

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF SOUTH CAROLINA  
3 COLUMBIA DIVISION  
4 - - - - -

5 MDL DOCKET NO. 865

6 RE:

7 L-TRYPTOPHAN LITIGATION  
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10  
11 DEPOSITION

12 (The following is the deposition of JERRY D.  
13 HORN, taken pursuant to Notice of Taking Deposition, at the  
14 Sheraton Union Square Hotel, Pittsburgh, Pennsylvania,  
15 commencing at approximately 9:40 o'clock a.m., August 11,  
16 1992.)

17 APPEARANCES:

18 On Behalf of the Plaintiffs Steering Committee:

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1 Denko?

2 A. My assumption would be definitely they would not.

3 Q. And why is that, sir?

4 A. Well because if there's anything that's questionable  
5 about product safety, we wouldn't -- we wouldn't sell them,  
6 we wouldn't put them through the manufacturing process to  
7 make them up into finished goods.

8 MS. HODAK: I believe that's all I have. Thank  
9 you.

10 THE WITNESS: Thank you.

11 THE REPORTER: Off the record, please.

12 (Discussion off the record.)

13 BY MR. SUGGS:

14 Q. Good afternoon, Mr. Horn. I introduced myself earlier  
15 to you, but for the record my name is David Suggs, I'm with  
16 the law firm of Robins, Kaplan, Miller and Ciresi, and I'll  
17 be asking questions in connection with the L-tryptophan  
18 litigation in Minnesota. Okay?

19 Mr. Horn, have you ever heard the term "snake oil?"

20 A. Yes.

21 Q. Do you have a meaning in mind for that term?

22 A. Oh, I think the term comes to me from the old Western  
23 movies I might have seen when the guys sold products from  
24 the covered wagons and all.

25 Q. Does it carry any implication to you of the quality of

1 those products?

2 A. Well, I don't know the real definition of "snake  
3 oil." It's a colloquialism for, I guess, medicines or  
4 whatever. I don't know what it means.

5 Q. I'll represent to you that the Webster's Ninth New  
6 Collegiate Dictionary defines snake oil as any of various  
7 substances or mixtures sold, as by a traveling medicine  
8 show, as medicine usually without regard to their medical  
9 worth and properties. Is that an acceptable definition to  
10 you?

11 A. It's fine with me.

12 Q. Okay. Is GNC an honest, reputable company selling  
13 high-quality products, or has it been in the business of  
14 selling snake oil over the years?

15 A. I believe it's an honest, reputable company selling  
16 high-quality products.

17 Q. Okay. Isn't it true, Mr. Horn, that during the last  
18 20 years GNC has repeatedly come under fire from the FDA,  
19 the Federal Trade Commission, and the U.S. Postal Service  
20 and various state regulatory agencies regarding the sale of  
21 its products?

22 MR. MERCURIO: Object to the form of the  
23 question.

24 A. I can't speak to prior to 1985 because I was not  
25 here. Since 1985, which has been my watch, that is not the

1 case.

2 Q. Well when you came in 1985 you -- you were brought  
3 into the company because the company had had problems with  
4 various regulatory agencies; correct?

5 A. Well that's not the only reason. There --

6 Q. It was a reason.

7 A. Perhaps. The company was not doing well financially.  
8 And it was devoting more time than it should have been to  
9 regulatory problems, there's no doubt about that.

10 Q. And one of the first things you did when you came into  
11 office as the chief executive officer was to run down to  
12 the FDA and meet with them and talk about those types of  
13 problems; correct?

14 A. Not one of the first things, but it was early on.

15 I --

16 Q. How early on?

17 A. First two to three months -- one to three months we'll  
18 put it.

19 Q. Okay. So within a month or so, a month or two months,  
20 you went down to the FDA to talk about the history problems  
21 that GNC had had with the regulatory agencies, correct?

22 A. Well I didn't really talk about that. What I wanted  
23 to let them know was that my intention was to manage a  
24 company that would be in compliance, that I recognized the  
25 FDA as a traffic policeman and that we would stay within

1 the speed limit. I -- just sort of a get-acquainted, let  
2 them know what kind of a person I was and -- and how I  
3 intended to manage the company.

4 Q. Okay. Now what were you paid as CEO when you first  
5 came on board when the company wasn't doing well  
6 financially?

7 A. It's -- it's in our proxy, in our public statements.  
8 I think it was \$275,000 a year, I believe. I'm not certain  
9 of that, but that was ballpark.

10 Q. Okay. Well either before you came with the company or  
11 at any time after you came with the company, were you ever  
12 informed that in 1969 the Federal Trade Commission brought  
13 charges against GNC for false advertising regarding claims  
14 for a product known as Geri-Gen and a product known as  
15 Hemotrex?

