UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NILDA GUTIERREZ, et al., Plaintiffs, v. JOHNSON & JOHNSON, Defendant.	Civil Action No. 01-5302 (WHW) **REDACTED**

APPENDIX C, VOLUME 1: REPORT OF DR. JAMES OUTTZ

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UNITED STATES DISTRICT COURT
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Nilda Gutierrez, et al. Individually and as Class Representatives, Plaintiffs, v. JOHNSON & JOHNSON, Defendant,	Civil Action No. 01-5302 (WHW)

Expert Report of James L. Outtz, Ph.D.

Volume 1

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Expert Report In The Case of:

Gutierrez v. Johnson & Johnson: Civil Action No. 01-5302

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EXECUTIVE SUMMARY

BACKGROUND

- I am an Industrial-Organizational Psychologist with expertise in human resources policies, practices and procedures.
- I was retained on behalf of the defendant Johnson & Johnson to evaluate the company's human resources policies, practices and procedures as they relate to class certification.
- My evaluation was directed at determining whether the named plaintiffs and employees they wish to represent were similarly affected by the human resources policies, practices and procedures of Johnson & Johnson Corporate Headquarters and the Subsidiaries (as defined in this report).
- My evaluation was based upon examination of documents produced during discovery by Johnson & Johnson, documents and materials filed in this case, deposition transcripts, declarations and other materials referenced in this report.

CONCLUSIONS

- As of 2001, Johnson & Johnson was a high technology, award winning company that had evolved via mergers and acquisitions into over 197 companies worldwide including over 30 autonomous U.S. companies.
- In 2001, Johnson & Johnson had a decentralized management structure in which human resources personnel at each subsidiary were responsible for policies, practices and procedures relating to performance management, compensation, and promotion among other areas.

- Examination of a random sample of completed performance appraisals from the companies in existence in 2001 revealed that the performance management systems at the companies (a) exceeded the standards of accepted professional practice with regard to objectivity and (b) were significantly different among companies.

- Examination of the compensation policies, practices and procedures of the companies indicated significant differences among companies.

- Examination of the promotion practices of the companies indicated that promotions were obtained in a variety of ways. Analysis of plaintiffs' claims as to promotion requires information in detail about the specifics of each promotion.

- Given the decentralized, autonomous management structure of Johnson & Johnson, the statistical analysis of plaintiff's experts is fatally flawed because the analysis is based on aggregation of data across companies despite the fact that such aggregation (a) runs counter to the reality of the organizational structure of Johnson & Johnson (and therefore is not applicable to the facts in this case) and (b) distorts the data such that probative conclusions are not possible.

INTRODUCTION

Purpose

I have been retained by counsel for the defendant in the case of *Gutierrez v. Johnson & Johnson* to evaluate the human resources policies, practices and procedures of Johnson & Johnson Worldwide Headquarters (Corporate Headquarters) and Johnson & Johnson's U.S. companies, including certain divisions of companies (The Subsidiaries) as they relate to class certification. My evaluation was directed at determining whether the named plaintiffs and employees they wish to represent were similarly affected by the human resources policies, practices and procedures of Corporate Headquarters and the Subsidiaries. I focused my evaluation on salaried employees in EEO categories 10 through 50. My evaluation was not directed at the merits or validity of the human resources policies, practices and procedures of Corporate Headquarters and the Subsidiaries, but rather, at determining (a) whether putative class members were similarly affected by those policies, practices and procedures and (b) whether those policies, practices and procedures were excessively subjective. This report presents the results of my evaluation.

Qualifications

I am an Industrial-Organizational (I/O) Psychologist in private practice in Washington, DC for over 25 years. Industrial-Organizational Psychology is the application of psychological principles, theory, and research to the world of work. I hold a Ph.D in I/O Psychology, which I received from The University of Maryland in 1976. My area of specialization is selection, which encompasses the manner in which organizations hire, retain, develop, evaluate and promote employees.

I am a Fellow in the Society for Industrial and Organizational Psychology (SIOP) as well as the American Psychological Association, and a consulting editor to the Journal of Applied Psychology. I served on the SIOP committee to revise the Principles for the Validation and Use of Personnel Selection Procedures. The Principles detail accepted professional practice with regard to the development and validation of personnel selection practices and procedures. Over the past fifteen years I have served on a number of committees of the National Academy of Sciences charged with addressing national issues of employment selection and organizational staffing. At present, I serve on the National Academy of Sciences' Committee for the Study of Federal Aviation Administration Aviation Safety Inspector Staffing Standards. Past committee service includes the

Committee on Workforce Needs in Information Technology and the Board on Testing and Assessment.

I have published works on a variety of topics including racial discrimination in employment; the role of cognitive ability tests in employment selection; the effect of testing medium on validity and subgroup performance, and implementing fair selection strategies. I have also written reviews of published texts on affirmative action and workforce diversity.

A significant part of my practice over the past 25 years has been devoted to the development and validation of selection procedures for public and private sector organizations. I have been retained by employers in both the public and private sectors and developed over 100 selection devices and/or selection procedures for entry level and managerial positions. A representative sample of clients includes, CSX Transportation, Publix Super Markets Inc., Potomac Electric Power Company, the cities of New York, Chicago and San Francisco, the Federal Deposit Insurance Corporation, the United States Department of Justice (Federal Bureau of Investigation) and the United States Department of Labor. Selection procedures that I developed have been administered to over 500,000 applicants for entry level and supervisory positions in organizations throughout the United States. I have been retained by legal counsel on behalf of organizations such as The

Boeing Corporation, and Matsushita Communications Industrial Corporation of USA.

I have been retained as an expert for plaintiff and defendant in litigation involving human resource policies, practices and procedures such as promotion, job posting and performance appraisal. I have testified at trial as an expert witness for plaintiffs as well as defendants on over 20 occasions. A more complete description of my experience and qualifications is contained in my curriculum vitae, which is in Appendix A.

Sources of Information

The opinions presented in this report are based on my examination of a large number of documents produced during discovery by Johnson & Johnson, documents and materials filed in this case, deposition transcripts, declarations, and other materials referenced in this report. A list of these documents is contained in Appendix B.

I have also relied on a number of texts and related professional publications from the field of industrial-organizational psychology and human resource management. These publications are contained in the list of references on page 68 of this report.

Chapter 1

About Johnson & Johnson

Any attempt to evaluate the human resources policies, practices and procedures of Johnson & Johnson Corporate Headquarters and the Johnson & Johnson Subsidiaries must take into account Johnson and Johnson's unique organizational composition and evolutionary growth. Therefore I begin with a brief synopsis of the evolution of Johnson & Johnson.

Plaintiff's complaint in this case was filed in November of 2001. For that reason, this report focuses on Johnson & Johnson as it existed at the end of 2001. At the end of year 2001, Johnson & Johnson had $33 billion in sales. According to its annual report, the company was the "most comprehensive and broadly based manufacturer of health care products, as well as a provider of related services for the consumer, pharmaceutical, medical devices and diagnostic markets" (Johnson & Johnson 2001 Annual Report). The company had over 100,000 employees and 197 subsidiaries in 57 countries around the world.

At its genesis in the mid-1880's, Johnson & Johnson was a family-owned company that developed the first ready-made, ready-to-use surgical dressings (www.jnj.com). In 1888, Johnson & Johnson had 125 employees.

In 1890 the company began marketing Johnson's® Baby Powder which became, and remains, one of the most recognized products in the world. During the time period from these early achievements to its status in 2001 as a broad based manufacturer of healthcare products, there were many milestones in the company's evolution. These milestones provide a clear picture of some of the factors that led to Johnson & Johnson's organizational structure and employee composition as of 2001. Examples of these milestones are shown in Figure 1.

Figure 1
Significant Milestones in the Evolution of Johnson & Johnson

Date	Milestone
1905	Johnson & Johnson made its first acquisition with the purchase of the J. Ellwood Lee Company which continued to independently market its products, thus becoming the first example of the Johnson & Johnson decentralized system of management.
1920	Johnson & Johnson began marketing BAND-AID® Adhesive Bandages.
1934	Company president Robert Wood Johnson introduces the concept of decentralization as the way the company does business and the term "Johnson & Johnson Family of Companies".
1943	Johnson & Johnson publishes its Credo, a document intended to define the company's business philosophy.

Date	Milestone
1949	Johnson & Johnson's wound closure business was restructured as 'Ethicon Corporation', an independent operating company focused on the development and manufacture of surgical sutures and other surgery related medical products.
1953	Janssen Pharmaceutica joined The Johnson & Johnson Family of Companies.
1954	Johnson & Johnson creates the "Executive Committee" as a primary component of its management organization.
1959	Johnson & Johnson purchases McNeil Laboratories Inc. which marketed Tylenol® and other sedation and muscle relaxant drugs.
1986	Life Scan Inc., a maker of blood glucose monitoring systems, joined the Johnson & Johnson Family of Companies.
1989	Johnson & Johnson and Merck Consumer Pharmaceutical Company form a 50/50 joint venture to market Merck's prescription pharmaceuticals as they became available over-the-counter.
1990	Ortho-Biotech Inc., the first biotechnology subsidiary within Johnson & Johnson, was established.
1993	Two Johnson & Johnson operating companies, Ortho Pharmaceutical and McNeil Pharmaceutical, were combined to form Ortho-McNeil Pharmaceutical Inc.
1994	Johnson & Johnson sales reached twelve billion dollars. Neutrogena Corporation Inc., a maker of skincare products, was acquired. Johnson & Johnson Health Care Systems Inc. was formed.
1995	Mitek Surgical Products Inc., Menlo Care Inc., Joint Medical Products Inc., and Ultracision Inc., were acquired for the Johnson & Johnson medical devices

Date	Milestone
	and diagnostics business.
1996	Johnson & Johnson sales exceeded twenty billion dollars. Johnson & Johnson was awarded The National Medal of Technology, the United States' highest technology award, recognizing excellence in technological innovations and commercialization.
	Cordis Corporation merges with Johnson & Johnson Interventional Systems Company to form Cordis Corporation, a Johnson & Johnson subsidiary with approximately 3,500 employees worldwide.
1997	Biopsis Medical, Inc., merged into Ethicon Endo-Surgery to produce minimally-invasive breast biopsies.
	Gynecare Inc. was merged into Ethicon, Inc.
	Johnson & Johnson acquired Innotech, Inc., a manufacturer of equipment for high quality prescription eyeglass lenses.
	The Motrin® (ibuprofen) franchise was acquired by Johnson & Johnson's McNeil Consumer Healthcare subsidiary.
1998	Johnson & Johnson merged with DePuy, Inc., the oldest U.S. manufacture of orthopedic implants, in a $3.7 billion transaction.
1999	Centocor, Inc., a biopharmaceutical biotechnology company and a world leader in monoclonal antibody technology and manufacturing, merged with Johnson & Johnson in a $4.9 billion transaction.
	Johnson & Johnson purchased the Aveeno® line of skin care products from S.C. Johnson Company.
2000	Johnson & Johnson acquired the St. Joseph®

Date	Milestone
	business, best known for its orange-flavored, low dose aspirin.
	Johnson & Johnson acquired Altrionix, Inc., a firm specializing in devices for the treatment of atrial fibrillation.
	Johnson & Johnson acquired Innovasive Devices Inc., a manufacturer of devices for sports medicine surgery.
2001	The Janssen Research Foundation and R.W. Johnson Pharmaceutical Research Institute merged to form Johnson & Johnson Pharmaceutical Research and Development, L.L.C.
	Johnson & Johnson merged with ALZA Corporation, a leader in the field of drug delivery-based pharmaceuticals in a $12.2 billion transaction.
	Johnson & Johnson acquired Inverness Medical Technology. Products acquired from Inverness were incorporated into LifeScan, Inc.
	Johnson & Johnson acquired Baby Center, L.L.C., the leading online pregnancy and parenting resource.
	Post 2001 Mergers and Acquisitions
2002	Johnson & Johnson acquired Tibotec-Verco N.V., a company based in Belgium focused on the development of anti-viral treatments for HIV/AIDS and other infectious diseases.
	Ortho-Clinical Diagnostics, Inc., a Johnson & Johnson company, acquired Micro Typing Systems, Inc., a leading manufacturer of blood bank serology tests that help to insure safe and effective blood transfusions.

Date	Milestone
2003	Johnson & Johnson acquired Scios Inc., a research-based company that uses cutting-edge technology in drug discovery and development and in understanding disease pathway physiology. Its principal product is NATRECOR® (nesiritide) for acute congestive heart failure.
	Johnson & Johnson acquired Link Spine Group, a privately owned corporation with exclusive worldwide rights to the Charite™ Artificial Disc.
	Johnson & Johnson acquired 3-Dimensional Pharmaceuticals, Inc., a company with a technology platform focused on the discovery and development of therapeutic small molecules.
	Johnson & Johnson acquired Orapharma Inc., a specialty pharmaceutical company focused on the development and commercialization of unique oral therapeutics.
2004	Johnson & Johnson acquired Egea Biosciences Inc., a pioneer in protein engineering. Egea's platform technology enables, for the first time, optimization of biologics and antibodies for therapeutic use through proprietary large-scale gene synthesis.
	Johnson & Johnson acquired Wyeth St. Louis, MO, a biopharmaceutical facility.
2005	Johnson & Johnson announces agreement to acquire Peninsula Pharmaceuticals, a biopharmaceutical company focused on developing and commercializing antibiotics to treat life-threatening infections. (Pending)
	Johnson & Johnson announces agreement to acquire TransForm Pharmaceuticals, a privately held company that specializes in the discovery of superior

Date	Milestone
	formulations and novel crystalline forms of drug molecules. (Pending)
	Johnson & Johnson announces a planned merger with Guidant Corporation, a company with 12,000 employees that manufactures and markets products that enable less invasive care for life threatening medical conditions. (Pending)

The information in Figure 1 was obtained from *www.jnj.com, www.peninsulapharm.com* ***and Johnson & Johnson News Releases.***

The information in Figure 1 is important for several reasons. First, Figure 1 shows that by 2001 Johnson & Johnson had evolved into a constellation of subsidiaries formed in large part from mergers, acquisitions, internal reorganizations, and product innovations that began as early as 1905.

Figure 1 is also important because it demonstrates that the Subsidiaries include a wide range of technologies and businesses. Given the extremely diverse products of the Subsidiaries, and the manner in which the Subsidiaries were formed (e.g. mergers and acquisitions), Johnson & Johnson's decision over 70 years ago to pursue a decentralized organizational structure has played a critical role in the company's business success. Lemaitre (2005) has testified as follows with regard to Johnson & Johnson's decentralized organizational structure:

> While this decentralized structure has been criticized by some investors because of the expenses associated with duplication of functions at the company level that

> could be operated centrally at a lower cost, the tangible results at the sales line from decentralization has convinced most investors that Johnson & Johnson's decentralized structure is the best mechanism to sustain growth. Indeed, Johnson & Johnson's sales have compounded at 10%, well in excess of growth in the economy, for the last 100 years, a record that, to my knowledge, is unmatched in corporate America. And investors are willing to accord a higher price earnings multiple to Johnson & Johnson because of the visibility that top line growth provides.
>
> To reiterate, Johnson & Johnson is a highly decentralized company, and while its decentralization adds costly infrastructure, it provides the necessary focus at the local level to sustain top line growth. This is paramount to investors as they gauge Johnson & Johnson's overall prospects.
>
> Based on my twenty years of studying Johnson & Johnson, in my opinion, its decentralized management approach has been a very effective way of managing and growing Johnson & Johnson's very large and diverse group of companies. Indeed, it is my opinion that decentralized management has been an important contributing factor in Johnson & Johnson remaining a powerhouse in pharmaceuticals, biotechnology, diagnostic and medical devices, making it the world's most broadly based health care company.
> (Lemaitre Declaration; P. 7-8, Para. 20-22)

By any reasonable measure, Johnson & Johnson's decentralized structure and growth through mergers and acquisitions has been successful. The prolific number of industry awards the company has received attests to Johnson & Johnson's success. Figure 2 below lists awards and recognition that Johnson & Johnson received between 1991 and 2001.

Figure 2

Awards and Recognition Received by Johnson & Johnson from 1991 through 2001

Year	Source	Award
1991	U.S. Office of Federal Contract Compliance Programs	Opportunity 2000 Award granted to an employer for its initiatives in creating upward mobility for women and establishing work and family programs.
1991	Families and Work Institute	Johnson & Johnson identified as the most family friendly company in the world.
1995	New Jersey Monthly	Named Johnson & Johnson among 10 companies designated as "Best Place to Work."
1995-98	Hispanic Magazine	Recognized Johnson & Johnson in the publication's corporate 100, which honors companies that provide the most opportunities for Hispanics.
1996	U.S. Department of Commerce	Johnson & Johnson awarded the National Medal of Technology, the nation's highest technologies award recognizing excellence in technological innovations and commercialization.
1998	Black College Magazine	Johnson & Johnson named to its list of Best Places to work for black students.

Year	Source	Award
1998	Fortune Magazine	Johnson & Johnson ranked in the top 50 best companies for Asians, Blacks and Hispanics.
1999	Fortune Magazine	Johnson & Johnson ranked among the 100 best companies in which to work.
2000	Harris Interactive: The Reputation Institute	Johnson & Johnson selected as having the best corporate reputation in America.
2000	Fortune Magazine	Johnson & Johnson ranked as the 17th most admired company in the world and the third among pharmaceutical companies.
2001	Harris Interactive: The Reputation Institute	Johnson & Johnson selected as having the best corporate reputation in America.
2001	Hispanic Magazine	Johnson & Johnson named among the Hispanic Corporate 100, a worldwide ranking of companies that provide economic and employment opportunities to Hispanics.
2001	Latina Style	Johnson & Johnson named one of the top 50 companies for Hispanic women to work in the U.S.

As of 2001, Johnson & Johnson had achieved 69 consecutive years of increased sales and 17 consecutive years of double-digit earnings increases. Johnson & Johnson has sought to root each of its healthcare businesses in a foundation of science and technology. In 2000, the Company invested $3.6

billion in research and development. Merger and acquisitions activity included a $12.3 billion merger with ALZA Corporation. At that time this was the largest merger in the history of Johnson & Johnson.

Chapter 2

Johnson & Johnson's Decentralized Management System

In 2001, Johnson & Johnson included the following companies and divisions of companies:

Advanced Sterilization Products: a manufacturer of a range of sterilization systems based on a patented low temperature, hydrogen peroxide gas plasma process, as well as sterilizing/disinfecting product solutions.

ALZA Corporation: a research-based pharmaceutical company in drug delivery technologies. ALZA technologies optimize and control medicines that are delivered into and within the body, enhancing therapeutic value, and potentially reducing side effects and improving tolerability.

Centocor, Inc.: a fully integrated biopharmaceutical company specializing in the development and commercialization of therapeutic products to meet critical human health care needs. Centocor is a world leader in monoclonal antibody technology and manufacturing. Centocor's products include Remicade (infliximab) used in combination with methotrexate for reducing the signs and symptoms and inhibiting the progression of joint damage in patients with moderately to severely active rheumatoid arthritis.

Cordis Corporation: a developer and manufacturer of devices for circulatory disease management. Major products include stents, balloons and catheters used in treating cardiovascular disease. As of 2001, Cordis Corporation marketed its products through four main divisions: Cordis Cardiology for coronary applications; Cordis Endovascular for all peripheral applications; Cordis Neurovascular for neurological applications; and Biosense Webster for electrophysiology and medical sensor technology in endocardial procedures.

DePuy, Inc.: a developer and marketer of products under the DePuy, DePuyACE, Acromed and Codman Brands. DePuy and DePuy Ace

provide products for reconstructing damaged and diseased joints, including products for repairing and reconstructing traumatic skeletal injuries. Acromed products facilitate the fusion of elements of the spine and correction of spinal deformities. Codman products are designed to provide for the treatment of central nervous system disorders.

