 you go to were busy.

24 MR. MURPHY: Objection, Your Honor.

(Gilbreath - As on Cross)

1 THE COURT: This has to end sometime  
 2 before the summer.

3 MR. KLINE: I hope so. I am trying  
 4 hard with a lot of information.

5 THE COURT: There will be cross  
 6 examination, and if there is redirect it will  
 7 be in the format we did with the other  
 8 witness, ten or 15 minutes.

9 MR. KLINE: Right. I get it.

10 THE COURT: So you have the witness  
 11 here, ask whatever you wish. I have been very  
 12 indulgent that way, but after cross  
 13 examination is over, that's it. Except for  
 14 about a 15-minute period. So wrap it up.

15 MR. KLINE: When I was referring to  
 16 direct I was thinking of me being on cross and  
 17 them being on direct.

18 THE COURT: I understand that. You are  
 19 on direct examination as if on cross, I think  
 20 is how we call it.

21 MR. KLINE: That, too, I agree.

22 BY MR. KLINE:

23 Q What else do you want to tell us, sir? What  
 24 did I miss?

(*Gilbreath - As on Cross*)

MR. MURPHY: Objection, Your Honor.

THE COURT: That's sustained.

Q No, I would like to know if in answer to any of my questions, in case I want some follow-up on it, there is anything else that you would add to the jury that they haven't seen about your visits to Dr. Mathisen?

A No.

MR. MURPHY: Objection, Your Honor, for the record.

THE COURT: Overruled. You have the answer.

A No, I have nothing else to add.

Q Do you believe that we have covered it fully, the way you have seen our discussions?

MR. MURPHY: Objection, Your Honor, these are counsel's questions, its not for the witness to determine whether there has been a full discussion.

MR. KLINE: I want to know what he believes.

THE COURT: That's sustained.

MR. KLINE: Okay, thank you, sir.

THE WITNESS: Thank you, Mr. Kline.

(*Gilbreath - Redirect*)

Dr. Mathisen. Do you recall that?

A Yes.

Q And during the course of his questioning, Mr. Kline suggested to you that toward the end of the time that you were calling upon Dr. Mathisen, those last three times, that those were the only times that you had made presentations. Do you recall that?

A I recall him pointing those three out.

Q But that wasn't true, was it? That is to say, you made a presentation only to Dr. Mathisen on prior occasions, hadn't you?

A Yes, I had.

Q So the suggestion that those last three times were the only three times that you made presentations only would not be correct?

A Correct.

Q One other thing I wanted to clear up is something that you were confronted with regarding the 1 milligram denomination, and whether it was unscored?

A Yes, right.

Q And Mr. Kline's question to you was along the lines that when you made a call in April of 2004,

(*Gilbreath - Redirect*)

MR. KLINE: Thank you. I wish you safe travel, sir.

THE WITNESS: Thank you very much.

THE COURT: You may proceed with cross examination. Counsel, we will be going until about 12:30, 12:45.

MR. MURPHY: May I proceed, Your Honor?

THE COURT: Yes, sir.

MR. MURPHY: Thank you. Good morning, everyone.

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REDIRECT EXAMINATION

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BY MR. MURPHY:

Q Mr. Gilbreath, I want to ask you a few questions, clarify a few things, and march through some questions that I had for you initially.

A Sure.

Q And I am going to ask you and the jury to indulge me a little bit because I will probably have to use the elmo as well as the screen to make sure that everyone can see.

One thing I want to clear up, you were asked questions about presentations that you made to

(*Gilbreath - Redirect*)

that was the first time that you had provided to Dr. Mathisen unscored Risperdal in the denomination of 1 milligram. Do you recall that?

A I do recall that discussion.

Q But it is a fact that every time you dropped off a 1 milligram denomination, it was unscored because all 1 milligram denominations are unscored. Right?

A To my knowledge, we only had one denomination. I don't recall at what point it was scored or not scored, but I do know it was called out like that.

Q Well, let's be fair to you, the record and to the jury, all right?

A Yeah.

Q I am going to use the elmo at this point, and using Mr. Kline's nomenclature, we are looking at 62(F).

MR. KLINE: Ken, would you kindly give me the date?