16 A. No, I was not aware of those.

17 Q. Were you ever advised that in 1974 the FDA seized a  
18 supply of vitamin C tablets and destroyed them because the  
19 FDA charged that the labeling of the tablets made false and  
20 misleading nutritional claims?

21 A. I was not aware of those.

22 Q. Were you informed that in 1980 the FDA seized powdered  
23 milk which GNC was touting as a cure for arthritis?

24 A. No, I was not familiar with that.

25 Q. Were you informed that in 1980 the United States

1 Postal Service brought charges against GNC for false  
2 representations regarding a product known as Model-Etts, an  
3 alleged reducing aid?

4 A. I'm not familiar with that.

5 Q. Were you informed that in 1981 GNC agreed to drop  
6 claims that lysine, an amino acid, cured genital herpes,  
7 and did so at the insistence of the FDA?

8 A. I'm not familiar with that.

9 Q. Were you informed that despite GNC's agreement with  
10 the FDA that it would stop claiming that lysine cured  
11 genital herpes, that it nevertheless continued to circulate  
12 literature suggesting that it would?

13 A. I'm not familiar with any literature that we circulate  
14 since my watch, since I came with the company, that talks  
15 about any curative powers of any product.

16 Q. Okay. Were you informed that in 1982 the United  
17 States Postal Service filed a complaint charging that  
18 advertising for a product known as Starch Block sold by GNC  
19 contained false representations that the product blocked  
20 the absorption of calories from starch-containing foods?

21 A. I'm not familiar with that product.

22 Q. Were you informed that in 1984 the United States  
23 Postal Service brought charges against GNC for making false  
24 representations for 13 products?

25 A. For 13?

1 Q. Yeah, 13 different products, including products such  
2 as Risk Modifier, Life Expander, Choline Chloride, Mental  
3 Acuity Formula, Life Expander Fat Fighter, Challenge  
4 Maximum Body Builder, L-Glutamine tablets, a type of amino  
5 acid, Lipotrophic -- excuse me, Lipotropic Fat Fighter,  
6 Spirulina 24-hour Diet Plan, the Practical Diet Plan, Life  
7 Expander Growth Hormone Releaser, Herbal Diet, and Inches  
8 BeGone, were you informed of any of those?

9 A. I'm -- I knew that the company had had some  
10 notifications with the Postal Service and some -- I'm  
11 not -- I wasn't sure, I'm not today sure what specifically  
12 they were, and we have had no problems like that with the  
13 Post Office department since 1985.

14 MR. SUGGS: I move to strike the last portion of  
15 your response which is not responsive.

16 Q. My question was: Were you informed that in 1984, the  
17 year before you came on board, that United States Postal  
18 Service had made claims against GNC with respect to those  
19 products I listed?

20 A. I was not informed prior to my coming to work for the  
21 company, no.

22 Q. Were you informed that in 1984 the Federal Trade  
23 Commission filed an administrative complaint against GNC  
24 for making deceptive claims that Healthy Greens, a product  
25 sold by GNC, might help prevent cancer?

1 A. I was aware when I was recruited at GNC that there was  
2 a claim or complaint by FTC in some form regarding a  
3 product that I later learned was Healthy Greens.

4 Q. Okay. And were you informed that in 1986 an  
5 administrative law judge concluded that -- this is a quote  
6 from his order -- "GNC's unconscionable, false and  
7 misleading advertising found in this case is not an  
8 isolated incident but in fact is a part of a continuing  
9 pattern. GNC's false and deceptive advertising in this  
10 case may be seen as an indication of GNC's propensity to  
11 employ false and misleading advertisements?"

12 A. To what case was he referring in that.

13 Q. That was the Healthy Greens case.

14 A. And that was prior to 1985?

15 Q. This is -- well the complaint was filed in 1984 and  
16 the 19 -- the quote that I just read you was from 1986 --

17 A. I was not --

18 Q. -- when the administrative law judge --

19 A. No, I was not advised or aware of that inasmuch as it  
20 occurred before I came to work for the company.

21 Q. Well the order and the quote from the language that I  
22 just used was from a 1986 order from the administrative law  
23 judge. Is it your testimony that in 1986, after you'd been  
24 with the company for more than a year, that when the  
25 administrative law judge with the FTC made that finding,



1 that no one communicated that to you as the chief executive  
2 officer of GNC?

3 A. I'm not -- I'm not saying they did not communicate  
4 that to me. I think your -- as I recall your question, it  
5 was was I informed of it. My answer -- I responded in a  
6 manner that intended to state that the incident occurred  
7 prior to my coming there. The subsequent incidents after I  
8 was there to cure these problems I was aware of but took  
9 no -- you know, I wasn't in a motion to take any action on.