Ethicon, Inc.: develops and markets products for surgery in the areas of wound care and wound management, surgical sports medicine, women's health, cardiovascular surgery, and advanced wound treatment.

Ethicon Endo-Surgery, Inc.: develops and markets surgical instruments for less invasive and traditional surgery. The company's primary focus is on the design of innovative devices for interventional diagnosis and treatment of various diseases and conditions in the areas of general surgery, breast disease, gynecology, oncology, urology and thoracic.

Independence Technology, L.L.C.: develops and markets products designed to help persons with disabilities. Independence Technology's products include the IBOT 3000 mobility system, a gyro-balance device for persons with mobility-related disabilities.

Janssen Pharmaceutica, Inc.: produces and markets prescription medications for central nervous system disorders, gastrointestinal health, pain management and the treatment of fungal infections.

Johnson & Johnson Consumer Products Company: produces and markets baby care, wound care, child care products, family first aid, home health care products and skin care products.

Johnson & Johnson Health Care Systems Inc.: provides national, managed care, government and large hospital customers with one point of contact for Johnson & Johnson products.

Johnson & Johnson • Merck Consumer Pharmaceuticals Co.: is a joint venture between Johnson & Johnson and Merck and Co., formed to develop and market nonprescription products including PEPCID AC Acid Controller, PEPCID Complete and MYLANTA Antacid.

Johnson & Johnson Networking & Computer Services, Inc.: provides networking and computer technology products and services to the Johnson & Johnson operating companies.

Johnson & Johnson Pharmaceutical Research & Development, L.L.C.: conducts research and development and achieves regulatory approval for products used in psychiatry, gastroenterology, oncology, anti-infective, central nervous system, diabetes, hematology, immunology/inflammation, women's health and wound healing.

Johnson & Johnson Sales and Logistics Company: provides sales, marketing and logistical services to U.S retail customers on behalf of the domestic consumer operating companies.

Johnson & Johnson Worldwide Headquarters: carries out functions in a number of areas including law, finance, accounting, information management and strategic planning among others.

LifeScan, Inc.: develops and markets glucose monitoring products for people with diabetes.

McNeil Consumer & Specialty Pharmaceuticals: markets over-the-counter and prescription pharmaceuticals including TYLENOL® (Acetaminophen), MOTRIN IB (Ibuprofen), IMODIUM AD, St. Joseph Aspirin and NIZORAL A-D Shampoo. Prescription products include CONCERTA for attention deficit hyperactivity disorder and FLOXIN for ear infections.

McNeil Nutritionals, LLC: markets nutritional products and dietary alternatives. McNeil Nutritionals had four major franchises as of 2001, BENECOL cholesterol-lowering foods and supplements; LACTAID products that enable lactose intolerant consumers to enjoy dairy foods; SPLENDA no calorie sweetener; and VIACTIN for calcium supplementation.

Neutrogena Corporation: develops, manufactures and markets skin and hair products. Its products include bar and liquid cleansers, shampoo, hand cream, body lotion, facial moisturizers, bath preparations and cosmetics.

Noramco, Inc.: produces a variety of ingredients used in the manufacture of pharmaceutical products, and is a worldwide producer of medicinal analgesics, pharmaceutical intermediates and synthetic fine organic chemicals.

Ortho Biotech Products, L.P.: markets and distributes biopharmaceutical products and services including products for the treatment of chronic illnesses such as anemia, cancer and leukemia.

Ortho-Clinical Diagnostics, Inc.: provides professional diagnostics products to hospital laboratories, commercial clinical laboratories and blood donor centers. Its products include reagents used in blood transfusions and blood screening.

Ortho-McNeil Pharmaceutical, Inc.: provides several categories of prescription drugs including analgesics, anti-infectives, anti-epileptics, urology and wound healing. The company's line of women's health products includes oral contraceptives, diaphragms and hormone replacement therapy among others. The company also produced and now markets the first contraceptive patch.

Personal Products Company: produces and markets oral health products and women's health and sanitary protection products. The company's oral health products include Johnson & Johnson dental floss and REACH toothbrush products.

PSGA (The Pharmaceutical Sourcing Group - Americas): integrates Johnson & Johnson Pharmaceutical operations and quality assurance organizations within the Americas.

Spectacle Lens Group: designs, develops, manufactures, and markets ophthalmic lenses.

THERAKOS, Inc.: specializes in therapies for the prevention and treatment of serious immune-mediated and neoclastic diseases.

Vistakon: produces disposable contact lenses including lenses for people with astigmatism.

(Johnson & Johnson Annual Report, 2001; Declarations of Jean Messina, Alfred Riles, Victoria Walker, Jerald Collins, and Nancy Shapiro)

The ebb and flow of acquisitions and divestitures at Johnson & Johnson pose unique problems with regard to assessing equal employment opportunity at Corporate Headquarters and the Subsidiaries. More specifically, these acquisitions and divestitures must be taken into account

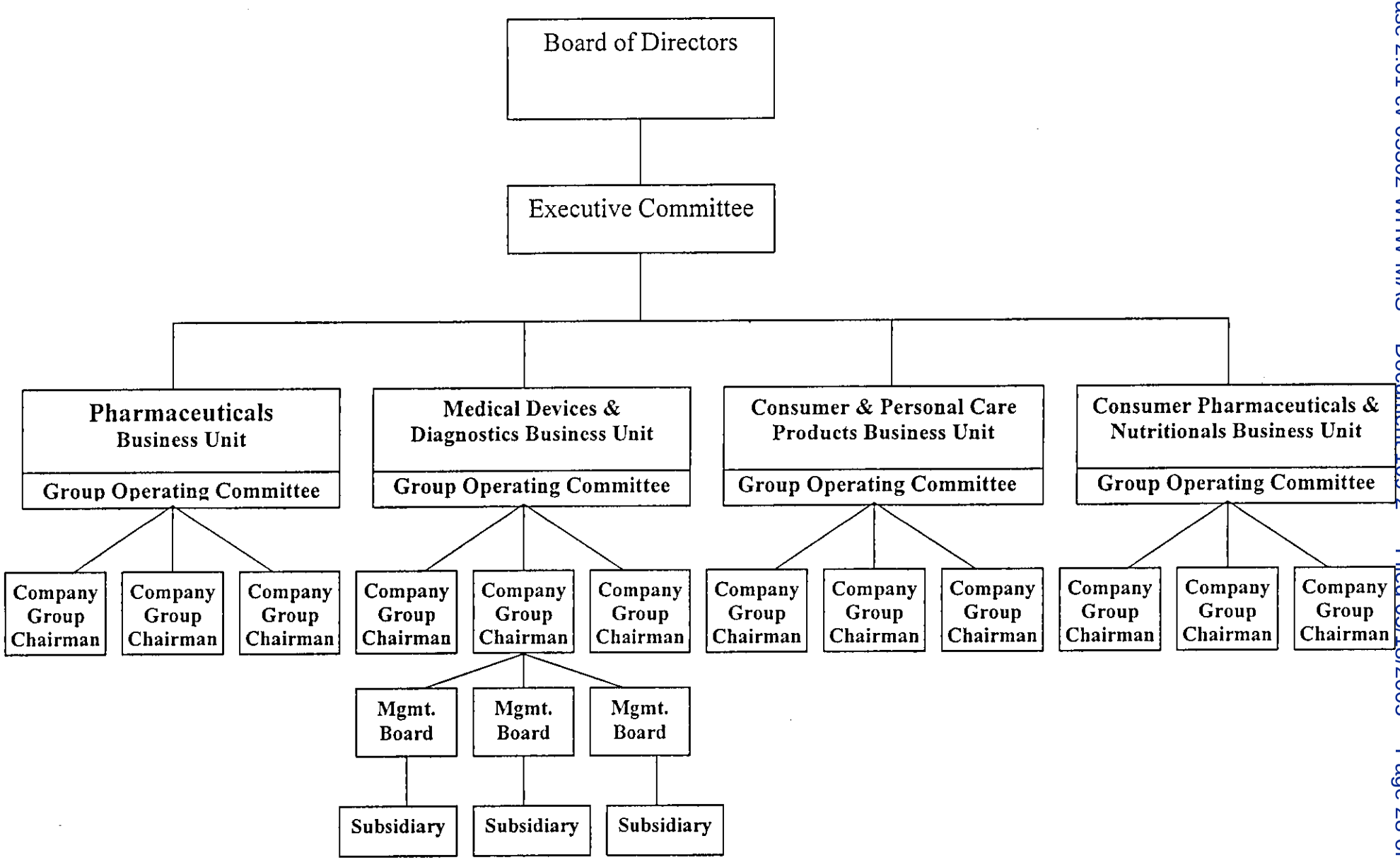
when attempting to determine whether the putative class members in this case are or were similarly situated at any given point in time.

A single acquisition may significantly affect the number and demographic composition of employees in salaried and non salaried positions. As an example, the acquisition of DePuy, Inc. in 1998 and of Centocor in 1999 increased the number of management and executive positions at the Johnson & Johnson subsidiaries by several thousand (Larsen Dep. Exhibit 37).

The mergers, acquisitions and divestitures Johnson & Johnson experienced throughout its history, but particularly the acquisitions it made during the ten year period 1991 - 2001, highlight the criticality of the decentralized, autonomous structure of Corporate Headquarters and the Subsidiaries to the issue of equal opportunity. In Figure 3 below I illustrate the basic organizational structure of Johnson & Johnson in 2001.

Figure 3 shows that each subsidiary had a management board responsible for day-to-day company operations as stated in the declarations of HR executives (see, for example, the declarations of Joan Berle; David Hind; Jerald Collins; Laura Famularo; and Milton Brougham).

Figure 3 Organizational Structure of Johnson & Johnson in 2001



**Each of the four business units had the same structure as that shown for the medical Devices and Diagnostics Business unit.*

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Johnson & Johnson has been highly successful using a decentralized structure as its organizational foundation. Based on this organizational structure, each of Johnson & Johnson's companies is autonomous and accountable for its individual performance.

The decentralized organizational structure of Johnson & Johnson means that the company's human resources policies and practices have been implemented within that decentralized environment. What this means at an operational level is illustrated by the testimony of company executives such as Mr. Michael Carey. Mr. Carey testified as follows:

> "At the operating company level, staff functions such as finance, information management, and human resources are quite different."
> (Carey Dep., P. 644)

Policies, practices, and procedures in areas such as compensation, performance management, and promotion are significantly affected by Johnson & Johnson's decentralized structure. Johnson & Johnson Corporate Headquarters issues guidelines that serve as a resource Subsidiaries can use to design salary administration policies and practices for their salaried employees. Although Corporate Headquarters provides compensation guidelines, each subsidiary is responsible for implementing its compensation system.

Figure 3 shows that operating companies are organized into operating groups. These operating groups function as independent conglomerates, with each

subsidiary in the group having its own policies, practices, and procedures regarding such things as pay and promotion.

The decentralized structure of Johnson & Johnson also affects policies and practices regarding promotion. Each subsidiary is responsible for the promotion processes it utilizes. The approach used by each subsidiary will depend on its particular circumstances. As an example, Michael Carey testified that large subsidiaries such as Ortho McNeil are more likely to fill promotions from within, whereas smaller companies that are highly specialized, such as Advanced Sterilization Products, are less likely to be able to "grow" their own employees from within the company (Carey Dep., P. 175-176).

Promotions for exempt employees up to the executive level are decided within each subsidiary. In 2001, the managers at each subsidiary were responsible for identifying candidates for promotion and making promotion decisions. The managers received support from their human resources department. Johnson & Johnson had an internal network (The GO Network) that was available to operating companies for posting job vacancies. Mr. Michael Carey testified as follows regarding the availability of the GO Network and the manner in which it was administered:

> The GONetwork was an intranet based system for posting open positions, available for use by managers and employees of Johnson &Johnson and its subsidiary companies. (In the Fall of 2003, it was replaced by a different intranet system). The GONetwork was administered by Johnson & Johnson Recruiting Services, providing a per use fee-based

> employment agency-type of service for the companies that chose to use it. Each subsidiary's management and Human resources department were responsible for deciding whether to post a particular position on the GONetwork, post it locally within the subsidiary by other means, advertise the position externally, use an external employment agency service, and/or identify potential candidates through other means. Whether a position was posted on the GONetwork or not, each subsidiary's management and Human Resources department were responsible for determining the qualifications and requirements for the position, deciding whom to hire, and determining the compensation and responsibilities of the person hired.
> (Carey Declaration; P. 5, Para. 14)

Planning for succession of employees into positions at the top levels of each Johnson & Johnson subsidiary is accomplished via Succession and Development Planning (S&DP) processes. The positions at the Subsidiaries covered by the S&DP processes include the following:

- President/Managing Director
- The management board and pool of replacement candidates
- All those reporting to management board members and their replacement pool candidates
- Additionally, executives considered to have high potential for board, business unit head or senior management positions

In 2001, each subsidiary determined what additional positions would be included in succession planning. As an example, at Ethicon, succession planning and development was performed for all exempt employees. Employees included in Ethicon's succession planning and development process were evaluated on their performance, their potential to advance and their success in developing others (See Cachinero Declaration; P. 15, Para. 65). As part of its succession planning and

development, each Ethicon business unit and function typically identified "high potential" candidates for certain key positions.

Unlike Ethicon, Biosense Webster limited its succession planning process to the President; Management Board members and their direct reports; the pool of candidates to replace the direct reports; and a limited number of "high potential" individuals at the level of manager and above (Chen Declaration; P. 11, Para. 37).

Each subsidiary was responsible for its succession planning processes. Mr. Michael Carey gave the following testimony regarding succession planning.

> Each subsidiary's management, working with its Human Resources Vice President, is responsible for succession planning for its President, Management Board, and other senior executive positions, and all other positions and individuals that it decides to include in its succession planning. This responsibility encompasses determining the scope of, and executing, that company's succession planning processes, identifying the succession planning needs of the organization, identifying diverse talent pools, assessing and rating the potential of employees within the organization, identifying future leaders, and implementing development plans both to grow talent within that organization and to ensure succession for critical positions. Johnson & Johnson addresses succession planning only with respect to senior positions (that is, in the U.S., the President and other Management Board positions, their replacements, and the identification of high potential talent), and participates in succession planning reviews only for President and other Management Board positions. To put this in context, these senior positions number approximately 1,000 out of more than 40,000 employees in the United States. Even for these positions, however, the primary responsibility for succession planning belongs to the subsidiary's own President.
> (Carey Declaration; P. 6, Para. 16)

The information briefly summarized in this chapter shows that human resources policies, practices, and procedures, as of 2001, were developed and implemented by each subsidiary based on its business environment.

Despite the high degree of autonomy provided to the subsidiaries at Johnson & Johnson, each company is expected to design and administer human resources practices consistent with the values of Johnson & Johnson's Credo with regard to fair treatment of employees. Johnson & Johnson's Credo was first formulated in 1943. This Credo expresses the company's philosophy as to how it wishes to conduct its business. The full text of Johnson & Johnson's Credo is shown in Appendix C. Mr. Michael Carey testified that ensuring that employee behavior is consistent with the Johnson & Johnson Credo occurs first at the operating company level (Carey Dep., P. 61). Each domestic Subsidiary has at least one EEO coordinator or human resources professional supporting EEO processes and decisions within that company (Carey Declaration, P. 10-11, Para. 27).

Recognition of Johnson & Johnson's evolutionary history in terms of mergers and acquisitions and the resulting decentralized management structure is critical not only to understanding who the company is, but also to understanding how its human resources practices (including EEO) should be evaluated.

The decentralized management structure at Johnson & Johnson has resulted in different approaches across subsidiaries with regard to the design and implementation of policies and practices in key human resources areas such as compensation, performance management and promotion. The different approaches are further necessitated by the different skill sets required of the work forces of

each Subsidiary. Mr. Michael Carey gave the following testimony with regard to the relationship between Johnson & Johnson's evolution and the make up of the workforce in each subsidiary:

> During the time period addressed by plaintiffs, Johnson & Johnson acquired dozens of other companies, large and small, in many parts of the country. Many companies had hundreds or even thousands of employees when acquired, and the representation of African American employees in the workforces of acquired companies generally was significantly lower than that within existing Johnson & Johnson companies. Over 50 companies have been acquired since the early 1990s alone. These companies include Cordis Corporation, acquired in 1996, which develops and markets cardiovascular stents and other devices for circulatory disease management; DePuy, Inc., acquired in 1998, which develops and markets orthopedic products for repairing traumatic skeletal injuries, joint disease and spinal deformities; and Centocor, Inc., acquired in 1999, a biopharmaceutical company that leads in monoclonal antibody technology and manufacturing and in the development of other therapeutic pharmaceutical products. At the same time, other companies were being divested. For example, Chicopee, Inc., an industrial textile company with facilities in several states in the Southeast as well as New Jersey, was one of the largest Johnson & Johnson companies in 1976 but, by 1992, was fully divested.
>
> Overall, the types of businesses within Johnson & Johnson shifted significantly between 1976 and 2001. In 1976, the largest segment of businesses within the Johnson & Johnson companies was manufacturing and marketing consumer products. Almost 40% of sales were for toiletries, baby care and feminine hygiene products and 10% were for industrial products, such as Chicopee's industrial textiles. Since then, the companies within Johnson & Johnson have become increasingly life science and technology-based businesses. By 2001, consumer products accounted for just over 20% of overall sales, there was no longer an industrial segment, and almost 80% of overall sales were by companies in the Pharmaceutical and Medical Devices & Diagnostics sectors.
>
> As a result, the workforces of Johnson & Johnson companies in 2001 were not the same as the workforces of Johnson & Johnson companies in 1976. There was a significantly greater proportion of positions requiring science, technology, or other specialized qualifications for which there often is a lower availability of qualified African American and Hispanic talent. Johnson & Johnson companies have responded to these challenges by, for example, participating in programs such as those I describe in this declaration, which specifically support the development and recruiting of African Americans, Hispanic Americans, and other minority groups for science or technology-related careers. (Carey Declaration; P. 17-18, Para. 40-42)

Chapter 3

Performance Management at the Johnson & Johnson Companies

Chapter two makes clear that implementation of policies and procedures in areas such as compensation and promotion is first and foremost the responsibility of each subsidiary at Johnson & Johnson. Johnson & Johnson's decentralized management structure, together with its long held policy of providing autonomy to each subsidiary, lies at the very heart of the issue of class certification in this case. The putative class members are, or were, employed in different Subsidiaries. A critical question then is whether these employees have been similarly affected by the policies, practices and procedures of the different Johnson & Johnson subsidiaries. Put another way, the question is whether the subsidiaries have the same policies, procedures and practices, and if so, do they implement them in the same manner. One way to address this question would be to examine the components of each company's policies, practices and procedures. Components related to compensation and promotion would be the appropriate focus given that plaintiffs' allegations of discrimination fall primarily in those areas.

It is evident from the declarations and deposition testimony of Johnson & Johnson executives, as well as documents produced to plaintiffs, that performance appraisal plays a key role in compensation and promotion decisions at the subsidiaries (Carey Dep., P. 231 Exhibit 17: Larsen Dep., P.52; Obler Dep.

Exhibits 8 and 11; See also Declarations of HR executives). Testimony from officials at the Subsidiaries indicates that, as of 2001, each Subsidiary based its compensation practices primarily on job performance among other factors. As an example, Mr. Earle Hanlin, the Vice President for Human Resources at DePuy Orthopedics, testified that at DePuy, salary increase decisions were driven by performance ratings (Hanlin Declaration; P. 6, Para. 23). Timothy Raher, Vice President, Human Resources at Noramco, gave similar testimony regarding compensation. Mr. Raher testified that in 2001, Noramco utilized merit increase guidelines based on a graduated scale tied to the employee's performance rating.

(Raher Declaration; P. 12, Para. 31).

Each subsidiary has the autonomy to determine the specific manner in which employee performance is evaluated. Since the philosophy of each subsidiary is to link pay and advancement to performance, an examination of the performance appraisal systems of the subsidiaries is one way to determine whether policies, practices and procedures are the same across companies.