Q So can you see, Mr. Gilbreath, the reference two from the bottom that says, "Risperdal, 1 milligram, 1X7, unscored"?

A I do.

Q And just to zoom out, this is what we have

## (Gilbreath - Redirect)

1 been talking about at 62(F), right?

2 A Yes.

3 Q And if you see the top, we see a date of  
4 3-11-03?

5 A Yes.

6 Q Okay. And now we are going to look at the  
7 call note from 8-5-03. Do you see that?

8 A I do.

9 Q Bear with me one second because that's not the  
10 one I want. Let's look at the call note from  
11 5-18-04. Do you see that?

12 A I do.

13 Q And now if we look at the bottom, the sample  
14 that was left behind, 1 milligram, 1X7, unscored,  
15 correct?

16 A Yes.

17 Q Okay. That was 62(R). And if we look at  
18 what's been marked as 62(Q), which is a call note  
19 from April 5th, 2004, do you see that at the top,  
20 Mr. Gilbreath?

21 A I do.

22 Q And if we look at what was left behind, the  
23 bottom, the last description of a sample that you  
24 provided, we see 1 milligram, 1X7, unscored.

25

## (Gilbreath - Redirect)

1 MR. MURPHY: I am happy to do so, Your  
2 Honor.

3 MR. KLINE: If he needs to take the  
4 transcript out, I object.

5 THE COURT: What's your question first?

6 MR. MURPHY: The question is whether he  
7 knows that Dr. Mathisen told the jury, in  
8 fact --

9 THE COURT: That's sustained then.

10 What difference does it make whether he knows?

11 MR. MURPHY: What is relevant --

12 THE COURT: It's not relevant. Move on  
13 to another question.

14 MR. MURPHY: Not a problem.

15 THE COURT: He is not supposed to know.  
16 That's why we have sequestration.

17 MR. MURPHY: I understand.

18 THE COURT: All right, so let's move on  
19 to a different angle.

20 BY MR. MURPHY:

21 Q The samples that we went through, Mr. Kline  
22 went through with you for the two years or so?

23 A Yes.

24 Q That you left with Dr. Mathisen, am I correct

## (Gilbreath - Redirect)

1 Correct?

2 A That's correct.

3 Q So again, this is showing that the 1 milligram  
4 denominations all were unscored?

5 A Yes.

6 Q We are clear on that?

7 A Yes.

8 Q Okay. Now, one of the things Mr. Kline  
9 suggested to you was that Dr. Mathisen treated  
10 children almost exclusively. Do you recall that?

11 A He did.

12 Q But you testified that Dr. Mathisen told you  
13 that he also had adult patients?

14 A He did.

15 Q You were not here when Dr. Mathisen testified  
16 in court, were you?

17 A I was not, no.

18 Q And do you know that Dr. Mathisen told the  
19 jury the same thing you told them --

20 MR. KLINE: Objection.

21 THE COURT: That's sustained. It's the  
22 jury's recollection as to what Dr. Mathisen  
23 said. Unless you want to take the transcript  
24 out.

25

## (Gilbreath - Redirect)

1 that you left those samples because Dr. Mathisen  
2 requested those samples?

3 A Yes. All samples were left at physician  
4 requests.

5 Q At one point Mr. Kline confronted you with the  
6 2002 Risperdal label, I believe that is D-1, and --

7 A I am sorry, what did you say, the label?

8 Q Yes, the label. And before we go further,  
9 there has been use of the term "label" and the term  
10 "package insert" and PI?

11 A Yes.

12 Q For the jury's edification, package insert and  
13 label is the same thing?

14 A Yes, it's what the Food and Drug

15 Administration allows for, I would call it  
16 officially prescribing information. There is a

17 Physicians' Desk Reference that contains a big  
18 appendix of all the medications that are available.

19 But label, PI, prescribing information,  
20 package insert, same thing, it's all used  
21 synonymously.

22 Q Mr. Kline showed you the 2002 label and  
23 suggested to you that the recommended dose for  
24 Risperdal in schizophrenia was 1 milligram. Do you

25

*(Gilbreath - Redirect)*

1 recall him having that exchange with you?