10 Q. Mr. Horn, let me try again. Were you or were you not  
11 informed that in 1986 an administrative law judge in an  
12 order concluded that, quote, "GNC's unconscionable, false  
13 and misleading advertising found in this case is not an  
14 isolated incident but in fact is a part of a continuing  
15 pattern. GNC's false and deceptive advertising in this  
16 case may be seen as an indication of GNC's propensity to  
17 employ false and misleading advertisements?"

18 A. I -- I don't recall. It was -- didn't have that much  
19 meaning to me inasmuch as I had already put in process  
20 procedures for those types of things not to happen again.

21 MR. SUGGS: I'm going to move to strike your  
22 answer as non-responsive.

23 Q. Can you just tell me, sir, did anybody tell you that  
24 the administrative law judge had made that conclusion or  
25 not?

1 A. I don't recall.

2 Q. Okay. If somebody did tell you that, that's not the  
3 type of thing that apparently stands out in your memory; is  
4 that correct?

5 A. No, it's not.

6 Q. Were you informed that in 1984 the FDA brought a  
7 criminal prosecution against GNC charging that three of its  
8 officers and two retail store managers had violated the  
9 federal Food, Drug and Cosmetic Act by conspiring to  
10 promote and sell an Evening Primrose Oil product with  
11 claims that it's effective against high blood pressure,  
12 arthritis, multiple sclerosis, and other diseases?

13 A. I think I read that in the prospectus before I took  
14 the job. That's how the information came to me.

15 Q. Well, in 1986, after you'd been at the company for  
16 over a year, isn't it true that the company pled guilty to  
17 four counts of misbranding a drug and that former President  
18 Gary Daum pled guilty to one misbranding count?

19 A. Yes, that's true.

20 Q. And you were informed of that in 1986; correct?

21 A. Yes, I was.

22 Q. Were you informed in 1985 that a product known as  
23 Appetite Control Factor with CCK was recalled after the FDA  
24 informed the company that the claims that were being made  
25 for the product made it an unapproved new drug?

1 A. I don't recall that, no.

2 Q. Do you recall that in 1985 a product manufactured and  
3 distributed by GNC known as Life Expander Fat Fighter was  
4 recalled after the FDA informed GNC that the claims that  
5 were being made for the product made it an unapproved new  
6 drug?

7 A. Do you have a date in 1985?

8 Q. The precise date in '85 I do not.

9 A. I don't recall that. Could have been before I came on  
10 board.

11 Q. Okay. I believe you said that in -- as far as you're  
12 aware, after 1985 there were no other actions by regulatory  
13 authorities against GNC?

14 A. That had occurred from '85 forward, none of  
15 significance that I'm aware of.

16 Q. Okay. Do you recall that in 1989 the Pennsylvania  
17 Department of Health made a charge against GNC that it was  
18 marketing a Helsinki Formula Hair Treatment product and  
19 that the claims that were being made for that were false?  
20 It was right here in Pennsylvania.

21 A. Well that's not a product -- that's a third-party  
22 product. I don't --

23 Q. It was being sold through your stores; wasn't it?

24 A. Yes, but we -- we were -- to my knowledge we were  
25 making no claims about that product.

1           To answer your question, no, I was not -- I don't  
2 recall that.

3       Q.   Well GNC signed a consent agreement on that case;  
4 didn't it?

5       A.   I don't know.

6       Q.   You do understand, I -- I believe I gather from your  
7 testimony this morning, that a product is a drug if its  
8 intended use is for the cure, treatment or prevention of  
9 some disease or illness; correct?

10      A.   Yes.

11      Q.   You under -- you understood that from the day you  
12 walked in the company; didn't you?

13      A.   Well I think I understood that as part of the  
14 orientation to this industry. I don't -- I didn't know it  
15 from the day I walked in, no.

16      Q.   Well at least shortly thereafter you became aware of  
17 that.

18      A.   Shortly thereafter, yeah.

19      Q.   Okay. Sir, in light of all the history of repeated  
20 allegations of misconduct by GNC in the marketing of its  
21 products and the convictions, criminal convictions of some  
22 of its officers, has GNC developed any written code of  
23 ethics regarding the manufacture, distribution and sale of  
24 its products?

25      A.   Yes, we have -- we have a policy statement on --

1 regarding quality of products and the highest standard of  
2 manufacturing and highest quality of ingredients, yes.

3 Q. How about the marketing? Have you developed any  
4 written policies regarding ethical matters involved in  
5 marketing your products?

6 A. Well our philosophy is that we'll stay in compliance  
7 with -- with the rules for marketing these types of food  
8 products. These are food-grade products.