The direct work product of a performance appraisal process is the completed appraisal. Examining completed appraisals allows one to evaluate the performance appraisal processes that produced them regarding two criteria important to this

case. First, examining completed performance appraisals is a way to determine whether the practices of subsidiaries are the same or different with regard to a key element related to compensation and promotion. If, for example, performance appraisal practices differ among subsidiaries, the assertion that employees of all companies are similarly affected by a (supposedly) common flawed performance appraisal process is not tenable. Second, one can determine whether the appraisals from the different subsidiaries are consistent with professional standards with regard to objectivity (i.e. not excessively subjective). One of the claims of plaintiffs is that Johnson & Johnson's human resources practices are excessively subjective.

I examined performance appraisals from Corporate Headquarters and the Johnson & Johnson companies in existence at the start of 2001. The completed appraisals selected for examination came from a representative sample of employees of Johnson & Johnson companies in Equal Employment Opportunity (EEO) categories 10 through 50 drawn by Dr. Eugene Ericksen. Categories 10 through 50 are comprised primarily of professional employment positions. The population from which the sample was drawn included employees from Corporate Headquarters and the Johnson and Johnson domestic subsidiaries. See Ericksen (2005) for a detailed description of the sampling methodology. I examined the 287 performance appraisals randomly sampled by Dr. Ericksen that constitute the

representative sample drawn by Dr. Ericksen (see Ericksen, 2005).[1] The companies represented in the sample and the number of appraisals examined from each are shown in Appendix D.

The purpose of my examination of the completed appraisals was twofold. The first objective was to determine whether performance appraisal systems differed across companies. Second, I wanted to determine whether the appraisals were excessively subjective.

Differences in Appraisal Systems

The first objective of examining actual performance appraisals was to assess the similarity or dissimilarity of the performance appraisal processes at the Subsidiaries. Detailed examination of the performance appraisals from each Subsidiary revealed systemic differences produced by the following six factors:

1. **Job Complexity:** There were significant differences between and within subsidiaries with regard to the variety and complexity of the jobs employees held. Highly complex jobs tend to have unique characteristics that make it difficult to utilize a common appraisal methodology for all of them. A supervisor at DePuy Orthopedics for example had to evaluate the performance of a Director of Biostatistics and Outcomes. The duties of this position included providing statistical support for published articles that appear in peer-reviewed journals. A supervisor at Centocor was responsible for evaluating the performance of a Research Scientist. The duties of this position included oversight of clinical trials of experimental medications. A supervisor at Johnson & Johnson Health Care Systems evaluated an Associate Human Resources Analyst. The job duties of this position included

[1] **In addition to the 287 performance appraisals in the representative sample, I also reviewed 15 appraisals of alternates randomly selected by Dr. Ericksen which were to have been included in the representative sample if needed.**

implementing and monitoring compensation policies, procedures and practices.

2. **Source of Appraisal Information:** The performance appraisal systems at the Subsidiaries differed in the number of sources from which appraisal information was obtained. In some companies appraisals were based almost exclusively on information from the immediate supervisor with second level review from a manager. In other Subsidiaries, information regarding an employee's performance was obtained from a number of sources in addition to the immediate supervisor. This multi-source feedback on an employee's performance was gathered from a number of sources including the employee, peers, direct reports, internal customers, external customers, and vendors or suppliers. Examination of the performance appraisals revealed numerous instances in which the employee either provided a self-rating or provided input as to work accomplishments to be considered by the supervisor in evaluating the employee's performance. In my professional experience, the more complex the job, the more likely it is that employee input including self-appraisal will be required.

3. **Weighting of Appraisal Components:** A third factor on which the performance appraisals systems differed significantly was the expressed use of a weighting system to determine the performance appraisal rating. As an example 95% of the appraisals from Ethicon Endo-surgery made use of weighted job functions (with weights expressed on the rating form) to determine the final performance rating. For many operating companies on the other hand, none of the appraisals involved expressed weighting of job components.

4. **Team versus Individual Performance:** The appraisals from a number of Subsidiaries indicated that the key component of the employee's job was leading a team. Therefore the employee's performance appraisal was based on whether the team achieved specific goals. As an example, a Senior Area Business Manager at Centocor received a performance rating of 8 on a scale of 1 to 9 on the basis of his sales team's performance when compared to other teams throughout the country. Obviously, the degree to which team accomplishments play a role in job performance depends upon the level of the position and the nature of the work to be performed. Even within the same Subsidiary, two employees with the same job title or job function may have different responsibilities with regard to team leadership. As an example, examination of the performance appraisals of two employees at Johnson & Johnson Pharmaceutical Research and Development with the job title "Principal Scientist" revealed that one had responsibility for leading a scientific team whereas the other did not.

5. **Acquisition Status of the Operating Company:** The state of the performance appraisal process at a Subsidiary in 2001 depended in large

measure on whether the company was a recent acquisition, and the recency of the acquisition. As an example, the merger between Johnson & Johnson and Centocor took effect in early 2000. Examination of 2001 performance appraisals of Centocor employees showed that a transition from the less structured system in place at Centocor prior to its acquisition. One of the appraisals that I examined was from a Human Resource Coordinator at Centocor. In the self-assessment section of the appraisal this employee indicated that she was relatively new to the human resource area, having transferred from her previous position in sales and marketing around the time of the acquisition. She went on to describe her contribution to improving human resources practices at Centocor in the post acquisition period, writing:

> "When I began in HR, I had no direction or orientation to the processes that occurred and there are quite a few! Upon investigation, I learned that there is no formal record or SOP [standard operating procedure] for the tasks, many of which are routine and all of which those in HR "just knew." I have developed an HR processes electronic directory that provides instructions for the many HR tasks and also includes electronic attachments for use by the team. I have offered to make sure that it stays updated."
> (Performance Coaching and Development Plan, HR Coordinator, Centocor, January 21, 2002)

The difficulties described by this employee are a microcosm of the difficulties faced by Johnson & Johnson each time it experiences a merger or acquisition. The human resource practices of the acquired firm or new business partner may reflect prior practices. If this is the case, such practices will at some point have to reflect Johnson & Johnson's business philosophy as exemplified for example in the Johnson & Johnson Credo. This undoubtedly takes time. Therefore it may be inappropriate to consider human resources practices of a subsidiary to be those of "Johnson & Johnson" until the company has had sufficient time to examine those practices and consult with the new Subsidiary to change them if necessary.

6. **Sales versus Non-sales Positions:** The appraisals for sales positions differed from those for non-sales positions in that the rating criteria were more formulaic. Ratings of sales performance typically included objective measures such as the percentage of forecasted sales or market share/volume increase achieved during the appraisal period. The specific formulas used to evaluate performance were developed by the sales management of each Subsidiary, and differed by Subsidiary.

The six factors described above resulted in significant differences in the manner in which employee performance was evaluated at each of the domestic

subsidiaries in 2001. Each of these factors in and of itself provides, in my opinion, sufficient basis for concluding that the performance appraisal practices at the Johnson & Johnson subsidiaries, as of 2001, were significantly different. Jobs with the same title or within the same function could differ in complexity. The sources of information included in the appraisal process varied considerably between Subsidiaries. Some Subsidiaries structured their appraisal system such that employee goals and objectives were given numerical weights; thus the final rating was a function not only of achieving behavioral goals but also the weight of each goal. Therefore individuals with similar job titles and/or similar job duties employed by different Subsidiaries could be rated differently by virtue of the weights applied to the job duties. Combining performance appraisals practices from the different Subsidiaries for purposes of determining excessive subjectivity is like combining apples and oranges.

As discussed above, Johnson & Johnson experienced a number of mergers and acquisitions immediately prior to and during the relevant time period for this case. The status of the human resources practices of the acquired Subsidiaries was significantly influenced by the status of their assimilation into the Johnson & Johnson family of companies. Combining the policies and practices of newly acquired companies with those of existing Subsidiaries is also combining apples and oranges.

Given the impact of the six factors described above, it is my opinion that the human resource policies and practices of the Johnson & Johnson Corporate Headquarters and the Subsidiaries regarding performance appraisal were significantly different from one company to the next and reflected the decentralized, autonomous nature of Johnson & Johnson. What this means is that employees at each Subsidiary in 2001 were not similarly situated with regard to the assessment of their job performance and consequently were not similarly affected by human resources decisions such as compensation and promotion that were based on appraisals of their job performance. At a minimum, the level of analysis for assessing Johnson & Johnson's human resources policies and practices as of 2001 must begin at each Subsidiary and likely must be carried out at the individual level.

Examining Plaintiff's Claim of Excessive Subjectivity

The second objective in examining completed performance appraisals was to determine whether the performance appraisal systems in each Subsidiary were excessively subjective. For the purposes of my evaluation, excessive subjectivity was defined on the basis of criteria drawn from the fields of industrial/organizational psychology and human resource management.

The works of Malos (1998) and Grote (1996) suggest three criteria that (a) address the issue of subjectivity and (b) can be applied simply by examining completed performance appraisals. These criteria are:

1. The degree to which the appraisal process is based on job analysis
2. The degree to which the appraisal is based on behavior rather than traits
3. The degree to which the appraisal is related to specific functions

A fourth criterion can be added to this list that I believe is also relevant to making a determination of excessive subjectivity, "documentation." That is, by examining completed appraisals, one should be able to determine whether sufficient detail is provided to document the basis for the performance rating.

The criteria described above directly address subjectivity and are among the criteria generally used to assess the soundness of performance appraisal systems. Malos (1998) for example lists the following as indicators of a legally sound performance appraisal system.

> Legally sound performance appraisal:
> - Should be objective rather than subjective
> - Should be job-related or based on job analysis
> - Should be based on behaviors rather than traits
> - Should be within the control of the ratee
> - Should relate to specific functions, not global assessments
> - Should be communicated to the employee
>
> (Malos, In Smither (1998) P. 80)

Grote (1996) describes several common characteristics of performance appraisal systems that were found legally acceptable by a court of law in cases involving charges of discrimination. The common characteristics of the systems were:

- Appraisers were given specific written instructions on how to complete the appraisals.
- Job analysis was used in developing the content of the appraisal.
- Appraisals focused on observable behaviors rather than traits.
- Performance ratings were reviewed in advance by upper management.
- Appraisers were trained in how to appraise performance and in how to conduct the appraisal interview.
- The results were discussed with the employee who had been appraised.

(Grote (1996) P. 330)

Given that the four criteria I have identified directly address the issue of subjectivity, I used the four criteria to determine whether performance appraisal systems at Johnson & Johnson Corporate Headquarters and the Subsidiaries were excessively subjective as of 2001. Note that all four of these criteria can be applied by examining completed performance appraisals. If examination of the performance appraisals from a Subsidiary resulted in a finding that the four criteria above were met, then in my professional opinion the performance appraisal system met accepted professional standards for objectivity.

The first criterion is based on the degree to which the performance appraisal process is based on a job analysis. A job analysis is a study of a job to determine what is done, the context in which it is done and the attributes (e.g., areas of knowledge, skills and abilities) needed to perform the job successfully. The methodology required to conduct a proper job analysis depends upon the purpose for which the analysis is conducted. If for example, an employer wishes to

develop a valid test for hiring accountants, an appropriate job analysis would require the gathering of information about the accountant position from a sample of accountants or knowledgeable persons, and utilizing that information to construct a test. In essence, a job analysis produces information about a job that is appropriate for use in making sound human resource decisions (e.g., selection, promotion, training, etc.).

When the human resource decision is performance appraisal, the job analysis does not necessarily require conduct of a formal study. That is, organizations are not required to conduct a detailed study on each job to which the appraisal process is applied. If for example, a supervisor and employee set agreed upon goals and objectives at the outset of the appraisal period, and those goals and objectives are defined in terms of specific behaviors, that constitutes a job analysis. Grote (1996) offers the following guidelines with regard to appropriate job analysis methodology:

> "1. *The performance appraisal should be based on an analysis of the requirements of the job.* Courts are skeptical of subjective, trait-based rating systems since they leave an enormous amount of room for the biases of raters to influence the outcomes, and they are not directly related to specific job responsibilities. Organizations, however, are not required to conduct exhaustive analyses of each job in the company as a condition of doing performance appraisal. A job analysis can be built directly into the appraisal process itself.
>
> When an individual and manager discuss the important goals and objectives that the individual will address during the course of the year and against which his performance will be appraised, that is a job analysis. If a manager evaluates the specific behaviors and expected conduct and demeanor required to perform according to the company's expectations, and then discusses these expectations and their importance with each subordinate, that is a job analysis.

> Completely objective measures of performance do not always exist. If they did, everyone would use them. In fact, if there were complete, objective, and quantifiable measures for every job, performance appraisal systems themselves would probably not be necessary; the data would speak for themselves. But with most jobs, there are few absolutely direct and impartial measures of an individual's performance, particularly when a successful performance is less dependent on performing countable acts than it is on such vital but slippery responsibilities as the ability to recognize and take advantage of opportunities, the ability to build a committed work team, or the ability to recognize obstacles before they become serious interferences.
>
> When a supervisor and subordinate together determine what results the subordinate should concentrate on producing over the upcoming year and they also discuss how the subordinate will go about generating these results-the behaviors and competencies that must be demonstrated-a legitimate job analysis has been conducted."
> (Grote, 1996, P. 330-331)

Given that a job analysis can be built into a performance appraisal system, and my focus was on completed performance appraisals, I assessed the performance appraisal systems at Johnson & Johnson Corporate Headquarters and the Subsidiaries by determining whether a job analysis was built into the appraisal system. Building a job analysis into a performance appraisal system satisfies the standards for best practices.

The second criterion I used to evaluate the companies' performance appraisal practices was the degree to which completed performance appraisals were based on actual behaviors rather than traits. Any number of traits are important to success in most jobs. Traits such as cooperativeness, dependability and enthusiasm are usually important to successful job performance regardless of the position. However, an excessively subjective performance appraisal can result when the appraisal process only calls for a

supervisor to evaluate an employee on such traits, without defining the behaviors that determine the rating. Therefore, the performance appraisals of Johnson & Johnson's Corporate Headquarters and the Subsidiaries were evaluated on the degree to which actual work behaviors of the employee were used to make performance ratings.

The third criterion used to evaluate the performance appraisals was the degree to which performance ratings were related to specific job functions rather than overall performance, without specification of job functions. The fourth criterion was whether the appraisals contained sufficient information to support the rating.

The results of my examination of the performance appraisals showed that in 2001 the performance appraisal systems at Johnson & Johnson Corporate Headquarters and the Subsidiaries well exceeded accepted professional standards for objectivity. Specifically, 96% of the appraisals examined were:

(a) based on a job analysis,

(b) based on behaviors

(c) described specific job functions and

(d) contained sufficient detail to document the appropriateness of the appraisal.

Appraisals of Plaintiffs' Declarants

In addition to my examination of the random sample of appraisals described above, I have examined completed performance appraisals of plaintiffs' declarants produced in this litigation. The results of that examination are consistent with my findings with regard to the appraisals randomly sampled by Dr. Ericksen. The completed appraisals of plaintiffs' declarants were objective and based on work behaviors. The completed appraisals exceeded accepted professional standards with regard to objectivity.

Chapter 4

Human Resources Policies, Practices and Procedures at Johnson & Johnson Corporate Headquarters and the Subsidiaries

I have examined policies, practices and procedures of Johnson & Johnson Corporate Headquarters and the Subsidiaries in existence in 2001. I have also read the declarations of executives from each Subsidiary. In this chapter, I present my opinions regarding the differences in policies, practices and procedures of the Subsidiaries specifically with regard to compensation, performance appraisal, and promotion. In Volume II of this report I provide a summary of each company's policies, practices and procedures. Each summary is based upon an examination of documents, deposition transcripts (including exhibits) and declarations from officials of Johnson & Johnson Corporate Headquarters and the Subsidiaries.

Compensation

In 2001, initial compensation for employees at Johnson & Johnson Corporate Headquarters and each Subsidiary was determined by the management of each entity. The Subsidiaries typically considered several factors in determining initial compensation. However they did not necessarily consider the same factors.

The collective list of factors typically considered by Subsidiaries as described in the declarations of Subsidiary executives is shown below:

A. Market pricing data
B. Candidate's education and experience
C. Candidate's current/last salary (compensation package)
D. Candidate's salary request
E. Internal equity (a comparison with what others in similar positions at the Subsidiary are being paid)
F. Degrees awarded (for college hires)
G. Geographic location of the position
H. Recommendation of recruitment agent (if applicable)
I. Candidate's bargaining position
J. Expected level of contribution
K. Requirements of the position
L. Competing offers
M. Competitiveness of the college attended (for college hires)
N. Market trends reflecting industry demand for the employee's skills

Figure 4 on the following pages shows the factors typically considered by Subsidiaries when making initial compensation offers in 2001. Figure 4 includes Subsidiaries for which documents and/or testimony from company officials addressing factors considered in determining initial compensation were available.

Figure 4

Factors Typically Considered for Initial Compensation

SUBSIDIARY	A. Market Pricing Data	B. Candidate's education and experience	C. Candidate's current/last salary (compensation package)	D. Candidate's salary request	E. Internal equity (a comparison with what others in similar positions at the operating company are being paid)	F. Degrees awarded (for college hires)	G. Geographic location of the position	H. Recommendation of recruitment agent (if applicable)	I. Candidate's bargaining position	J. Expected level of contribution	K. The requirements of the position	L. Competing offers	M. Competitiveness of the college attended (for college hires)	N. Market trends reflecting industry demand for the employee's skills
Advanced Sterilization Products	X	X	X	X	X	X								
ALZA Corporation		X	X	X	X		X	X						
Centocor, Inc.	X	X	X	X	X			X						
Cordis Corporation	X	X	X	X	X		X				X			
DePuy , Inc.	X	X	X	X	X									
Ethicon, Inc.	X	X	X		X				X					
Ethicon-Endo Surgery, Inc.	X	X	X	X	X					X				
Janssen Pharmaceutica, Inc.	X	X			X									
Johnson & Johnson Consumer Products/Personal Products/Sales and Logistics Company	X	X	X		X									
Johnson & Johnson Health Care Systems, Inc.	X	X	X	X	X		X	X				X		

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SUBSIDIARY	A. Market Pricing Data	B. Candidate's education and experience	C. Candidate's current/last salary (compensation package)	D. Candidate's salary request	E. Internal equity (a comparison with what others in similar positions at the operating company are being paid)	F. Degrees awarded (for college hires)	G. Geographic location of the position	H. Recommendation of recruitment agent (if applicable)	I. Candidate's bargaining position	J. Expected level of contribution	K. The requirements of the position	L. Competing offers	M. Competitiveness of the college attended (for college hires)	N. Market trends reflecting industry demand for the employee's skills
Johnson & Johnson/Merck Consumer Pharmaceuticals Co.	X	X	X	X	X	X		X						
Johnson & Johnson Networking and Computing Services, Inc.	X	X	X	X	X									X
Johnson & Johnson Pharmaceutical Research and Development, LLC	X	X	X	X	X									
Johnson & Johnson Worldwide Headquarters	X	X	X		X					X				
LifeScan, Inc.	X	X	X	X	X			X					X	
McNeil Consumer & Specialty Pharmaceuticals	X	X	X	X	X			X						
McNeil Nutritionals, L.L.C.	X	X	X	X	X									
Neutrogena Corporation	X	X	X	X	X		X							
Noramco, Inc.	X	X			X									X

SUBSIDIARY	A. Market Pricing Data	B. Candidate's education and experience	C. Candidate's current/last salary (compensation package)	D. Candidate's salary request	E. Internal equity (a comparison with what others in similar positions at the operating company are being paid)	F. Degrees awarded (for college hires)	G. Geographic location of the position	H. Recommendation of recruitment agent (if applicable)	I. Candidate's bargaining position	J. Expected level of contribution	K. The requirements of the position	L. Competing offers	M. Competitiveness of the college attended (for college hires)	N. Market trends reflecting industry demand for the employee's skills
Ortho Biotech Products, L.P.	X	X		X	X		X							X
Ortho-Clinical Diagnostics, Inc.	X	X	X	X	X		X							X
Ortho-McNeil Pharmaceutical, Inc.	X	X	X	X	X			X						
Pharmaceutical Sourcing Group-Americas	X										X			
Spectacle Lens Group	X	X	X		X						X			
Vistakon	X	X			X									

Figure 4 shows that the Johnson & Johnson companies typically considered different factors when determining initial salary compensation. Consequently aggregating compensation data from the different subsidiaries for the purpose of assessing differences between majority and minority groups is inappropriate. One must first control for, or take into account, differences between subsidiaries with regard to initial compensation practices.