2 A Yes, I do.

3 Q And you in fact informed him that there are  
4 special populations where the initial dose in fact  
5 is less than, recommended dose is less than 1  
6 milligram, correct?

7 A Yes.

8 Q Mr. Kline did not invite your attention to the  
9 special --

10 MR. KLINE: Your Honor, objection. Can  
11 we have questions that have to go with what he  
12 asks, not what I call or didn't call to his  
13 attention.

14 THE COURT: Counsel, I haven't heard  
15 the question so it's a little premature. I  
16 just don't know what the question is.

17 MR. KLINE: The question was not a  
18 direct question. It's all about me. It's all  
19 about me.

20 MR. MURPHY: Trust me, it's not all  
21 about you, my friend.

22 THE COURT: There was some leeway  
23 during your examination on this witness and I  
24 am going to permit the same thing here. We

*(Gilbreath - Redirect)*

1 section addressing Special Populations?

2 A Yes. I believe it's actually present in both  
3 labels.

4 MR. MURPHY: Any objection to me  
5 showing that, Mr. Kline?

6 MR. KLINE: Are you talking about the  
7 elderly section?

8 MR. MURPHY: No, I am talking about the  
9 Special Populations, sir.

10 MR. KLINE: I don't have any objection  
11 if you just point it out to me.

12 THE COURT: Has this been previously  
13 marked?

14 MR. MURPHY: Indeed it has. This is  
15 D-1 for the record, Your Honor, and I believe  
16 we are talking about Bates numbers ending in  
17 176.

18 MR. KLINE: It's the 2002 label I  
19 understand.

20 MR. MURPHY: If I said 2006 I  
21 apologize. It's 2002.

22 MR. KLINE: Although I did not display  
23 2002, I have no objection.

24 THE COURT: I think we have actually

*(Gilbreath - Redirect)*

1 don't even know what the question is.

2 MR. KLINE: It should be about them.

3 THE COURT: What is the question?

4 Q The question is, is there not a Special  
5 Population section in the 2002 Risperdal label  
6 setting forth doses for special population?

7 MR. KLINE: Your Honor, objection. I  
8 showed the 2006 label.

9 THE COURT: It's overruled.

10 MR. KLINE: But he has suggested to the  
11 jury that I showed the 2002 label. I showed  
12 the 2006.

13 THE COURT: Not in the question. I  
14 think the way we are going to get through  
15 this, Mr. Murphy, if you just ask the  
16 questions and let's not bring anything else  
17 other than the evidence into the question.

18 MR. MURPHY: That's all I am trying to  
19 do, Your Honor.

20 THE COURT: The question in the 2002  
21 label there is a question about special  
22 population or something? Ask the question  
23 again and we will get an answer.

24 Q In the 2002 Risperdal label, is there not a

*(Gilbreath - Redirect)*

1 seen this document before. No?

2 MR. MURPHY: We have seen the label  
3 itself.

4 THE COURT: All right, you want to show  
5 the Special Populations, let's get there.

6 MR. MURPHY: Exactly that's what I  
7 asked for. Bates ending in 176, Special  
8 Populations. Dosage in special populations.

9 Q Mr. Gilbreath, do you see on your screen what  
10 this section provides?

11 A Yes, I do.

12 Q And it states, "The recommended initial dose  
13 is .5 milligrams BID." And just for the record and  
14 the jury's edification, BID means what?

15 A That's two times a day. BID would suggest  
16 once in the morning, once in the evening.

17 Q ".5 milligrams BID in patients who are elderly  
18 or debilitated, patients with severe renal or  
19 hepatic impairment." Right?

20 A Yes.

21 Q So in fact, in this 2002 label there is a  
22 section with a recommended dosage for special  
23 populations, less than 1 milligram, correct?

24 A Yes.

## (Gilbreath - Redirect)

1 Q Okay. And you told the jury you began at  
 2 Janssen as a primary care rep?  
 3 A I did.  
 4 Q And then you became an elder care rep?  
 5 A Yes, that's correct.  
 6 Q During your tenure as a sales rep,  
 7 Mr. Gilbreath, did you become aware that doctors  
 8 prescribe oral solution of Risperdal to adult  
 9 patients?  
 10 A Yes. It was somewhat common.