Another complication revealed by Figure 4 has to do with the factors that were most frequently used across subsidiaries. Figure 4 shows that the following factors were considered by many of the subsidiaries when establishing initial compensation:

A. Market pricing data
B. Candidate's education and experience
C. Candidate's last salary
D. Candidate's salary request
E. Internal equity

All of these factors are either "person specific" or "subsidiary specific." Factors B, C and D are person specific in that they are, by definition, unique to each applicant. Factors B, C, and D are also interdependent. That is, Factors C and D are to some extent dependent upon Factor B. It is reasonable to conclude for example that an applicant's last salary and salary request will be related to the applicant's education and experience. The

higher the applicant's level of relevant education and the greater his or her relevant work experience, the higher his or her previous salary and salary request are likely to be. If level of relevant education and experience correlate with race, differences in initial compensation could appear to be due to race, when in actuality they are correlated with differences in salary requests, education and experience and prior salary level. A scientific analysis of initial compensation at Johnson & Johnson Corporate Headquarters and the Subsidiaries would require use of methodology that takes such circumstances into account. The differences in factors considered by each subsidiary together with the person specific nature of the most commonly used factors leads me to conclude that the appropriate analysis for evaluating plaintiffs' claims regarding initial compensation is at the individual level.

Even if one were to ignore factors B, C and D above, factor "E", internal equity (a comparison of the initial salary offer with the salaries of other employees in the same or similar positions at the Subsidiary), makes the initial compensation decision specific to each Subsidiary. That is, the initial compensation offer for applicants seeking similar jobs may be quite different between subsidiaries because the pay scales for employees in the companies differ.

The factors the companies use in determining initial compensation are consistent with professional standards for best practices.

Merit Increases

In 2001, Subsidiaries considered a number of factors in determining merit increases. The number and types of factors used differed among subsidiaries. The collective list of factors considered is shown below:

A. Performance rating
B. Position within market pricing data
C. Future growth potential
D. People development skills
E. Technical skills
F. Functional competencies
G. Achievement of operating company core competencies
H. Internal equity
I. Calibration
J. Achievement of individual goals and objectives
K. Proficiency in standards of leadership
L. Current placement in salary range
M. Ratings of team performance
N. Contribution to the business

Figure 5 on the following pages shows the specific factors typically considered by some of the Johnson & Johnson subsidiaries in 2001 to determine merit increases. Figure 5 includes subsidiaries for which documents and/or testimony from company officials addressing the factors considered in determining merit increases for non-sales employees were available.

Figure 5

Factors Typically Considered in Determining Merit Increases

SUBSIDIARY	A. Performance rating	B. Position within market pricing data	C. Future growth potential	D. People development skills	E. Technical skills	F. Functional competencies	G. Achievement of operating company core competencies	H. Internal equity	I. Calibration	J. Achievement of individual goals and objectives	K. Proficiency in standards of leadership	L. Current placement in salary range	M. Ratings of team performance	N. Contribution to the business
Advanced Sterilization Products	X	X	X	X										
ALZA Corporation	X	X	X		X									
Centocor, Inc.	X	X		X		X	X							
Cordis Corporation	X													
DePuy, Inc.	X			X		X				X				
Johnson & Johnson Health Care Systems	X	X						X	X					
Johnson & Johnson/Merck Consumer Pharmaceuticals Co.	X	X				X				X	X			

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SUBSIDIARY	A. Performance rating	B. Position within market pricing data	C. Future growth potential	D. People development skills	E. Technical skills	F. Functional competencies	G. Achievement of operating company core competencies	H. Internal equity	I. Calibration	J. Achievement of individual goals and objectives	K. Proficiency in standards of leadership	L. Current placement in salary range	M. Ratings of team performance	N. Contribution to the business
Johnson & Johnson Networking and Computing Services, Inc.	X									X				X
Johnson & Johnson Pharmaceutical Research and Development, L.L.C.	X													
LifeScan, Inc.	X		X			X				X	X			
Noramco, Inc.	X													
Ortho-Clinical Diagnostics, Inc.	X			X		X				X				

Figure 5 shows that as was the case with initial compensation decisions, the factors typically considered by the Subsidiaries in determining merit increases varied significantly. This finding is directly relevant to the issue of whether the compensation practices of Johnson & Johnson Companies can be properly evaluated by aggregating compensation data from all of the subsidiaries. In my opinion, again the answer is no. One of plaintiffs' claims in this case is that African American and Hispanic salaried employees at Johnson & Johnson received lower compensation in the form of merit increases than similarly situated Caucasian employees. Given that the factors considered in determining merit increases differed between subsidiaries, combining data on merit increases from all of the operating companies is not proper scientific methodology.

The factors considered for merit increases are consistent with professional standards for best practices.

Compensation for Field Sales Employees

In 2001 compensation for sales employees at the Subsidiaries typically consisted of base salary and incentive compensation based upon sales performance. Compensation was determined on the basis of compensation plans formulated by human resources and sales management at the Subsidiary.

Corporate Headquarters has little if any involvement in the development and implementation of compensation practices for sales employees at Johnson & Johnson subsidiaries (see, for example, Cohen Declaration, Para. 37; Shapiro Declaration, Para. 30). The compensation processes for sales employees are handled by the Subsidiaries with each company developing a system that best suits its business needs.

For example, Mr. Barry Cohen, the Senior Director, Business Operations at Ortho-McNeil's North American Pharmaceutical Centers, testified that methods used to incentivize and measure the achievements of Ortho-McNeil Pharmaceutical sales personnel changed over time depending upon competitive market conditions (Cohen Declaration, Para. 18). In 2001 at Ortho-McNeil, potential for increased incentive earnings for sales personnel accelerated as certain targets were triggered and territory performance multipliers were applied.

[redacted] (Cohen Declaration, Para. 27).

At Cordis in 2001, compensation for sales employees was based on va[redacted]le compensation plans that differed from year to year and business unit to business unit (Gudicello Declaration, Para. 29).

REDACTED

(Gudicello Declaration, Para. 30).

The collective list of criteria used to determine compensation for sales employees at the various Subsidiaries included the following:

- Sales performance as a percentage over sales forecast
- Relevant sales experience
- Score on threshold and distinguishing competencies
- Inventory expense management
- Planning and project management
- Sales quota attainment per product category
- Sustained sales performance
- Sales performance compared to peers
- Team performance and company forecast attainment

We see that a variety of factors were used to determine the compensation of sales employees. Therefore aggregating compensation data for sales employees across operating companies to assess compensation practices is inappropriate.

The factors the companies considered in determining sales compensation are consistent with professional standards for best practices.

Performance Appraisal

The results of an examination of a random sample of completed performance appraisals from Corporate Headquarters and the Subsidiaries in

existence as of 2001 were presented in Chapter 3. In essence that examination revealed that (a) the evaluations were significantly different and (b) the appraisals from each Subsidiary exceeded the standards for accepted professional practice with regard to objectivity. I conducted further examination of the performance appraisal policies and practices in the domestic subsidiaries at Johnson & Johnson in 2001 by reviewing documents describing the appraisal process and reading testimony from human resources managers from each subsidiary who had responsibility for the performance appraisal process. My examination revealed that the approaches of the subsidiaries differed in design and implementation.

As I discuss in Chapter 3, performance appraisals among subsidiaries differed in implementation based on factors such as the weighting of job components and assessment of individual and team performance. I also point out in Chapter 3 that appraisal systems differed among subsidiaries in terms of approaches to implementation including sources of appraisal information, and the use of formulas to determine the achievement of individual performance objectives.

After examination of documents from the Subsidiaries describing their appraisal systems and the examination of the testimony from human resources personnel from the companies I have found an additional difference in design that involves factors used to actually define

performance. Listed below are different factors that the Subsidiaries included in the definition of performance when evaluating employees.

- Performance results
- Decision making
- Self-management
- Problem solving
- Leadership
- Development of the support of others
- The degree to which performance goals were challenging
- Obstacles that had to be overcome to achieve objectives
- Guidance needed versus working independently
- The degree to which objectives accomplished were routine
- The degree to which projects were a team effort
- The degree to which there was performance improvement
- Customer satisfaction

Given the wide variety of factors underlying the design of performance appraisal procedures across Subsidiaries, it is my opinion that an analysis of plaintiffs' claims regarding performance appraisals must at a minimum be studied at the level of the Subsidiary, unit within Subsidiary, or more likely at the level of the individual employee.

The factors the companies used to assess performance are consistent with professional standards for best practices.

Promotions

Promotions occurred in a variety of circumstances at the Subsidiaries in 2001, including the following:

- An employee's job responsibilities were significantly increased

- There was a job progression or progression ladder (e.g., junior accountant to accountant to senior accountant)
- There was a promotion to a position above the employee's salary range
- Succession planning
- There was a promotion in line with the development plan for an employee

Regardless of the circumstances, the promotion processes at each subsidiary included consideration of the employee's job performance as assessed by that company's performance appraisal process. It has already been shown that the performance appraisal processes at Corporate Headquarters and among the Subsidiaries differed significantly. Promotions were specific to the circumstances present at a particular company and the individual employee or employees involved. The circumstances in which promotions occurred and the manner in which performance was used to determine promotions are consistent with professional standards for best practices.

Monitoring Employment Practices

An important element in the development and implementation of human resource policies and practices particularly with regard to equal employment opportunity is proper monitoring. It is not good enough to simply formulate policies that meet accepted professional standards, the employer must take affirmative steps to monitor the implementation of those policies to ensure that they produce the intended results. In 2001 each

Johnson & Johnson company was responsible for monitoring implementation of its human resources polices and procedures including those related to equal employment opportunity. Each company for example was responsible for preparing EEO-1 reports and Affirmative Action Plans. These documents are required by governmental agencies such as the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). In fulfilling their responsibilities with regard to these agencies and for purposes of their EEO-1 and Affirmative Action Plans, each operating company maintained data on employment decisions such as hiring and promotions. Each company also analyzed its status regarding equal employment opportunity by assessing (on an annual basis) the degree to which there was underutilization of groups protected under Title VII of the 1964 Civil Rights Act (e.g., racial and ethnic minorities and women) in hiring and promotion. Where it was determined that underutilization existed, the subsidiary was required to formulate and implement steps designed to address it. If the company failed to adequately monitor its hiring and promotion practices and/or take appropriate steps to address deficiencies, compliance action could be taken by the appropriate governmental agency (e.g., the Office of Federal Contract Compliance). Therefore, each subsidiary was held accountable for its human resources

policies and practices with regard to equal employment opportunity and was required to monitor those practices in accordance with federal regulations.

Chapter 5

Plaintiffs' Analysis of the Johnson & Johnson Companies

Plaintiffs' statistical experts (Drs Madden and Vekker) report that they evaluated whether employment practices at Johnson & Johnson are racially and ethnically neutral (Madden and Vekker, 2005). The intent of their analysis was to assess whether selections for promotions, awarding of compensation, and setting of initial job assignments for salaried employees were racially and ethnically neutral (Madden and Vekker, 2004).

Madden and Vekker (2004) focused their analysis on African American, Hispanic and White non-Hispanic employees at Johnson & Johnson in salaried exempt and nonexempt positions in the United States between November 1997 and May 2003. In conducting their analysis, Madden and Vekker established the following criteria for determining whether promotions, compensation and initial assignments at Johnson & Johnson were racially and ethnically neutral.

> "Racially and ethnically neutral employment practices exist when there are no systematic differences in outcomes – i.e., promotions, compensation, or initial job assignment – by race and ethnicity for employees with equivalent credentials." (Madden & Vekker, 2004, P. 2)

A critical element in Madden and Vekker's analysis is whether racial and ethnic differences exist for employees with "equivalent credentials."

Madden and Vekker present the following conclusions with regard to promotions based upon their analysis:

> "We find that African American employees are significantly less likely than comparably qualified white non-Hispanic employees to be selected for promotion from 1997 through 2003. The racial differential in promotions occurs throughout the business units and jobs at J&J. African American employees are expected to have had 11.5% more promotions than they actually received, were a racially neutral process used to select employees for promotions. (Madden & Vekker, 2004, P. 2)
>
> We also considered the role of ethnicity in promotions. We find that Hispanic employees do not have statistically lower likelihood of promotions relative to comparably qualified white non-Hispanic employees from 1997 through 2003." (Madden & Vekker, 2004, P. 3)

Madden and Vekker concluded the following with regard to compensation at Johnson & Johnson:

> "We find that the awarding of compensation is not racially and ethnically neutral. For each year from 1997 through 2003, African Americans and Hispanics had lower average base salaries than comparably qualified white non-Hispanic employees, even when in the same job. (Madden & Vekker, 2004, P. 3)

Madden and Vekker (2004) report the following conclusions with regard to initial job assignments:

> We find that the initial job assignments that employees received when they were hired are not racially and ethnically neutral. We find an average wage differential at hire by race of 3.27% (5.62 standard deviations) for African Americans of equivalent education and years of experience to non-Hispanic whites hired between 1999 and 2003. We find an average wage differential at hire by ethnicity of 4.48% (6.03 standard deviations) for Hispanics of equivalent education and years experience to non-Hispanic whites hired between 1999 and 2003. (Madden & Vekker, 2004, P. 6)

Madden and Vekker's conclusions in all three areas above are based on the premise that they accurately identified African American, Hispanic and White non-Hispanic employees who were equally qualified. The

accuracy of this premise is a direct function of (a) the degree to which the factors that Madden and Vekker used to determine employee qualifications were the same as the factors actually used by Johnson & Johnson Corporate Headquarters and the Subsidiaries in making decisions regarding promotions, compensation and initial job assignment and (b) the degree to which those factors were accurately measured.

Promotions

Madden and Vekker used the following factors to determine whether African American, Hispanic and White non-Hispanic employees in their analysis were equally qualified for promotion:

- Year of promotion
- Business unit
- Job function
- Job major subfunction
- Job hierarchy (job level)
- Level of education (e.g., high school diploma, Associate's Degree, Bachelor's etc.)
- Time at J&J
- Age
- Participation in succession planning

In their analysis of promotions at Johnson & Johnson Headquarters and the Subsidiaries, Madden and Vekker compared the number of promotions that African Americans and Hispanics could expect based on the factors listed above with the number of promotions they actually obtained.

I have discussed in the previous chapter the factors and circumstances at Johnson & Johnson Headquarters and the Subsidiaries that typically determined promotions. Those factors and circumstances include:

- Job performance
- Job responsibilities
- Job progression or progression ladder
- Succession planning
- The employee's promotion plan

The factors and circumstances listed above differed amongst Johnson & Johnson companies, but job performance was the primary factor used by each subsidiary to determine promotions. The statistical analysis of promotions conducted by Madden and Vekker (2004) did not include employee performance in determining whether candidates were equally qualified for promotion. Furthermore Madden and Vekker have not shown that the methods they used to measure education and experience accurately reflect the manner in which those factors were considered by the Johnson & Johnson companies.

The fact that Madden and Vekker's analysis does not take into account factors and circumstances Johnson & Johnson Corporate Headquarters and the Subsidiaries actually used to determine promotions, means that their analysis of promotions is not relevant to the facts in this case.

Compensation

Figure 5 in the previous chapter shows factors typically used by Corporate Headquarters and the Subsidiaries to determine year-end compensation. These included job performance, internal equity, and ratings of team performance among others. Madden and Vekker (2004) did not include these factors in their analysis of the compensation policies, practices and procedures of Corporate Headquarters and the Subsidiaries. What this means is that differences in compensation that Dr.'s Madden and Vekker attribute to race cannot be attributed to race without first accounting for the other relevant (non-racial) factors used to determine compensation. The failure of Drs Madden and Vekker to include in their analysis the appropriate, non-racial factors used by Corporate Headquarters and the Subsidiaries to determine compensation means again that their analysis is not relevant to the facts in this case.

Initial Job Assignments

Madden and Vekker report that they have examined whether there were racial and ethnic differences in initial job assignment for employees at Johnson & Johnson (Madden & Vekker, P. 44-46). Madden and Vekker (2004) compared employees whom they assert were "comparably qualified" as defined on the basis of age, level of degree (education) and job function/major sub-function. Madden and Vekker report that they analyze

differences in initial job assignment by examining "whether there are any differences in annual base salary rates assigned at hire by race and ethnicity", after adjusting for potential racial and ethnic differences in qualifications as they defined them. However, there is no indication that Madden and Vekker considered the types of jobs applicants seek, the processes by which applicants are considered for specific jobs or the processes by which they are hired. These considerations might include, for example, how each candidate's education relates to the specific requirements of the position or positions for which he or she is being considered; which aspects of each candidate's work experience (if any) relate to the specific requirements of the position or positions for which he or she is being considered; and the match between the candidate's work expectations and the jobs for which he or she is being considered.

Figure 4 in the previous chapter presents over a dozen factors that Corporate Headquarters and the Subsidiaries typically considered in determining initial compensation. Most of these were not included in the Madden and Vekker analysis. Plaintiffs' experts' analysis of "initial assignment" therefore does not reflect the actual practices of the Johnson & Johnson companies and consequently is not relevant to the facts in this case.

Chapter 6

Conclusions

The purpose of this report was to present the results of my evaluation of the policies, practices and procedures of Johnson & Johnson Corporate Headquarters and the domestic subsidiaries as they relate to class certification. My evaluation focused on Johnson & Johnson as it existed as of 2001. I directed my evaluation at determining whether named plaintiffs and the persons they wish to represent were similarly affected by the human resources policies, practices and procedures of Corporate Headquarters and the Subsidiaries. My evaluation was not directed at the merits or validity of the human resources policies, practices and procedures of Corporate Headquarters and the Subsidiaries, but rather, at determining (a) whether putative class members were similarly affected by those policies, practices and procedures and (b) whether those policies, practices and procedures were excessively subjective.

My conclusions are listed below.

- As of 2001, Johnson & Johnson consisted of approximately 197 companies worldwide, including over 30 domestic subsidiaries that operated as autonomous companies, each responsible for its human resources policies, practices, and procedures.

- The decentralized and autonomous management structure of Johnson & Johnson Corporate Headquarters and the Subsidiaries requires that any examination of the companies' human resources policies, practices and procedures appropriately account for this management structure.

- Examination of a random sample of completed performance appraisals from the Johnson & Johnson companies in existence in 2001 revealed that the performance management systems at the companies (a) exceeded the standards of accepted professional practice with regard to objectivity and (b) were significantly different among companies.

- Examination of the compensation policies, practices and procedures of the companies indicated significant differences among the companies.

- Examination of the promotion practices of the companies indicated that promotions were obtained in a variety of ways. Analysis of plaintiffs' claims as to promotion requires information in detail about the specifics of each promotion.

- Examination of the human resources policies, practices and procedures of Johnson & Johnson Corporate Headquarters and the Subsidiaries indicates that plaintiffs' experts did not utilize appropriate methodology in evaluating the companies' human resources policies, practices and procedures. Specifically, plaintiffs' experts sought to determine whether African American and Hispanic salaried employees at Johnson & Johnson received significantly fewer promotions, less compensation and lower initial job assignments than similarly qualified White non-Hispanic employees. Plaintiffs' experts' analysis failed to achieve their goal because the analysis was not based on the actual factors used by Johnson & Johnson Corporate Headquarters and the companies to determine compensation and promotion. Plaintiffs' experts' analysis does not address initial job assignments. Additional information is needed to adequately address that issue.

I declare under penalty of perjury that the foregoing is a true and correct report of my analysis and opinion.
Executed on this 13th day of May, 2005.

James L. Outtz

References

Grote, D. The Complete Guide to Performance Appraisal. AMACOM. 1996.

Madden, J. and Vekker, A. "Expert Report of Janice Fanning Madden and Alexander Vekker on Evaluating Whether Employment Practices at Johnson & Johnson are Racially and Ethnically Neutral."

Malos, S. "Current Legal Issues in Performance Appraisal." Performance Appraisal: State of the Art Practice. Edited by James W. Smither. Jossey-Bass Publishing. Ch. 2; P. 49-94. 1998.

Appendix A

Curriculum Vitae

VITAE

James L. Outtz, Ph.D.

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January 2005

JAMES L. OUTTZ, Ph.D.

Education

Ph.D. **Industrial/Organizational Psychology**	University of Maryland, College Park Maryland December 1976
M.S. **Industrial Psychology**	Northeast Louisiana University, Monroe, Louisiana January 1972
B.A. **Sociology**	Northeast Louisiana University, Monroe, Louisiana May 1969

Professional Affiliations

American Psychological Association

Fellow – Society for Industrial and Organizational Psychology
Member - Division of Evaluation and Measurement
Member – Committee On Psychological Tests and Assessment (1990 through 1992)

American Psychological Association Division 14
The Society for Industrial and Organizational Psychology (SIOP)

Member - Ad Hoc Committee on Revision of the SIOP Principles
Member - Ad Hoc Committee on Revision of the Uniform Guidelines
Member – M. Scott Myers Award Committee
Past Member - Program Committee for the Ninth Annual Conference
Past Member - External Affairs Committee

The American Educational Research Association

Member

The International Personnel Management Association

Member

Public Service

National Academy of Sciences, National Research Council

Member – Committee to Study FAA Aviation Safety Inspector Staffing Standards
(October 2004 to Present)

Member – Committee on Workforce Needs in Information Technology (1999 to 2001)

Member - Board on Testing And Assessment, Commission on Behavioral and Social Sciences (1992 through 1996)

Publications

Outtz, J., (2005) Race Discrimination Cases: Common Themes. In Employment Discrimination Litigation: Behavioral, Quantitative and Legal Perspectives, Landy, F. (Ed) New York, New York, Jossey – Bass/Pfeiffer.

Outtz, J. and Landy, F. (2005) Some Concluding Thoughts. In Employment Discrimination Litigation: Behavioral, Quantitative and Legal Perspectives, Landy, F. (Ed) New York, New York, Jossey – Bass/Pfeiffer.

Cascio, W., Goldstein, I., Outtz, J., and Zedeck, S. (2004) Technical Issues in Staffing Decisions. In Test Score Banding in Human Resource Selection: Legal, Technical, and Societal Issues, Aguinis, H. (Ed.) New York, New York, Quorum Books.

Outtz, J. (2004) The Psychology and Management of Work Force Diversity. A Book Review. Personnel Psychology. Vol. 57 No. 4 1041-1044

Outtz, J., (2002) The Role of Cognitive Ability Tests in Employment Selection. Human Performance Vol. 15 No. (½) 161-171.

Campion, M., Outtz, J., Zedeck, S., Schmidt, F., Kehoe, J., Murphy, K., and Guion, R. (2001) The Controversy over Score Banding in Personnel Selection: Answers to Key Questions. Personnel Psychology, Volume 54, No. 1, 149-185.

Outtz, J. (1998) Affirmative Action: A Review of Psychological and Behavioral Research. A Book Review. Personnel Psychology, Volume 51, No. 1, 216-219.

Outtz, J. (1998) Testing Medium, Validity and Test Performance. In Beyond Multiple Choice: Evaluating Alternatives to Traditional Testing for Selection, Hakel, M. (Ed.) Hillsdale, New Jersey, Erlbaum Associates, Inc.

Outtz, J. (1997) Developing and Implementing Fair Systems of Assessment. Paper prepared for the Committee on Access Diversity and Civil Rights, National Skill Standards Board, Washington, DC

Zedeck, S., Cascio, W., Goldstein, I., and Outtz, J. (1996) An Alternative to Top-down Selection. In Fair Employment strategies In Human Resource Management, Barrett, R. (Ed.) Westport, Connecticut, Quorum Books.

Cascio, W., Zedeck, S., Goldstein, I., and Outtz, J. (1995) Selective Science or Selective Interpretation. American Psychologist Vol. 50, No. 10, 881-882.

Cascio, W., Goldstein, I., Outtz, J., and Zedeck, S., (1995) Twenty Issues and Answers about Sliding Bands. Human Performance Vol. 8, No. 3, 227-242.

Outtz, J. (1992) The Sliding-band Referral Method: An Innovative Procedure for Selecting or Promoting Employees. Employment Testing, Vol. 1, No. 10, 169-173.

Zedeck, S. Outtz, J. Cascio, W., and Goldstein, I. (1991) Why Do 'Testing Experts Have Such Limited Vision? Human Performance Vol. 4, No. 4 297-308.

Cascio, W. Outtz, J. Zedeck, S. and Goldstein, I., (1991) Statistical Implications of Six Methods for Establishing Cutoff Scores in Personnel Selection. Human Performance Vol. 4, No. 4, 233-64.

Outtz J., (1977) Racial Bias As a Contaminant of Performance Evaluation. Research Report #15, Contract #N00014-75-C-0884, Personnel and Training Research Programs, Science Division, Office of Naval Research, Arlington, Virginia.

"Alternative Uses of Traditional Selection Procedures" (manuscript in preparation).

Current Employment

Industrial Psychologist in Private Practice

Current and Previous Consultant Activities

Consultant October 2004 to Present	**Alcoa Inc.** **Pittsburgh, Pennsylvania** Retained to develop an entry-level test for apprentice positions at the Company's Cleveland, Ohio facility.
Consultant July 2004 to Present	**The Popham Law Firm, P.C.** **Kansas City Missouri** Retained as expert witness for the plaintiff in the case of Shirley Williams vs. Sprint/United Management Company. The case involves claims of age discrimination with regard to a reduction-in- force carried out by the defendant.
Consultant April 2004 to Present	**Weiner & Katz LLC** **Livingston, New Jersey** Retained as expert witness for the plaintiff in the case of Bishop et. al. v State of New Jersey et. al. This case involves a claim of racial discrimination with regard to a promotion examination for the position of fire captain.
Consultant April 2004 to Present	**Lieff, Cabraser, Heimann & Bernstein, LLP** **San Francisco, California** Retained as expert witness for the plaintiff in the case of Gonzalez et al. v. Abercrombie & Fitch Stores, Inc., A&F California, LLC and A&F Ohio, Inc. The case involves a claim of racial discrimination in hiring.

Consultant
March 2004 to
June 2004

U.S. Department of Commerce
Office of General Counsel
Washington, DC

Retained as Expert witness for the defendant in the case of Janet Howard v. Donald L. Evans, Secretary U.S. Department of Commerce. The case involves a claim of racial discrimination by African American employees with regard to the Department of Commerce performance appraisal system. I was retained to evaluate the adequacy of plaintiff expert's report.

Consultant
March 2004

City of Bridgeport
Bridgeport, Connecticut

Testified as expert witness for the defendant in the case of John Bolton v. City of Bridgeport (CV 04-0409828 S). The case involved a claim of racial discrimination by non-minority applicants for the position of firefighter.

Consultant
January 2003 to
October 2003

Fisher & Phillips LLP
Atlanta, Georgia

Retained to conduct an evaluation of the human resources practices of Matsushita Communication Industrial Corporation of U.S.A. ("MCUSA") relating to pay and promotion for its hourly, salaried-nonexempt, supervisory and management employees.

Consultant
November 2002

City of Chicago
Chicago, Illinois

Testified as expert witness for the defendant in the case of Horan et al. v. The City of Chicago. I offered an opinion regarding the proper interpretation and use of the results of an entry-level firefighter examination.

Consultant
April 2002 to
March 2003

Publix Super Markets, Inc.
Lakeland, Florida

Retained to provide assistance in the development and validation of modifications to a selection battery for Assistant Department Manager and Department Manager positions.

Consultant
April 2002 to
December 2003

Arent, Fox, Kintner, Plotkin & Kahn, PLLC
Washington, D.C.

Retained as expert for the defendant in the case of Wicks, et al., v. Metso Paper USA. This case involves a complaint of age discrimination by former employees at the Clark Summit facility of the Beloit Company who were not selected for retention by Metso Paper USA after its acquisition of the Clark Summit facility.

Consultant
October 2001 to
August 2002

Epstein Becker & Green, P.C.
Washington, D.C.

Retained as expert witness for the Defendant in the case of Thornton et al., v. ICMA Retirement Corporation. This case involved a complaint of racial discrimination by current and former African American employees.

Consultant
February 2001 to
December 2002

City of San Francisco
San Francisco, California

Retained to develop and validate a Firefighter examination for the City of San Francisco Fire Department.

Consultant
February 2001 to
Present

Bridgeport Civil Service Commission
Bridgeport, Connecticut

Retained to develop and validate an examination for the position of Firefighter.

Consultant
January 2001 to
October 2003

Thelen, Reid and Priest, LLP
Washington, D.C.

Retained to monitor, review, and provide input to the Bureau of Alcohol, Tobacco, and Firearms regarding the development and validation of a promotion process for First-Level Supervisor positions.

Consultant
January 2000 to
December 2001

Spriggs and Davis, PA
Tallahassee, Florida

Retained as expert for the plaintiff in the case of Middleton, et al., v. Publix Supermarkets, Inc.

Consultant
March 2000 to
December 2001

Bridgeport Civil Service Commission
Bridgeport, Connecticut

Retained to develop and validate promotion examinations for the positions of Police Sergeant and Police Detective.

Consultant
July 1999 to
September 2001

City of San Francisco
San Francisco, California

Retained to develop an Officer Candidate Promotion System for the City of San Francisco Fire Department.

Consultant
June 1999 to
January 2003

CSX Transportation
Jacksonville, Florida

Retained to validate tests and selection procedures used for hiring and promotion in several departments including Train and Engine Service, Yardmaster, Dispatcher, Mechanical Operations, and Engineering.

Consultant
June 1999 to
August 2002

NAACP Legal Defense Fund
Los Angeles, California

Retained as expert for the plaintiffs in the case of Rios, et al., v. Regents, et al. Retained to evaluate the admissions procedure of the University of California at Berkeley.

Consultant
December 1998
to Present

Federal Deposit Insurance Corporation
Washington, D.C.

Retained to provide expert services to the Legal Division of the Federal Deposit Insurance Corporation (FDIC) regarding employment discrimination matters. Responsibilities include conduct of validation studies regarding selection and promotion procedures used by the organization.

Consultant
December 1998
to January 2000

Vladeck, Waldman, Elias and Engelhard, P.C.

Retained as expert for the plaintiffs in the case of Rodolico v. Unisys Corporation. Responsibilities included an evaluation of a reduction in force carried out by Unisys with regard to engineers employed by Company.

Consultant
August 1998 to
December 2001t

City of San Francisco
San Francisco, California

Retained to develop a Firefighter Cadet Program to replace the Firefighter selection procedures used in the past. Project included the development and validation of screening procedures for entering the program, program content, and methods of evaluating performance.

Consultant
July 1998 to
January 2001

Arter and Hadden
Washington, D.C.

Retained as expert witness for the defendant in the case of Beebe, et al., v. the National Association of Social Workers Inc. (NASW). Responsibilities included evaluation of the procedures used by the NASW to select persons for senior management positions.

Consultant
June 1998 to
Present

Arent, Fox, Kintner, Plotkin and Kahn
Washington, D.C.

Retained as expert for the defendant, INA Bearing Company Inc., in response to a Show Cause Notice from the U.S. Department of Labor, Office of Federal Contract Compliance. Responsibilities include an analysis of the Company's selection procedures for specific craft positions.

Consultant
March 1998 to
Present

Vladeck, Waldman, Elias, and Engelhard, PC
New York, New York

Retained as expert for the plaintiff in the case of Lott v. Westinghouse. Responsibilities include evaluation of the performance appraisal and promotional procedures of the Westinghouse Company.

Consultant
November 1997
to January 2001

Perkins Coie
Seattle, Washington

Retained on behalf of The Boeing Company to provide recommendations regarding the validity, fairness, and operational use of the Company's First-Level Management Selection System.

Consultant
October 1997 to
January 1999

Hermina Law Group
Laurel, Maryland

Retained as expert for the plaintiff in the case of Richard v. Bell Atlantic Corporation, et al. Responsibilities include review of the testing and promotion procedures of the Bell Atlantic Corporation.

Consultant
July 1997 to
November 1997

National Skills Standards Board
Washington, D.C.

Retained to prepare a paper on alternative methods of assessing national skills standards.

Consultant
May 1997 to
June 1997

Gordon, Silberman, Wiggins and Childs
Birmingham, Alabama

Testified as expert witness for the plaintiff in the case of Moore, et al., v. Norfolk Southern. My testimony addressed the appropriateness of using validity generalization as a strategy for establishing the job relatedness of cognitive ability tests used in a clinical assessment process, and the feasibility of alternatives to the cognitive ability tests used by the defendant. I demonstrated that there were alternatives to the defendant's cognitive ability tests that had less adverse impact and equivalent validity.

Consultant
June 1996 to
June 1997

The George Washington University
Washington, D.C.

Retained to provide consultation with regard to implementation of a reduction in force (RIF) at the George Washington University Medical Center. Responsibilities included examination of implementation decisions from a psychometric standpoint.

Consultant
January 1996 to
May 1997

Vladeck, Waldman, Elias, and Engelhard. P.C.
New York, New York

Retained as expert for the plaintiff in the case of Krueger v. N.Y. Telephone. Retained to examine the report of defendant's expert regarding a downsizing plan implemented by the New York Telephone Company. Responsibilities included evaluation of the conclusions in the report, providing assistance in preparing for defendant expert's deposition, and preparing a rebuttal report.

Consultant
December 1995
to March 1999

Williams and Connolly
Washington, D.C.

Retained to evaluate the work necessary to validate certain CSXT Railroad Company employment practices in connection with pending litigation.

Consultant
November 1995
to May 1997

City of Columbus
Columbus, Ohio

Retained to provide consultant services to complete a job analysis for the position of Firefighter and, if appropriate, make recommendations to modify the City's testing method. Responsibilities included meeting with key City personnel regarding the project; providing job analysis training to Civil Service Commission staff; reviewing job analysis data; providing written comment to the Civil Service Commission regarding acceptability of the work, and recommending possible modifications to the Firefighter examination.

Consultant
August 1995 to
June 2001

United States Department of Justice
Federal Bureau of Investigation
Washington, D.C.

Retained to serve on a three-person Review Committee, under the terms of a settlement agreement, to monitor and comment upon the proposals and recommendations of experts hired by the FBI. Responsibilities include evaluation of proposals and recommendations of experts with regard to promotion practices of the Agency specifically relating to the Career Development Program, Performance Appraisal Report System, Management Appraisal Program, and Initiation of Disciplinary Proceedings.

Consultant
June 1995 to
January 2000

O'Melveny and Myers
Washington, D.C.

Retained as expert for the defendant, Ford Motor Company, in employment discrimination litigation. Responsibilities include performing statistical and other analyses of employment data of the Ford Motor Company and Ford Motor Credit.

Consultant
March 1995 to
April 1997

Cohen, Milstein, Hausfeld and Toll
Washington, D.C.

Retained as expert for the plaintiff in the case of Roberts v. Texaco, Inc. Responsibilities included review of Texaco's selection and promotion policies and practices to determine whether they are excessively subjective and inadequately audited or monitored and, therefore, are likely to have an adverse impact on African American employees.

Consultant
February 1995 to
May 1995

Koskoff, Koskoff and Bieder
Bridgeport, Connecticut

Retained as expert witness for the intervening defendants in the case of Burke, et al., v. Bridgeport Civil Service Commission, et al. I testified regarding the development and validation of a written examination for Police Officer and the use of a banding procedure to interpret test scores.

Consultant
December 1993
to December
1994

City of Columbus Civil Service Commission
Columbus, Ohio

Retained to advise the Civil Service Commission with respect to professionally acceptable strategies for test grading and application certification. Also retained to prepare a position paper on "Banding" as a selection strategy and provide recommendations to City officials.

Consultant
October 1993 to
September 1995

Potomac Electric Power Company
Washington, D.C.

Retained to (a) develop selection procedures for all first-level supervisor positions, (b) develop alternative selection procedures for entry-level positions, and (c) evaluate and revise the qualification card program which determines progression into skilled craft positions.

Consultant
September 1993
to Present

City of Chicago
Chicago, Illinois

Retained to develop and validate a written examination for the position of Firefighter. The examination is administered to approximately twenty-five thousand applicants. It incorporates audiovisual technology as well as nontraditional item format designed to enhance validity and reduce adverse impact.

Consultant
June 1993 to
March 1995

City of Detroit
Detroit, Michigan

Retained to develop promotion examinations for the positions of Police Lieutenant, Sergeant, and Investigator in the Detroit Police Department.

Consultant
February 1992 to
May 1992

CORE Corporation, Inc.,
Berkeley, California

Retained to work with the firm to develop and validate an entry-level Firefighter examination for the City of San Francisco.

Consultant
January 1992 to
January 2000

U.S. Department of Justice
Federal Bureau of Investigation
Washington, D.C.

Retained to conduct a review and analysis of the Career Development Program for Mid-Level Managers (GS-14 and
GS-15) and propose modifications.

Consultant
July 1991 to
December 1991

Arnold and Porter
Washington, D.C.

Retained (with agreement of the Federal Bureau of Investigation) to assist the law firm in preparation for possible litigation on behalf of a class of African American FBI agents who claimed that the FBI discriminated against them on account of race in violation of Title VII of the Civil Rights Act of 1964.

Consultant
June 1991 to
January 1995

East Bay Municipal Utility District
Oakland, California

Designed and developed an entry-level test for apprentice positions in the Plant and Equipment Maintenance Division of the Maintenance Department. The positions included Electrical Worker, Mechanical Maintenance Worker (including auto mechanic), Carpentry Worker, and Instrument Worker. A new video-based testing format was used to present test information. This format produced greater fidelity between the test and the jobs. Results showed good variance, high reliability, and a significant reduction in test score differences across race, ethnicity, and gender.

Consultant
April 1991 to
January 1996

United States Department of Justice
Civil Rights Division
Washington D.C.

Retained as expert witness for the plaintiff in the case of United States v. State of New Jersey (CV 950-73) to review validation evidence, determine whether fire service tests are job-related, and possibly testify regarding findings.

Consultant
May 1992 to
June 1998

United States Department of Justice
Civil Rights Division
Washington D.C.

Retained in the case of United States v. Nassau County to assist in the design, development, and validation of a new device for use by Nassau County in the selection of candidates for the position of Police Officer. Responsibilities also included consultation with U.S. attorneys assigned to the case, and testimony by deposition and/or at trial as required.

Consultant
February 1991 to
March 1991

Arent, Fox, Kintner, Plotkin and Kahn

Retained as expert witness for the defendant in the case of Edward L. Jolly v. Northern Telecom Inc. (Civil Action No. 90-322-A). Retained to testify regarding the type of evaluation required for an industrial psychologist to reach the expert opinion that one employee is more qualified than another for promotion to a mid-level management position.