11 Q Mr. Kline also engaged you in --

12 MR. KLINE: Objection.

13 Q -- mathematical exercise on the dosage  
 14 associated with the samples you left; do you  
 15 remember that?

16 A Yes.

17 Q And he broke them down into .25-milligram  
 18 denominations. Do you recall?

19 A I do.

20 Q And what we are looking at right here, what  
 21 the jury can see as 64(A), in particular was your  
 22 call from 3-11-03. Can you see that as well?

23 A I can.

24 MR. KLINE: It's not on the screen.

## (Gilbreath - Redirect)

1 P-65-what?

2 MR. MURPHY: Your Honor, this is simply  
 3 what's on the easel. I can go to the easel.

4 THE COURT: That's what I want you to  
 5 do.

6 MR. MURPHY: Okay, happy to do that.

7 THE COURT: As long as you don't write  
 8 on it. If you are going to write on it then  
 9 you create your own document.

10 MR. MURPHY: I am not going to write on  
 11 it.

12 BY MR. MURPHY:

13 Q Here we go. P-63?

14 A I see that.

15 Q P-63 is a calculation of the samples that you  
 16 delivered to Dr. Mathisen on 3-11-03?

17 A Yes.

18 Q Calculated into the number of .25-milligram  
 19 denominations, right?

20 A Yes.

21 Q The equation here is 365, number of days of  
 22 the year. Do you follow?

23 A Yes.

24 Q And that's divided into the number of

## (Gilbreath - Redirect)

1 Q And the calculation?  
 2 A Yes.  
 3 Q What I want to ask you about this  
 4 calculation -- I am going to go to the elmo at this  
 5 point. For this document, Mr. Kline took your --

6 MR. KLINE: Your Honor, I thought we  
 7 were going to use the original exhibits.

8 THE COURT: Excuse me. What's the  
 9 issue?

10 MR. KLINE: Just so I have an  
 11 understanding, outside the presence of the  
 12 jury we were told we were going to use  
 13 exhibits in their original form. Now this  
 14 exhibit is up on the elmo.

15 THE COURT: I will sustain that. If  
 16 you have a document that we are using, it's  
 17 right there, Mr. Murphy. I am not really keen  
 18 on using the Power Points or the screens  
 19 unless they are formally admitted and with our  
 20 permission.

21 At this point you have a document in  
 22 front of us, you want to point something out,  
 23 do so, but let's not get into how you have a  
 24 footnote to an exhibit with -- what's this,

## (Gilbreath - Redirect)

1 .25-milligram denominations?

2 A Yes.

3 Q And Mr. Kline, in using this, said that that  
 4 was 3.3 years for schizophrenic patients?

5 A He did, yes.

6 MR. KLINE: Objection to the question.  
 7 Based upon his testimony that they were using  
 8 .25s in those patients.

9 THE COURT: Overruled. This is  
 10 redirect.

11 Q Mr. Gilbreath, schizophrenic patients in the  
 12 2002 label, their recommended dosage was 1  
 13 milligram, was it the not?

14 A Yes, as a starting.

15 Q Not .25?

16 A Correct.

17 Q So if we wanted to be true to the math and  
 18 true to the label, we would need to divide this by  
 19 four?

20 A Yeah, for a 1 milligram equivalent versus a  
 21 .25 equivalent.

22 Q Bear with me now and I will ask you to indulge  
 23 me. If we divide 1205 by four, we get 300.75.

24 A That sounds accurate.

*(Gilbreath - Redirect)*

1 Q That's the number of doses that we have.

2 Correct?

3 A Yes, in 1 milligram equivalents.

4 Q And we saw in the 2002 label that the  
5 recommended dosage for a schizophrenic is 1  
6 milligram BID. Do you recall that?

7 A Yes.

8 Q And you just explained to the jury that BID  
9 means twice daily?

10 A I did.

11 Q So we are now cutting that in half. So it's  
12 300.75 divided by two?

13 A Yes.

14 Q That gives us 150 days, if my math is correct?

15 A Yes, approximately.

16 Q But we know that not all schizophrenics simply  
17 are maintained on one BID, that is 1 milligram twice  
18 a day, correct?