Consultant
November 1990

City of San Francisco
San Francisco, California

Testified as expert witness for the defendant in the case of Officers for Justice, et al., v. Civil Service Commission of the City and County of San Francisco. This case involved the contention by plaintiffs that a system of test score interpretation called "sliding bands," which I developed, is statistically inappropriate and does not represent a reasonable alternative to the use of test scores in strict rank order. The district court ruled for the defendant. The decision was upheld by the Ninth Circuit Court of Appeals. In its opinion, the Ninth Circuit Court of Appeals wrote

"... we find that the efforts exerted in this process culminated in a unique and innovative program which succeeds in addressing past harms to minorities while minimizing future harmful effects on non-minority candidates. The successful efforts of all parties and the district court in reaching this resolution are to be lauded." (Officers for Justice v. Civil Service Commission of the City and County of San Francisco, Nos. C-73-0657 RFP and C-77-2884 RFP, N.D. Cal., 21, August 1991)

Consultant
September 90 to
September 1991

City of Huntington
Huntington, West Virginia

Retained to review the City of Huntington's Civil Service Rules and selection procedures for hiring Police Officers and Firefighters, provide an opinion regarding the validity of the procedures, and determine whether the adverse impact of the procedures could be reduced.

Consultant
April 1990 to
April 1991

NAACP
Baltimore, Maryland

Retained to provide expert opinion regarding the validity of the College Level Academic Skills Test (CLAST). This test was being used by the State of Florida to measure the achievement level of third-year college students pursuing a teaching career.

Consultant
December 1989

City of Bridgeport
Bridgeport, Connecticut

Testified as expert witness for the defendant in the case of Bridgeport Guardians Inc., Hispanic Society Inc., v. City of Bridgeport (Civil Action No. B-89-547, TFGD), U.S. District Court, District of Connecticut. The case involved a charge by the plaintiffs that the promotion process for the position of Police Sergeant in the Bridgeport Police Department had adverse impact against Black and Hispanic candidates, and was not valid. I gave testimony that in my opinion the promotion process did not have an adverse impact against these groups and was valid.

Consultant
December 1989

Bramhall, Duncan and Ohm
Attorneys at Law
Little Rock, Arkansas

Testified as expert witness for the plaintiff in the case of Grady Anthony v. City of Little Rock (Case No. LR-C-88-236), U.S. District Court, Eastern District of Arkansas, Western Division. The case involved a charge by the plaintiff that the procedure used to set the cutoff score on a Police Lieutenant examination was neither valid nor psychometrically correct. The court ruled that while plaintiff's arguments were plausible, and the defendant's promotion procedure was "far from perfect," it did meet the requirements of the Uniform Guidelines and was valid and reasonable.

Consultant
August 1989 to
December 1989

Congress of the United States
Office of Technology Assessment
Washington, D.C.

Retained to assist the Office of Technology Assessment in the evaluation of the validity and reliability of paper-and-pencil integrity tests. Assignment included review of validation studies and submission of a written report of my findings.

Consultant
July 1989 to
January 1998

United States Department of Justice
Federal Bureau Investigation
Washington, D.C.

Served on a committee with Drs. Robert Guion and Charles Lawshe to review and monitor the development of selection procedures for the positions of Supervisory Fingerprint Examiner and Latent Fingerprint Specialist.

Consultant
May 1989 to
June 1989

District of Columbia Public Schools
Washington, D.C.

Retained to serve as a member of a technical review committee for the District of Columbia Public Schools' Teacher Content Knowledge Assessment Program. The committee's task was to review the procedures used to develop and validate an entry-level teacher certification test.

Consultant
March 1989 to
July 1989

United States Department of Labor
Office of Federal Contract Compliance
Washington, D.C.

Retained to review validation studies from the New York Tele-phone Company to determine whether they were in compliance with the standards set forth in the Uniform Guidelines on Employee Selection Procedures. The validation studies were conducted to determine the validity and fairness of tests used to screen applicants for the position of Service Representative, as well as positions in entry-level and outside crafts.

Consultant
February 1989 to
January 1997

East Bay Municipal Utility District
Oakland, California

Retained to lead a team of three independent experts (James Outtz, Wayne Cascio, and Sheldon Zedeck) mutually agreed upon by the parties to perform the work of the "Testing and Selection Expert" in the Case of McIntosh, et al., v. East Bay Municipal Utility District. The Team's responsibilities included (a) review of the company's policies, practices and procedures with regard to testing and selection, (b) identification of practices and procedures not in compliance with the Uniform Guidelines on Employee Selection Procedures, and (c) formulation of recommendations to bring such practices and procedures into compliance.

Consultant
February 1989 to
January 1996

Giant Food Inc.
Landover, Maryland

Retained to conduct a criterion-related validation study of the company's selection procedure for the position of Retail Trainee. Retail Trainee is a first-level management position in the company's food stores. Responsibilities included research methodology, as well as reporting the results. Since completing this project, I have been retained to revise the selection procedure and conduct a second validation study.

Consultant
December 1988
to February 1989

New York State Department of Civil Service
Albany, New York

Developed and conducted two three-day training courses on contemporary approaches to reducing adverse impact in employment selection procedures. The training courses were presented to sixty members of the department's professional test development staff.

Consultant
February 1988 to
May 1990

CORE Corporation
San Francisco, California

Retained to join a committee of testing experts in the development and validation of selection procedures for positions from Firefighter to Battalion Chief in the San Francisco Fire Department. This project included conduct of a job analysis and the development of written tests as well as job simulations.

Consultant
January 1988 to
September 1989

City of Baltimore
Baltimore, Maryland

Retained to provide technical assistance in the development and validation of a promotion procedure for the position of Fire Battalion Chief in the Baltimore Fire Department. Project included conduct of a job analysis and the development of a written test and job simulations.

Consultant
October 1987 to
January 1998

City of New Orleans
New Orleans, Louisiana

Retained to provide technical assistance with regard to the development and validation of selection procedures for the positions of Police Officer and Police Lieutenant, in accordance with an agreement made by the City of New Orleans in the case of Williams v. City of New Orleans (Civil Action No. 73-649). In accordance with the settlement, the City of New Orleans agreed to consult with an Industrial Psychologist designated by plaintiffs.

Consultant
October 1987 to
April 1993

City of New York
New York, New York

Retained to provide technical assistance with regard to the development and validation of selection procedures for the positions of Police Lieutenant and Sanitation Supervisor. The project included conduct of a job analysis as well as development of written tests and job simulations.

Consultant
August 1987 to
January 1997

Amalgamated Transit Union Local 998
West Allis, Wisconsin

Retained to evaluate the Milwaukee County Transit System's selection procedure for the position of Shipper/Receiver and to offer an opinion as to its validity.

Consultant
July 1987 to
January 1989

Lopatin, Miller, Freedman, Bluestone, Erlich, Rosen and Bartnick
Detroit, Michigan

Retained as expert witness for the plaintiff in the case of Hugely, et al., v. General Motors Corporation, U.S. District Court, Eastern District of Michigan (Civil Action No. 83 C.V. 2866 DT). I was retained to evaluate the performance appraisal system used by General Motors for certain managerial positions and to offer an opinion as to its validity.

Consultant
May 1987 to
November 1987

Reiders, Travis, Mussina, Humphreys and Harris
Williamsport, Pennsylvania

Retained as expert witness for the plaintiffs in the case of Johns, et al., v. Phillips ECG v. United Steel Workers of America, et al., U.S. District Court for the Middle District of Pennsylvania. In this case, White female employees charged that the company discriminated on the basis of sex, and violated the Equal Pay Act.

Consultant
May 1987 to
June 1987

Cincinnati Civil Service Commission
Cincinnati, Ohio

Retained to advise the Civil Service Commission as to the merit of an appeal by Jon Sears, an employee of the City of Cincinnati. Mr. Sears claimed that he was denied promotion to a managerial position because of his race. I assisted the Commission in conducting a public hearing regarding the matter and, after reviewing relevant documents and a transcript of the hearing, recommended that Mr. Sears' appeal for promotion be denied.

Consultant
February 1987 to
March 1988

Baltimore City Civil Service
Baltimore, Maryland

Retained as expert witness for the defendant in the case of Thomas DeShields v. Mayor and City Council of Baltimore, et al. (Civil Action No. 3-84-1905). Mr. DeShields charged that the promotion examination process for the position of Battalion Chief in the Fire Department was not valid, had an adverse impact against Blacks, and resulted in disparate treatment against him because of his race. The court ruled for the defendant.

Consultant
August 1986 to
January 1987

Bridgeport Civil Service Commission
Bridgeport, Connecticut

Retained to develop and administer a content-valid promotion procedure for the position of Police Lieutenant, including pre-test study materials, a written test, and work sample exercises.

Consultant
August 1986 to
September 1986

Office of the Associate General Counsel, Personnel Appeals Board
U.S. General Accounting Office
Washington, D.C.

Retained as expert witness for the complainant in the case of Chennareddy v. U.S. General Accounting Office. This case involved a charge of racial discrimination in promotions. I reviewed the promotional procedure at issue, prepared a written report, and testified at the Personnel Appeals Board Hearing.

Consultant
July 1986 to
October 1990

Fitzpatrick and Associates
Washington, D.C.

Retained as expert witness for the plaintiff in the cases of James Short, et al., v. Federal Bureau of Investigation (EEOC Complaint No. 033-079-X0377) and Bennett, et al., v. Federal Bureau of Investigation (EEOC Complaint No. 033-085-X5323). I was retained to review the promotion process for the position of Fingerprint Specialist in the Latent Fingerprint Section of the FBI and to offer an opinion as to its validity and fairness.

Consultant
June 1986 to
July 1986

Legal Department, City of Bridgeport
Bridgeport, Connecticut

Retained as expert witness for the defendant in the case of Association Against Discrimination Inc. v. City of Bridgeport.
The case involved a charge by Black applicants for the position of Firefighter that rank ordering of candidates on an eligibility list was a racially discriminatory method of interpreting the scores on a Firefighter written test. I developed a system of interpreting the test scores based upon "band scoring" which was acceptable to the plaintiff, the City of Bridgeport, and the District Court. The Court ordered that the "banding" system be adopted.

Consultant
March 1986 to
January 1988

Baltimore Civil Service
Baltimore, Maryland

Retained to develop the 1986 and 1987 Police Sergeant promotion procedures based upon the system of "Targeted Testing" originally developed and implemented in 1984. This project involved the continued use of a pre-test study manual for the written test, and development and implementation of a written test and oral examination.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NILDA GUTIERREZ, et al., Plaintiffs, v. JOHNSON & JOHNSON, Defendant.	Civil Action No. 01-5302 (WHW) **REDACTED**

APPENDIX C, VOLUME 2: REPORT OF DR. JAMES OUTTZ

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Nilda Gutierrez, et al. Individually and as Class Representatives, Plaintiffs, v. JOHNSON & JOHNSON, Defendant,	Civil Action No. 01-5302 (WHW)

Expert Report of James L. Outtz, Ph.D.

Volume 2

Prepared by:

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REDACTED

Expert Report In The Case of:

Gutierrez v. Johnson & Johnson: Civil Action No. 01-5302

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Introduction

This volume of my report describes the policies, practices and procedures of Johnson & Johnson Corporate Headquarters and its Subsidiaries. Each description focuses on policies, practices and procedures in three areas: filling job vacancies, compensation and performance management. The information presented is based upon the declarations of managers and executives from each company as well as documents produced by defendant.

Advanced Sterilization Products

Advanced Sterilization Products ("ASP") was established as an independent operating company of Johnson & Johnson in 1987. ASP manufactures and markets products for disinfections and sterilization of medical instruments and devices. ASP is headquartered in Irvine, California and employed 377 employees in the United States in 2001. Its workforce included professional scientists, marketing, sales and manufacturing employees (Rains Declaration; P. 2, Para. 3-4). As an independent operating company, ASP has a Human Resource team that oversees its personnel practices including performance management, compensation, and staffing.

Filling Job Vacancies

In 2001, the hiring manager and ASP human resource personnel made the hiring and promotion decisions for positions at the manager level or below, with input from employees involved in the interviewing process. Before filling a position, the hiring manager was required to complete an employment requisition describing the requirements of the position, its responsibilities and the salary range. ASP human resources personnel and the ASP vice president for the relevant function determined the best

recruiting strategy for the position. Managers at ASP were given interview training by the ASP human resources department.

All exempt employees were included in ASP's succession planning process. Participants were evaluated on potential and people development. Ratings were reviewed at each management level to insure consistency.

Compensation

Almost all initial compensation offers at ASP were approved by Juliet Rains, the Vice President of Human Resources. Ms. Rains testified as follows with regard to initial compensation offers and promotion increases awarded upon promotion:

> Typically salary offers and promotion increases were developed by my team working in close cooperation with line management, in particular, the hiring manager. ASP based its compensation decisions on the candidate's education and experience, current compensation, salary request, market pricing data, and considerations of internal equity. For college hires, we also considered the degrees awarded to, and the majors of, the new hire.
>
> To ensure that ASP's initial compensation offers were competitive with the market, ASP HR relied on market pricing data. Depending on the position, ASP would either source the information from third-party vendors or from Johnson & Johnson's Worldwide Compensation Group. We identified the market pricing data we considered most relevant to the duties and responsibilities of the job being filled, and positioned the candidate within the relevant market data based on the factors cited above.
>
> For purposes of determining salary increases upon promotion, we also referred to market pricing data, as well as internal equity.
> (Rains Declaration; P. 5-6, Para. 13-15)

Juliet Rains also testified that merit increases were based on the employee's performance appraisal rating, position within the relevant market pricing data, future growth potential and (for managers) people development skills (Rains Declaration; P. 5-6, Para. 13-14).

Ms. Rains further testified as follows regarding compensation at ASP in 2001:

> As part of year-end compensation planning, Management Board Members were authorized to recommend, in addition to merit increases, "other adjustments" to salary on the basis of internal equity, level of contribution to the business, and performance.
>
> Bonus and stock option grant decisions were made through a process very similar to that used for determining merit-increases. However, after bonus recommendations were made and reviewed, bonus awards remained subject to adjustment up or down depending on ASP's overall performance. Such adjustments affected the bonus of all ASP employees who were bonus eligible.
>
> ASP HR conducts periodic pay equity analyses to confirm, among other things, that women and racial minorities are being compensated equitably. Such an analysis was performed in 2001 and in every year since. Depending on the results of these analyses, ASP HR made adjustments to the extent necessary.
> (Raines Declaration; P. 6-7, Para. 17-19)

Performance Appraisal

The performance appraisal process at ASP in 2001 was based on procedures, evaluation criteria and forms created by the ASP human resources department. Supervisors were provided written instruction regarding the completion of appraisals through the ASP Performance Management System Manager's Guide (Rains Declaration; Exhibit 3).

Juliet Rains testified as follows regarding ASP's performance appraisal system:

> In the ASP performance management system, goals and objectives for individual employees were developed in meetings between the employees and their managers at the beginning of the performance management cycle. These individual goals were the final part of a company-wide "cascading goals" process. *See* Exhibit 3, Manager's User Guide, p. 7. This process began with the ASP Management Committee establishing strategic and tactical goals for the company as a whole. Each department was then expected to adopt accountabilities that facilitated achievement of the company goals. Finally, individuals were asked to develop personal goals to support the achievement of departmental goals.
>
> An employee's progress in achieving their individual goals and objectives was discussed and evaluated during mid-year years. At the end of the performance management cycle, the employee's supervisor completed a written appraisal for employees under his or her supervision. As part of this review, the supervisor assessed employee achievements against goals and objectives and assigned a numerical rating to the employee's performance. Until 2001, we used a scale of 1 to 5. In November of that year we adopted a scale of 1 to 9.
> (Rains Declaration; P. 3-4, Para. 7-8)

Employees who were dissatisfied with their performance appraisal could (a) so indicate on the performance appraisal form, (b) notify ASP Human Resources or his or her supervisor in writing, (c) utilize the Common Ground employee dispute resolution program and/or (d) call ASP's Credo Ethics Hotline.

Examination of completed performance appraisals from ASP that were part of the random sample described in Chapter 3 of Volume 1 of this report indicated that the appraisals were objective and based on work behaviors. The appraisals exceed accepted professional standards for objectivity.

ALZA Corporation

ALZA Corporation ("ALZA") was comprised of two primary businesses at the time Johnson & Johnson acquired it in 2001, ALZA Pharmaceuticals and ALZA Technologies (Michalcewicz Declaration, P. 1). ALZA develops drug delivery technologies that improve existing pharmaceuticals. ALZA partners with other Johnson & Johnson operating companies and companies outside Johnson & Johnson to develop and manufacture drug-delivery systems.

ALZA is headquartered in Mountain View, California, with facilities in Palo Alto, Vacaville, and Redwood City, California. The 2,200 or so employees of ALZA include over 800 experts in biology, engineering, pharmacology, clinical research and strategic planning. Technical employees range from nonexempt-level laboratory technicians to engineers, PhD scientists and medical doctors.

ALZA has an independent human resources department whose responsibilities include hiring, compensation, promotion and performance appraisal.

Filling Job Vacancies

At the time ALZA was acquired in 2001, its policies and practices for filling job vacancies were largely based on the policies and practices that existed there prior to its acquisition. This is to be expected given the recency of its acquisition at that time.

In 2001, ALZA had a practice of posting all job vacancies. Jobs were posted internally at ALZA and sometimes on Johnson & Johnson's GONetwork. If qualified candidates could not be found after posting throughout other Johnson & Johnson operating companies, vacancies were advertised in news media and on electronic websites outside Johnson & Johnson.

Compensation

In 2001, ALZA developed initial compensation offers based on a salary grade structure it had developed. Initial salary offers were typically based on several factors including the candidate's experience, previous salary, salary request, location of position, recommendation of recruitment agent (if applicable), educational level, and internal equity among comparable positions within ALZA.

Jobs at ALZA with comparable responsibility were grouped into a given salary rate with fixed salary ranges for each. ALZA set a goal of offering starting salaries at the mid-point of the salary range for a given group.

Compensation for promotions at ALZA was based on several factors including: current salary grade; market data, and the level of adjustment needed to move an employee's salary into the range for the new position. Merit increases were generally based on salary grade, performance rating, future growth potential, and technical skills (if applicable). Bonuses for 2001 were tied to performance. Employees with the same base salary and performance rating received a bonus within the same range.

Performance Appraisals

In 2001, ALZA used a performance appraisal system it had developed prior to being acquired by Johnson & Johnson. In this system, managers used a template developed by ALZA's human resources department to complete performance appraisals. After completing the written appraisal, managers then discussed it with the employee. After that discussion, at least one additional level of input and comment was provided.

ALZA conducted annual workshops to train their managers on employee performance. That practice continued after the acquisition.

In 2001, if an employee was dissatisfied with his or her performance appraisal, the employee could discuss it with his or her supervisor, the second level supervisor or ALZA human resources personnel.

Biosense Webster

Biosense Webster designs and produces a variety of therapeutic cardiac catheters used in the treatment of cardiac arrhythmias. Biosense also produces software and hardware systems for three dimensional cardiac mapping and navigation (Chen Declaration; P. 3, Para. 5).

Biosense is headquartered in Diamond Bar, California, with a second facility in Irwindale, California. Johnson & Johnson acquired Biosense in 1996. Biosense has 866 employees, three quarters of whom are located in the United States.

Filling Job Vacancies

The Biosense human resources department (Biosense HR) works with the hiring manager to fill vacancies below the level of director. They partner to determine the minimum qualifications for each vacancy. In 2001, Biosense posted most vacancies on a bulletin board in the Diamond Bar facility and in a weekly email discussing job opportunities. Johnson & Johnson's intranet system (GONetwork) was also used but to a lesser extent. Prior to 2002, Biosense filled certain vacancies by converting temporary employees to full-time positions (Chen Declaration; P. 9-10, Para. 33-34).

Mr. Roy Chen, the Vice President of Human Resources for Biosense Webster, testified as follows regarding the screening of applicants for vacancies:

> Generally speaking my department conducts the initial screening of external applicant resumes except where a third party recruiting agency has been engaged. We conduct the initial screening by comparing the job qualifications of the candidate as they appear on the candidate's resume with the minimum qualifications for the position set out in the job notice. Following this screening, a list of all candidates who have made it through the screening is sent to the hiring manager. At the hiring manager's request, HR may then conduct a secondary screen of external applicants through phone or face-to-face behavioral interviews and draw up a list of recommended candidates. It is up to the hiring manager to select the external applicants to be interviewed; this is typically done in consultation with my department. In all cases, at least two people conduct the interviews. In many instances, more people are involved.
> (Chen Declaration; P. 10, Para. 35)

Biosense limited its succession planning process to senior executive positions at the level of manager and above. Employees in the succession planning process were rated on performance, potential and people development. The ratings were reviewed and discussed by the company's management board.

Compensation

For positions below senior executive, Biosense determined the compensation to be paid to its employees. Mr. Roy Chen testified as follows regarding compensation at Biosense in 2001:

> ...For initial compensation offers, my department selects the appropriate market data for the position being filled. For positions that do not exist at other Johnson

> & Johnson companies or that we consider unique to Biosense, my department gathers competitive salary data from industry-specific, general industry, national, and local data sources to establish market data for the position. For positions for which the Johnson & Johnson Worldwide Compensation Group publishes market pricing data, known as "benchmark" positions, we use the market pricing data published by the Worldwide Compensation Group. *See* Exhibit 6, Compensation and Performance Management presentation, October 2002, p. 10.
>
> Once we have determined the appropriate market data for a position, my department typically recommends an initial salary offer in consultation with my department. To the extent that the hiring manager and assigned HR staff member cannot reach agreement on the starting offer, the matter is referred to me. I have final authority on such matters, with the exception of the senior-most positions within the company.
>
> Except in cases of substandard performance, an employee's initial salary typically increases over time due to annual merit increases. Salary increases may also result from "other adjustments" awarded for purposes of internal equity or to recognize special contributions or expanded job responsibilities. Of course, salary increases are also awarded at the time of promotion.
> (Chen Declaration; P. 8, Para. 25-27)

Compensation for sales employees was determined on the basis of compensation plans. Mr. Chen testified as follows regarding compensation plans:

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(Chen Declaration; P. 13-14, Para. 47-48)

Sales employees at Biosense also were eligible for sales awards for exceptional achievement. Award recipients were determined on the basis of the percentage sales and total number of dollars sold above forecasted sales.

Performance Appraisal

The performance appraisal cycle at Biosense in 2001 was twelve months beginning at the start of a given year and ending the first quarter of the next year. Biosense human resources provided training on the performance appraisal process each year. In addition to this training, Biosense has required all managers to attend a five-hour training program that included instruction on the performance management process (Chen Declaration; P. 5, Para. 15). The performance appraisal process included a self-appraisal process by the employee. Mr. Chen testified as follows regarding the performance appraisal process:

> As part of the performance appraisal process, my team encourages all employees to complete a self-assessment prior to their annual review. *See* Exhibit 7, Standard Operating Procedure: Employee Performance Appraisals, 6.0-Procedure. Although the completion of self-assessment is not mandatory, approximately 90% of the employees currently elect to self-evaluate.

> Biosense uses three broad categories to evaluate the performance of exempt non-sales employees: Job Responsibilities and Goal Achievement; Standards of Leadership and Professional Skills; Employee Development. Job Responsibilities measure progress against the projects and tasks assigned to an individual during the preceding year. Standards of Leadership and Professional Skills are behavioral skills considered important for leadership; Biosense groups these skills in broadly defined categories such as Customer/Marketplace Focus, Innovation, Interdependent Partnering, Mastering Complexity, Organizational and People Development, Job Knowledge, Quality, and Safety/Environment. *See* Exhibit 8-10, Non-Sales Performance Review Forms.
>
> Biosense rates Job Responsibilities and Standards of Leadership separately on a scale from one to nine (nine representing outstanding performance and one representing unacceptable performance). These two numerical ratings are then combined to arrive at a single, overall rating. Supervisors are expected to supplement the numerical ratings with narrative descriptions. *See* Exhibit 8-10, Non-Sales Performance Review Forms.
>
> To assist supervisors in assigning a rating to Job Responsibilities, employees and supervisors are asked to complete a goals-and-objectives worksheet at least once a year. Individual goals are expected to align with department goals and contribute to the achievement of Biosense's overall strategic objectives. The mutual goal-setting exercise provides managers an opportunity to communicate expectations to employees and provides employees an opportunity to shape their performance review. *See* Exhibit 5, Performance Management Users Guide 2001 (932980) – "Step 1", p. 5.
> (Chen Declaration; P. 5-6, Para. 16-19)

Biosense used separate appraisal forms developed by the human resource department for hourly employees, non-exempt employees, professionals, mid-level managers, senior managers and sales employees. Performance appraisals were subject to two levels of review before being finalized.

Employees who wished to appeal their performance appraisals were advised to contact the Biosense human resources department. If the matter

was not resolved, the employee was asked to participate in the Common Ground dispute resolution program.

Examination of completed performance appraisals from Biosense Webster that were part of the random sample described in Chapter 3 of Volume 1 of this report, indicated that the appraisals were objective and based on work behaviors. The appraisals exceeded accepted professional standards for objectivity.

Centocor, Inc.

Centocor, Inc. (Centocor) uses biotechnology (redirecting of naturally occurring biological processes) to develop and manufacture therapeutic drugs. In 2001, Centocor's products principally involved the management of cardiovascular disease and immunalogic disorders (Cunningham Declaration; P. 1, Para. 5).

Centocor is headquartered in Malvern, Pennsylvania, with facilities in other locations including Chesterbrook, Radnor, Horsham and Springhouse, Pennsylvania. Centocor maintains regional field sales offices across the United States (Cunningham Declaration; P. 2, Para. 6). In 2001, Centocor's U.S. workforce was approximately 1,800. Roughly of the total workforce were field sales representatives and 300 were scientists. Centocor was acquired by Johnson & Johnson is 1989. Centocor continued to use many of its human resources practices after the acquisition

Filling Job Vacancies

In 2001, Centocor posted the majority of its vacancies at the director level and below on the Johnson & Johnson internal network (the GONetwork). Centocor utilized internal searches as well as external

searches. External searches involved advertising in local media and national job listings, recruiting at colleges, participating in job fairs and employee referrals. The company also utilized outside search firms (Cunningham Declaration; P. 8-9, Para. 26).

In 2001, Centocor utilized succession planning for positions at the director level and above. Mr. Lawrence Cunningham, the Vice President for Human Resources at Centocor in 2001, testified as follows regarding Centocor's succession planning process:

> Employees included in succession planning were rated in three major categories: performance, potential, and people development. The performance rating was based on the employee's most recent performance evaluation, as well as past performance and key accomplishments. Potential ratings were agreed upon in a group meeting attended by the R&D and Operating Company board member and his or her direct reports. At this meeting the direct reports recommended ratings for each of the employees supervised, and the ratings were then discussed. These meetings were intended to ensure consistency within and across functions. (Cunningham Declaration; P. 9-10, Para. 29)

In 2001, Centocor's philosophy was to hire sales persons with significant experience in hospital and pharmaceutical sales and a minimum of five years experience. Recruiting for sales positions was conducted primarily by area business managers in the field, through local agencies or employee referrals.

Compensation

Centocor utilized a salary grade structure in 2001. Positions were placed within a salary grade based upon matching the Centocor position with external salary survey data. Mr. Cunningham gave the following testimony regarding Centocor's salary grade structure:

> Centocor continued to use its own salary scale for some period following the acquisition and only gradually changed over to utilizing, in part, market pricing data made available by Johnson & Johnson Worldwide Compensation Resources.
>
> Once Centocor had made the transition to market pricing as described above, when a vacancy occurred, it was the job of the assigned HR generalist and compensation specialist at Centocor to match the duties and responsibilities of the vacant position to available market pricing data for comparable positions. In carrying out this task, the HR generalist would refer to market pricing data for certain "benchmark" positions made available by Johnson & Johnson's Worldwide Compensation Resources. However, Centocor HR generalist and a compensation specialist together developed market data by consulting biotech and other salary surveys conducted by third party providers, such as the Radford Survey.
>
> Once the HR generalist had researched the market pricing data, he or she could consult with the hiring manager and a Centocor compensation specialist for purposes of recommending an initial salary offer. The candidate's prior education and experience, last compensation package, and salary requirements, as well as considerations of internal equity, would all play a role in determining the recommendation. To the extent an outside search firm was used, the HR generalist would consult with the recruiting agents to assess a candidate's compensation demands and bargaining position. Such consultations would provide us information on similar recent job searches in the relevant labor market area, allowing us to determine whether the compensation ranges we were using were competitive.
> (Cunningham Declaration; P. 6-7, Para. 19-21).

Year-end merit increases were based primarily on performance but other factors were considered such as an employee's functional competencies,

current placement in the market pricing range, people development skills and achievement of Centocor core competencies.

Mr. Cunningham testified that Centocor had specific guidelines regarding appropriate increases for promotions. Full promotions generally resulted in a salary increase of 10% or more. So-called "intermediate" promotions, involving for example an incremental step within the same job generally, resulted in a salary increase of approximately 5% (Cunningham Declaration; P. 8, Para. 25). Sales employees could earn incentive compensation under one of the company's two incentive compensation plans.

Performance Appraisal

Performance appraisals at Centocor were based on individual employee goals and objectives designed to support department objectives. Employees completed self-appraisals toward the end of each performance cycle. Managers then completed written performance assessments of their direct reports. In his testimony, Mr. Cunningham described the performance appraisal process at Centocor in 2001 as follows:

> In 2001, there were essentially two types of performance appraisal forms used at Centocor, one for non-sales employees and one for sales employees. Non-sales employees were typically evaluated on factors such as achievement against established goals and objectives, functional competency, and Centocor's "core

competencies," defined as "drive for results," "delight customers," "develop talent," "foster teamwork," and "operate with rigor." A sample Centocor Performance Coaching and Development Plan for a Senior Associate Scientist that discusses these competencies, redacted for purposes of employee privacy, is attached as Exhibit 2. As shown in Exhibit 2, Centocor's 2001 performance appraisal form for non-sales employees provides for narrative assessments of each performance element and an overall numeric rating; individual performance elements are not assigned a separate numeric rating.

Within the sales organization, employees were also rated on achievements against goals and Centocor's "core competencies," and were also assigned an overall numeric rating. But within sales, achievements were measured by comparing territory results to pre-set sales targets. See, for example, the 2001 Cardio Specialist Performance Coaching and Development Plan attached at Exhibit 3, and the Immunology Business Sales Performance Coaching and Development Plan, attached as Exhibit 4, both of which omit employee identification information for privacy reasons.

Examination of completed performance appraisals from Centocor that were part of the random sample described in Chapter 3 of Volume 1 of this report, indicated that Centocor's appraisals were objective and based on work behaviors. The appraisals exceeded accepted professional standards for objectivity.

Codman & Shurtleff

Codman & Shurtleff ("Codman") develops, manufactures and markets neuroclosure products, electro surgical products, hydrocephalic valves, drug delivery products and surgical instruments used for neurological care (Brougham Declaration; P. 2, Para. 4). Codman has 380 employees in the U.S., including sales employees. Non-sales employees at Codman include engineers in research and development, professionals and manufacturing employees.

Codman is headquartered in Raynham, Massachusetts, and became a subsidiary of DePuy, Inc. in 1998. Besides its headquarters, Codman has field sales offices throughout the U.S. Sales representatives typically work out of their homes whereas sales managers are located in a field sales office. In 2001, Codman had its own human resources department with responsibility for policies and practices including those pertaining to promotion, compensation and performance appraisal.

Codman's human resources policies and practices for non-sales employees were similar to those of AcroMed, also a subsidiary of DePuy, Inc. AcroMed's HR practices and procedures are described in the section of

this volume, entitled AcroMed. Codman's HR practices with regard to sales employees are described in the pages that follow.

In 2001, compensation for sales representatives and sales managers were based on a separate compensation plan for each position. Both compensation plans were designed by Codman.

(Brougham Declaration; P.4, Para. 4). Mr. Milton Brougham, the Vice President of Human Resources at Codman, gave the following testimony regarding the compensation plans for sales representatives and sales managers:

(Brougham Declaration; P. 4-5, Para. 11)

Salaries for new sales employees were based on existing salaries of current Codman sales representatives, market data, relevant experience and budgetary constraints (Brougham Declaration; P. 5, Para. 12). Compensation for promotion from sales representatives to a non-field sales position was based on a sales-to-marketing differential program developed by Codman to make up for any shortfalls between the employee's previous commission income and his or her new salary.

Performance Appraisal

In 2001, Codman used different appraisal goals, evaluation factors and measures to evaluate sales and non-sales employees. Mr. Brougham testified as follows regarding the process used by Codman's sales management to evaluate sales personnel:

> ...The process and forms used by Codman's sales management to rate sales personnel were specific to the Codman sales function in that they reflected performance criteria directly related to selling, such as sales volume and selling skills, or, in the case of sales managers, criteria related to managing sales employees. This process was developed by the Codman sales management staff.
>
> Specifically, in 2001 Sales Instrument Specialists and Neuro Specialists were evaluated in the following areas: Sales Performance; New Product Sales Execution (or Implant Product Sales, for Neuro Specialists); Clinical, Selling and Business Skills; Administration; Fleet Safety; and Leadership Skills. The evaluation forms also included a section for the supervisor to detail performance goals and objectives for the upcoming year, as well as the opportunity to include a development plan worksheet to aid the employee in self-development. A true and correct copy of the Instrument Specialist Performance Assessment & Development Plan Form is attached as Exhibit 2. A true and correct copy of the

> Neuro Specialist Performance Assessment & Development Plan Form is attached as Exhibit 3.
>
> In 2001, Codman evaluated its Sales Division Managers on Sales Results; Sales Representative/Team Development; Personal Development; Major Account Management; Recruiting; Budget Management; Administration; Fleet Safety; and Leadership Skills. A true and correct copy of the Division Manager Performance Assessment & Development Plans Form is attached as Exhibit 4.
> (Brougham Declaration; P. 3-4, Para. 8-10)

Examination of completed performance appraisals from Codman that were part of the random sample described in Chapter 3 of Volume 1 of this report, indicated that the appraisals were objective and based on work behaviors. The appraisal exceeded accepted professional standards for objectivity.

Cordis Corporation

Cordis, founded in 1959, produces medical devices including catheters, inflatable balloons and stents (Gudicello Declaration; P. 3, Para. 7). Cordis merged with Johnson & Johnson in 1996. In 1997, Cordis acquired Nitinol Devices and Components ("NDC"), a manufacturer of wire, tube, strip and sheet materials used in devices such as stents. NDC has become a separate subsidiary within Johnson & Johnson. However, Cordis, NDC and California-based Biosense Webster make up the franchise (Gudicello Declaration; P. 4, Para. 8). The Cordis human resources department consists of approximately 30 full-time employees, most of whom are located in Miami Lakes, Florida.

Filling Job Vacancies

All employees at the level of manager or above are included in the Cordis succession planning process. As part of that process, each employee is rated on performance and potential to determine their suitability for promotion.

Compensation

When a new employee is hired at Cordis, the Director of Compensation is contacted for a salary recommendation. A number of factors are considered when making a salary recommendation including the candidate's job experience, his or her last compensation package, internal equity relative to Cordis employees holding comparable positions, location of the position, the candidate's salary request and market data. Cordis uses market pricing data from Johnson & Johnson's Worldwide Compensation Group for jobs that are comparable to benchmark positions. Cordis develops its own market data for the one-third of its positions that are not comparable to those in the worldwide compensation database.

An employee's salary at Cordis will typically increase over time as a result of annual merit increases. Annual merit increases are based on the employee's performance rating. An employee's salary can also increase due to "other adjustments" designed to raise the employee's placement within the market data due to additional responsibilities.

All full-time, regular and part-time employees at Cordis are eligible for bonus awards. Bonus awards like merit increases are based on performance. Certain employees at Cordis are also eligible to receive stock awards and stock options.

Salaries of sales employees are determined on the basis of variable compensation plans developed by business teams located at each business unit. Variable compensation plans differ from year to year and across business units.

Performance Appraisal

Performance appraisals at Cordis in 2001 were based on individual performance objectives related to the company's strategic objectives. For sales employees, various aspects of individual performance are weighted to determine an overall rating.

Examination of performance appraisals from Cordis that were part of the random sample described in Chapter 3 of Volume 1 of this report, indicated that the appraisals were objective and based on work behaviors. The appraisals exceeded professional standards for objectivity.

DePuy, Inc.

DePuy Spine was formerly known as DePuy AcroMed ("AcroMed"), a subsidiary of DePuy, Inc. ("DePuy"). DePuy was acquired by Johnson & Johnson in 1998. At the time it was acquired, DePuy consisted of AcroMed and DePuy Orthopedics. In 2001, DePuy consisted of three operating companies – AcroMed, Orthopedics, and Codman & Shurtleff, Inc. (O'Connor Declaration; P. 2, Para. 2)

AcroMed specializes in medical devices for the human back (O'Connor Declaration; P. 2, Para. 5). AcroMed is a leading producer of spinal fixation precuts and biological products that have organic compounds that provide growth generation.

AcroMed has its headquarters in Raynham, Massachusetts, with a plant in Mountain View, California, and sales offices throughout the United States. In 2001 AcroMed had 350 employees including engineers, scientists, professionals, and sales employees. There were roughly full-time sales employees and more than ndependent sales contractors or contracted distributor principals (O'Connor Declaration; P.3, Para. 7).

In 2001, AcroMed had a human resources department ("AcroMed HR") of six employees including Susan O'Connor, the Vice President,

Human Resources. AcroMed HR provided guidance and oversight to AcroMed's supervisors and managers with regard to many personnel decisions including promotion, compensation and performance evaluation. Susan O'Connor testified as follows regarding AcroMed's human resources policies in 2001:

> In 2001, some of AcroMed's human resource policies and guidelines came from DePuy and pre-dated DePuy's acquisition by Johnson & Johnson. One example was the policy on job positing and bidding contained in the DePuy Policy Manual – Job Posting/Bidding Policy – DePuy, a true and correct copy of which is attached as Exhibit 1. Another example is the policy on intercompany job posting contained in the DePuy Policy Manual – Job Posting Policy – Intercompany, a true and correct copy of which is attached as Exhibit 2. However, as discussed below, this was not the case with respect to performance appraisals and compensation.
> (O'Connor Declaration; P. 3, Para. 9)

Compensation

In 2001, the factors considered for setting initial compensation for non-sales employees differed from those used for sales employees. Susan O'Connor gave the following testimony regarding the factors considered in determining initial compensation:

> In 2001 (as today), AcroMed set initial compensation for its non-sales employees based on the candidate's experience, educational background, last compensation package, salary request, market data, and internal equity. AcroMed HR partnered with the hiring manager to determine the appropriate salary offer for new employees. For positions comparable to the "benchmark" positions for which Johnson & Johnson's Worldwide Compensation Group published market pricing data, we would generally position the candidate within the range indicated by the data. For other positions, we would either blend the data for two roughly comparable "benchmark" positions or create an entirely new benchmark using locally sourced data. For example, no market pricing data for a position comparable to AcroMed's Director of E-Commerce Strategy was made available

> by Johnson & Johnson's Worldwide Compensation Group. Therefore, we blended market pricing data for the "benchmark" Director of Marketing position with market pricing data for the "benchmark" Director of Information Management position to fix the salary of our Director of E-Commerce Strategy.
>
> The setting of initial compensation for AcroMed sales employees differed from the process described above. Johnson & Johnson's Worldwide Compensation Group does not provide "benchmark" data for field sales representatives. Therefore, AcroMed developed its own market pricing data for AcroMed field sales representative positions, drawing on third party services. Under AcroMed's 2001 compensation plan for sales employees, new sales representatives received a base salary of plus a commission.
> (O'Connor Declaration; P. 5-6, Para. 15-16)

Salary adjustments for newly promoted employees were based on factors similar to those for initial hires. Those factors included market pricing data for the new position, the employee's background and experience and the employee's most recent compensation increase, if any.