19 A That's correct.

20 Q If in fact there was 2 milligrams BID, we  
21 would be with dividing that further in half, would  
22 we not?

23 A Yes.

24 Q And so instead of having 150 days of dosage,

*(Gilbreath - Redirect)*

1 about starter dose and that was my only  
2 objection.

3 THE COURT: We will have the question  
4 rephrased.

5 MR. KLINE: Thank you, Your Honor.

6 Q When Mr. Kline visited with you on P-61, he  
7 identified these populations, and he identified  
8 starting doses associated with them, correct?

9 A Yes.

10 Q But you are able to tell the jury that adult  
11 schizophrenics, A, start with 1 milligram BID  
12 initially, correct?

13 MR. KLINE: Objection at this point to  
14 leading. This is a direct witness, Your  
15 Honor, and it's significant, it's on core  
16 issues.

17 THE COURT: Overruled. I am asking  
18 that you get the mathematics on the table and  
19 then you can ask the question. So whatever  
20 Mr. Kline went through as far as the  
21 mathematics are concerned, if you repeat that,  
22 Mr. Murphy, I will permit that, and then you  
23 ask the question.

24 MR. MURPHY: Understood.

*(Gilbreath - Redirect)*

1 Q you would only have 75 days of dosage, right?

2 A Yes.

3 Q That's a far cry from 3.3 years, isn't it?

4 A It is a difference.

5 Q Thank you for indulging me.

6 A You're welcome.

7 Q I have to go back to the chart and I  
8 apologize. There is one other exhibit here, I will  
9 find it, it's 61. Mr. Kline visited with you a  
10 little bit on P-61, and here he charted different  
11 populations and their starting doses?

12 A Yes.

13 Q And that was part of what he used in making  
14 this calculation using the .25 dose. Do you recall  
15 that?

16 A Yes.

17 MR. KLINE: Objection to that question  
18 because it's a starter dose.

19 MR. MURPHY: That's the term I used.

20 THE COURT: Wait a minute. Is there an  
21 objection?

22 MR. KLINE: My objection was that I  
23 didn't believe that I heard -- I thought I  
24 heard the question as stated I was talking

*(Gilbreath - Redirect)*

1 Q My questions, Mr. Gilbreath, are simple.  
2 Let's focus on adult schizophrenics.

3 A Yes.

4 Q Adult schizophrenics, are you aware whether  
5 they start out with 1 milligram on the first day?

6 MR. KLINE: Your Honor, objection.  
7 That's simply a leading question on a core  
8 issue.

9 THE COURT: Again, that's sustained.  
10 The problem here is it has to be according to  
11 what the testimony was. In other words, what  
12 you are talking about is a standard dose. I  
13 mean we don't know what this doctor  
14 prescribed. That's part of the difficulty of  
15 this case.

16 MR. MURPHY: I agree with you.

17 THE COURT: All right, so right now  
18 when you are talking about -- you have to  
19 stick with what Mr. Kline, what his  
20 hypothetical was or what his question was,  
21 rather than to say, Oh, it was a .1 dose. We  
22 don't know what the doses were that were  
23 actually given by this doctor, do we?

24 MR. MURPHY: No, we don't. And that is

(Gilbreath - Redirect)

a fair point.

THE COURT: Stick to the questions that Mr. Kline presented which were based, I believe, on whatever point he was trying to make.

MR. MURPHY: I can move on.

THE COURT: All right, that's acceptable as well. In fact, why don't we just take a recess right here for lunch.

Members of the jury, we are going to recess until 1:30 for lunch. And we are going to make sure, please wear your yellow badges, that you make sure also that you do not discuss this matter with anybody, that you keep an open mind in the case, and any media reports, if any, about this case are to be ignored. All right? And have a good lunch and we will see you soon.

(The jury exits the courtroom.)

THE COURT: A reminder not to discuss with matter with any of the lawyers.

THE WITNESS: Yes, of course not. That means I eat alone.

(A luncheon recess is taken at 12:21 p.m.)

(Gilbreath - Redirect)

I HEREBY CERTIFY THAT THE PROCEEDINGS  
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OFFICIAL COURT REPORTER  
COURT OF COMMON PLEAS  
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