In 2001, AcroMed as well as DePuy's other subsidiaries used the same year-end compensation planning schedule and procedure. Susan O'Connor gave the following testimony regarding DePuy's year-end compensation.

> At DePuy, year-end compensation was tied directly to employee performance ratings. Using the matrices referenced above, managers made merit increase, bonus, stock award, and stock option grant recommendations based on the employee's attainment of objectives, proficiency in functional competencies, overall performance appraisal rating, and people development skills (where applicable).
>
> Managers' recommendations with respect to year-end compensation were subject to review and approval by the next level of management. AcroMed HR provides training to managers for the performance management process. A true and accurate copy of AcroMed's Performance Management Policy Guidelines are attached as Exhibit 8.
> (O'Connor Declaration; P. 6-7, Para. 19-20)

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AcroMed's compensation for field sales employees had two major components, base salary and variable compensation. The compensation plan for field sales employees was adopted each year for each level or position of its sales force.

Performance Appraisal

AcroMed's performance evaluation procedure in 2001 was developed by AcroMed HR. Susan O'Connor testified as follows regarding the performance-appraisal process at AcroMed:

> AcroMed HR communicated its performance review timeline and the definitions to be used in assigning performance ratings to its managers and supervisors under cover of a September 7, 2001 Memorandum from Peter Owens to DePuy AcroMed Managers and Supervisors, entitled Year-End 2001 Compensation Management process. A true and correct copy of this Memorandum is attached as Exhibit 4. AcroMed HR then oversaw the performance appraisal process to make sure that it occurred in accordance with the procedure, timeline, criteria, and forms we developed.
>
> In 2001, AcroMed evaluated its employees' performance based on the employee's achievement of his or her performance accountabilities and objectives. A true and correct copy of the performance appraisal form in use at AcroMed in 2001 is attached as Exhibit 5.
>
> Each employee was assigned an overall numerical rating on a scale from 1 to 9. Each rating on the scale corresponded to a description of performance at that level. The employee, the manager, and the manager's supervisor all were required to sign the performance appraisal form.
> (O'Connor Declaration; P. 4, Para. 11-13)

Employees who were dissatisfied with their performance appraisal could comment on the appraisal form, or indicate their dissatisfaction to AcroMed HR.

Examination of completed performance appraisals from DePuy Spine (the former DePuy AcroMed) that were part of the random sample described in Chapter 3 of Volume 1 of this report, indicated that the appraisals were objective and based on work behaviors. The appraisals exceeded accepted professional standards for objectivity.

Ethicon, Inc.

Ethicon Inc. ("Ethicon") is headquartered in Somerville, New Jersey. In 2001, Ethicon consisted of four business units – Ethicon products, Johnson & Johnson Wound Management ("J&J WM"), Gynecare and Mitek (Snyder Declaration; P. 2, Para. 3).

In 2001 Ethicon had U.S. plants located at Somerville, New Jersey; Cornelia, Georgia; and San Angelo, Texas (Cachinero Declaration; P. 4, Para. 12). Each business unit had its own human resources director and each plant also had a human resources manager.

Filling Job Vacancies

Ethicon's policy with regard to hiring in 2001 was to give first consideration to qualified Ethicon employees (Ethicon Policy Manual 213795). Second consideration was given to qualified employees of other Johnson & Johnson companies before turning to applicants outside Johnson & Johnson.

A position could be filled from within a department without a job positing. When a decision was made to select an internal

applicant, the manager consulted with the Director of Compensation to determine an appropriate salary. Ethicon used several processes to fill vacancies, including a succession planning and development process, corporate search and the Growth Opportunity (GO) Network. The GONetwork was an internal network on which Johnson & Johnson subsidiaries could circulate job descriptions and employees could submit applications for job vacancies.

In 2001, Ethicon included all exempt level employees in its succession planning and development process. Each business unit identified high potential candidates for key positions. The business units' core functions tailored the succession planning process to meet its particular needs (Cachinero Declaration; P. 16, Para. 67). All employees in the succession planning and development process were evaluated with regard to job performance, their potential to advance and their success at developing others. Performance and potential ratings were reviewed by each level of management up to the Management Board level. Each level of management discussed the performance and potential ratings of their direct reports. The purpose of this process was to ensure multiple input with regard to the ratings of each employee.

Compensation

The compensation policies and practices at Ethicon differed for sales and non-sales employees. Ethicon used general salary ranges developed by the HR division to set salary ranges. Data made available by Johnson & Johnson Worldwide Compensation Resources was used for the remainder of Ethicon's non-sales positions.

Compensation for new hires was determined by the candidate's education and experience; expected level of contribution, current salary compared to market data; and the salaries of existing Ethicon employees in similar positions.

Compensation for sales employees at Ethicon differed by business unit (Snyder Declaration; P. 5, Para. 10). Each Ethicon business unit had a sales compensation design team charged with developing the sales compensation plan for that business unit.

The sales compensations plans at each Ethicon business unit were highly structured, very objective and invariably tied directly to sales performance.

Performance Appraisal

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In 2001, Ethicon used a Performance Appraisal and Development System (PADS) to evaluate and record employee performance and determine compensation. Written instructions regarding use of the PADS system were contained in a document entitled PADS Ethicon's Performance Appraisal and Development System (198707 001—198707037). Under the PADS system the employee and supervisor set performance objectives for the upcoming performance period. The employee's performance appraisal was based on the degree to which the employee met his or her performance objectives.

Examination of completed performance appraisals from Ethicon that were part of the random sample described in Chapter 3 of Volume 1 of this report, indicated that the appraisals were objective and based on work behaviors. The appraisals exceeded accepted professional standards for objectivity.

Ethicon Endo-Surgery, Inc.

Ethicon Endo-Surgery, Inc. ("EES") develops, manufactures and markets advanced surgical instruments and medical devices for minimally invasive and traditional surgery.

EES became separately incorporated in 1995. EES is headquartered in Cincinnati, Ohio, with U.S. facilities in Albuquerque, New Mexico. In 2001, EES had approximately 2,360 employees.

EES designs and markets medical devices for the diagnosis and treatment of diseases and conditions in the areas of general and thoracic surgery, breast disease, gynecology, oncology and urology. The devices marketed by EES are designed to facilitate minimally invasive surgery. Minimally invasive surgery involves small incisions, or in some instances no incisions at all. Compared with open surgery, the use of minimally invasive surgery often results in faster healing and recovery, less pain, lower complications among other advantages.

In 2001 EES consisted of four major business units or franchises. Mr. Robert Ward, the Director of Human Resources at EES, gave the following testimony regarding the organizational structure of EES in 2001:

> In 2001, EES's businesses were divided into four principal franchises: Core Business, Urology, Breast Care and Bariatrics. Within these areas, EES pursues,

> and has historically pursued, four key strategies: (a) to help surgeons develop new, less invasive procedures; (b) to develop innovative products rapidly; (c) facilitate world-class professional education; and (d) to create the most technically competent sales organization in the world.
> (Ward Declaration; P. 2, Para. 6)

EES manufactures and markets products that are innovative and technologically advanced including ultrasonic surgical scalpels, image guided breast biopsy systems, and endoscopic vein harvesting systems. The manufacture and marketing of these technologically advanced devices requires a highly skilled, knowledgeable workforce. Robert Ward gave the following testimony regarding EES's work force requirements:

> To develop, manufacture, and market its technically advanced medical devices, it is essential for EES to recruit and retain a highly skilled workforce. For example, engineering expertise in metallurgy, plastics, and other materials is required to design and test EES prototype devices. The complexity of EES's devices also demands highly specialized knowledge of lasers and ultrasound technology and computer science. EES must also employ surgeons and other medical professionals and scientists to assist in research, development, testing and manufacturing of EES products.
>
> Operating in a highly regulated industry, EES also currently employs approximately 100 (and in 2001, employed approximately 50) regulatory and clinical affairs specialists with expertise in Food and Drug Administration ("FDA"), International Standards Organization ("ISO") and other applicable regulations concerning sterility, minimization of risk of damage to tissue outside the surgical target area, mechanisms to protect patients against improper use of a device, the collection and analysis of data from the testing devices, customer feedback, patient outcomes, potential recalls, and other regulated matters.
>
> EES also employs a skilled marketing staff with significant experience in promoting medical devices to surgeons, nurses, and material managers. Today, EES's Marketing group includes approximately 210 associates, up from approximately 200 in 2001.
>
> EES also has a large, skilled and highly-trained field sales force with extensive knowledge of EES medical devices and their use in surgical or diagnostic procedures. EES Sales Associates are trained to demonstrate EES devices in

> laboratory settings, discuss clinical data related to the products, and engage in technical discussions with surgeons and other medical professionals. Sales positions in the Core Business franchise require familiarity with hundreds of products and 10 weeks of intensive classroom and clinical training.
>
> EES's 2001 sales force included more than individuals working in more than 50 countries. In the United States roughly field sales representatives located throughout the country called on customers in assigned territories. These representatives reported to approximately divisional managers who in turn reported to Regional Sales Director
>
> (Ward Declaration; P. 3-4, Para. 9, 11-14)

EES established a state-of-the art professional and surgical training center in the early 1990's. This training center, the Endo-Surgery Institute ("ESI") includes operating rooms, laboratories, classrooms and technical/video space. The EES associates at ESI include experienced surgeons who teach medical professionals about minimally invasive surgery and EES Sales Associates who demonstrate the use of EES products.

In 2001, EES had a human resources department ("EES HR") with approximately 40 or so employees. EES HR was responsible for establishing and implementing HR policies and practices for all EES facilities in the United States.

Filling Job Vacancies

In 2001, job vacancies were filled via a number of processes depending upon the circumstances and level of the position involved. Mr.

Ward testified that hiring managers normally considered filling non-career ladder positions below the director level through a promotion or lateral move within EES (Ward Declaration; P. 10, Para. 36). EES HR would also post the position on EES's internal posting system. Line managers worked with EES HR to determine whether a position at the director level or above could be filled by a promotion, a lateral move within EES and/or through EES's succession planning process. The supervisor of the vacant position was the primary decision maker in hiring a candidate, although the supervisor's superior was often involved in the selection decision.

In 2001 EES conducted its succession planning process "top down" beginning with direct reports to executives reporting to EES's Company Group Chairman. This group was designated as Group I and developed a list of "high potential" individuals regarded as having the potential to move into senior management positions. The next group, designated as Group II consisted of the direct reports to Group I. Group II met and discussed potential ratings and advancement of manager-level positions (Ward Declaration; P. 10, Para. 34-35).

Compensation

Initial salary determinations were generally handled by EES HR Staffing Specialists ("EES Staffing") and EES HR compensation specialists ("EES Compensation"). EES Staffing formulates a salary recommendation and signing bonus if appropriate. Mr. Ward gave the following testimony regarding EES's procedure for formulating salary offers:

> In formulating recommended initial salary offers, EES HR typically considers: the candidate's education, relevant experience, most recent salary/bonus, and compensation request, the requirements of the position; internal equity (i.e., compensation-related comparisons with EES employees in similar positions); and market pricing data sourced either from Johnson & Johnson Worldwide Compensation Resources (for so-called "benchmark" positions) or from outside resources (for "non-benchmark" positions). By '"benchmark" position, I mean a position with a defined scope of duties and responsibilities for which Johnson & Johnson Worldwide Compensation Resources publishes market pricing data.
>
> EES Compensation determines which market pricing data is most applicable to the position being filled by comparing the responsibilities and duties of the position being filled to the responsibilities and duties of the "benchmark" positions for which Worldwide Compensation Resources publishes market pricing data. If there is a match, EES Compensation will use the market pricing data published by Worldwide Compensation Resources. If there is no match EES Compensation will either develop our own market data from local salary surveys or other information made available by third parties or combine and adjust data for the two closest "benchmark" positions.
>
> In setting initial compensation for non-benchmark positions that require some clinical or regulatory expertise, EES Compensation generally relies on the Salary Information Retrieval System ("SIRS"). SIRS is a compendium of salary information for benchmark exempt and non-exempt positions developed and maintained by a third party.
> (Ward Declaration; P. 12, Para. 43-45)

EES's policy was to offer new hires a salary within the established range. A salary offer outside the established range was limited to special cases such as when a candidate held a highly paid position at another

company. EES staffing and the hiring manager usually conferred and reached consensus on a salary offer before the offer was extended. Mr. Ward provided the following testimony regarding year-end compensation at EES:

> At EES, year-end compensation decisions are linked directly to an associate's performance rating. EES HR provides management with compensation guidelines (based on Johnson & Johnson guidelines) indicating the range for percentage year-end merit increases based on associate performance. These guidelines also indicate cash bonus and stock award recommendations linked to performance rating and salary level.
>
> Generally speaking, the factors and processes for determining bonuses, stock awards, and stock options in 2001 were similar to those used in determining year-end merit increases. One difference is that the amount of an associate's bonus (or number of options) may have been based, in part, on the amount of the bonus (or number of options) that the associate received the previous year, so that typically an employee performing consistently would not get a lower bonus amount.
> (Ward Declaration; P. 13-14, Para. 49 & 51)

Compensation for sales employees at EES was a combination of base salary, variable compensation, rewards and stock. Mr. Ward testified that EES's field sales force was divided among four business franchises: core business, urology, breast care and bariatrics. Mr. Ward also testified that there were three levels of field sales positions within each franchise: sales representative, senior sales representative, and executive sales representative

(Ward Declaration; P. 14-15, Para 54). After hire,

differences in salary over time were based on performance as assessed during the company's annual performance review process.

Once hired, field sales employees' compensation was based on the incentive compensation plan for the employees' franchise. Sales employees were eligible for merit increases based on overall performance. Fifty percent of field sales performance was based on sales results and fifty percent on sales processes.

Performance Appraisal

In 2001, EES's performance appraisal process was known as the Global Performance Management System ("GPMS"). Under the GPMS process the employee and manager met to set the employee's goals and objectives for the performance evaluation period. The employee's goals are set to be in line with, and support the goals of his or her department. Mr. Ward provided the following testimony regarding the GPMS process:

> During the year, there is ongoing coaching and development. GPMS calls for quarterly progress-to-date performance discussions (April, July, and October) during which managers provide performance feedback, reprioritize objectives if appropriate and provide coaching. (See Exhibit 7, at pages 5-6)
>
> Toward the end of the annual GPMS cycle, the manager is encouraged to solicit input about the associate from team members, customers, partners and/or subordinates in order to ensure that each subordinate receives a balanced review. (See Exhibit 7, at page 5) The manager also encourages the associate to complete a GPMS self-evaluation form. (See Exhibit 7, at page 17)

> The manager and associate then meet to discuss the associate's performance. (See Exhibit 7, at page 18) Next, the manager completes the written GPMS performance evaluation form. Attached as Exhibit 8 is an example of a completed EES GPMS form evaluating the performance of an associate in 2001, redacted to protect the privacy of the employee evaluated. As indicated by the signatures of the associate and manager on the front of the form, the associate and manager discussed the associate's performance against established goals quarterly.
>
> All performance ratings at EES are subject to several levels of review before they are considered final. Once managers have assigned overall performance ratings to their direct reports, but before they have discussed those ratings with their reports, the managers participate in "calibration meetings" designed to ensure equity in the rating process (e.g., to make sure that a rating of 4 means the same thing from department to department). Additionally, ratings are reviewed and approved two levels of management above the person being rated. Thus, performance ratings by Managers are reviewed by Directors and so on. At the calibration meetings and as a result of the further reviews, ratings may be challenged, and occasionally changed as a result. Attached as Exhibit 9 are guidelines developed by EES HR for the facilitation of the calibration meetings.
> (Ward Declaration; P. 7-8; Para. 25-27)

Employees who were not satisfied with their performance rating could raise the matter with their supervisor, EES HR or their next level manager. Employees could also write their concerns on the appraisal form or utilize the Common Ground employee dispute resolution program.

Examination of completed performance appraisals from EES that were part of the random sample described in Chapter 3 of Volume 1 of this report, indicated that the appraisals were objective and based on work behaviors. The appraisals surpass accepted professional standards for objectivity.

Janssen Pharmaceutica, Inc.

In 2001, Janssen primarily marketed and sold prescription pharmaceuticals (David Declaration; P. 1, Para. 2). Approximately of the company's workforce worked in sales. The field sales force consisted of four separate groups; primary care, central nervous system, eldercare, and hospitals. In all four sales forces, the sales representatives worked out of their homes in assigned territories. Depending upon the sales force, one or more sales representatives were assigned to each territory (David Declaration; P. 2-3, Para. 7-9).

In 2001, Janssen primarily marketed and sold prescription pharmaceutical in the areas of gastroenterology, psychiatry, mycology and pain management (Reardon Declaration; P. 2, Para. 3).

Filling Job Vacancies

In 2001, Janssen used different procedures to fill job vacancies. Mr. John Reardon, the Executive Director of Human Resources at Janssen in 2001, testified as follows regarding the processes used to fill job vacancies at Janssen:

> In 2001, Janssen used different processes to fill job vacancies depending on, among other factors, the level of the position being filled, the available pool within Janssen, and functional area.
>
> For any non-sales position not filled by promotion or transfer, Janssen required a Headcount Justification/Requisition form to be completed. See Janssen Pharmaceutical U.S. Headcount Justification/Requisition form, attached as Exhibit 6. This is a Janssen-created document that identifies the skills required for the available position, the educational level required, and the particular experience needed to fulfill the duties of the vacancy. The hiring manager then determined the job-specific criteria required for the position in consultation with a representative from Janssen HR. They could include technical expertise and process skills, as well as some or all of the Janssen competencies outlined in the Janssen Standards of Leadership.
> (Reardon Declaration; P. 8-9, Para. 31-32)

Janssen recruits candidates utilizing methods such as posting on the Johnson & Johnson company-wide network, employee referrals, advertisements, referral firms and job fairs. Janssen policy in 2001 was to post positions below director on the Johnson & Johnson company-wide network (GONetwork), if the vacancy could not be filled from within the hiring division.

Janssen maintained an order of preference with regard to hiring qualified candidates. Mr. Reardon testified as follows with regard to the order of preference:

> Janssen's preference when considering similarly qualified candidates for employment had an established order of priority: Janssen employees in the same Department or Division; Janssen employees; Johnson & Johnson employees returning from work and family leave and Johnson & Johnson displaced employees; all other Johnson & Johnson employees and Janssen temporary employees; all others. While candidates were sometimes interviewed in random order, Janssen sought to consider candidates according to its order of priority.
> (Reardon Declaration; P. 10, Para. 37)

Janssen utilized a succession planning and development process for positions at certain levels. However the position levels differed by division. For some divisions, succession planning included management positions only. Succession and development planning was carried out by Janssen without participation of Johnson & Johnson Worldwide Headquarters, with the exception of Management Board positions and certain key strategic positions (Reardon Declaration; P. 10, Para. 39).

Filling of job vacancies for field sales positions was handled by the district manager. Janssen employees who participated in interviewing candidates were given training by personnel from Janssen human resources. Sales representatives were recruited via a variety of methods including employee referrals, advertisements in newspapers and journals, job fairs, college recruiting, electronic postings and employment agencies.

A considerable amount of information was obtained about each candidate based upon a series of interviews. Mr. Reardon testified as follows regarding the interview process for sales representatives:

> Candidates who made it past the telephone screen were interviewed by several levels of management. After the screening interview, an outside consultant conducted a background check. This was followed by a reference check (conducted by a District Manager), and an applicant "field day," during which the applicant accompanied a Sales Representative to sales calls. Following the "field day," provided the applicant proceeded through the process, there was a second "debriefing interview," an optional additional interview, an optional validation