9 Q. Let me try again. Have you developed any written  
10 policy regarding the marketing practices which GNC will or  
11 will not engage in?

12 Simple "yes" or "no" question.

13 A. I don't know of any specific policy regarding the  
14 marketing of our products.

15 Q. Okay. Now you mentioned earlier this morning that you  
16 had visited various GNC stores from time to time. Is that  
17 correct?

18 A. Yes.

19 Q. Do you still go into GNC stores from time to time?

20 A. Yes.

21 Q. When was the last time you were in a GNC store?

22 A. Approximately three weeks ago.

23 Q. Where was the store?

24 A. Akron, Ohio.

25 Q. Why did you go to the store?

1 A. To review a -- a format. We reset all of our products  
2 each year, and that was a reset store from which  
3 photographs were taken, and the new set for the following  
4 year is sent out. And we have a walk-through and I was a  
5 part of that walk-through.

6 Q. Sir, isn't it true that GNC continues to this day to  
7 circulate and distribute in its stores written materials  
8 touting the drug effects of amino acids and other  
9 substances?

10 A. Not that I'm aware of, no.

11 MR. MERCURIO: Object to the form of that  
12 question.

13 Q. Now when you were in that store in Akron, Ohio, did  
14 you happen to see a book known as -- with the title of  
15 Prescription for Nutritional Healing written by James F.  
16 Balch and a Phyllis A. Balch? Do you remember seeing that  
17 there in that store?

18 A. I didn't see it in that store, no. I don't doubt that  
19 it's there, I mean I'm not saying it's not there, but I  
20 didn't see it.

21 Q. You didn't see it in that store.

22 A. I didn't see that book in that store, no.

23 Q. Do you remember every book that's in that store?

24 A. No. No, no. We don't sell very many books.

25 Q. Is it your testimony that this book wasn't in the

1 Akron store?

2 A. No. I don't know it was there and I don't know that  
3 it was not there.

4 Q. I'll represent to you, sir, that I bought this book  
5 just last Saturday at a GNC store in Plano, Texas, my home  
6 town, and it was -- I found it in the middle of the store  
7 in a big promotional thing, there was a stack of them  
8 there, there was a picture of Mr. Balch there and I started  
9 looking through this book.

10 Have you ever seen this book before?

11 MR. HERR: Is that a question?

12 MR. SUGGS: Pardon?

13 MR. HERR: Is that a question or are you giving  
14 testimony?

15 MR. SUGGS: It was a prelude to my question.

16 Q. Have you ever read that book?

17 A. I don't -- I've never read the book. I never looked  
18 inside. I may have seen the cover, but I don't recollect  
19 if I have or not.

20 Q. Have you ever heard of Mr. Balch or Dr. Balch before?

21 A. I have not, no.

22 (Discussion off the record between the witness  
23 and his counsel.)

24 BY MR. SUGGS:

25 Q. Mr. Horn, I'm going to represent to you that in this

1 book -- and I'll hand you the book here in a moment so you  
2 can look at it yourself, but I'll represent to you that  
3 there's a section in this book that goes on for almost 250  
4 pages listing various medical conditions, various medical  
5 problems ranging all the way from abscess to yeast  
6 infection, and that in this book there's a listing of -- of  
7 nutrients that are described in several categories, there's  
8 a very important category, there's an important category,  
9 and then there's another category known as -- it's  
10 described as being helpful, and that in here Dr. Balch  
11 lists the supplements that are helpful or important for  
12 these various medical conditions and then gives various  
13 suggested dosages. And then to the right of that he has  
14 various comments as to what -- what this dose of these  
15 supplements is going to do.

16 And I'm going to hand the book to you and I'd like you  
17 to look at the section here on cancer. And you see that  
18 listing of the various products that I was just describing  
19 to you?

20 A. Of these food -- or these nutrients here?

21 Q. Yeah.

22 A. Yeah. You've outlined in yellow.

23 Q. Right. You see the -- you see the heading there how  
24 they've got some he's listed as very important or essential  
25 and some that are important and some that are helpful;



1 correct?

2 A. Yes.

3 Q. Okay. With the implication that if someone wanted  
4 to -- wanted to take nutrients --

5 A. Excuse me, sir, I see essential and helpful, I don't  
6 see important.

7 Q. Oh, okay. Maybe he's just got two categories. Some  
8 of them have three, some of them have two.

9 Would you agree, sir, that the implication from that  
10 listing of those nutrients there is that someone may derive  
11 some benefit by taking those various nutrients or products  
12 if they've got cancer?

13 A. I have no idea. This man's a medical doctor, I'm not.

14 Q. Well I mean just the way it's set out there in -- in  
15 the book that you sell in your store, if someone --

16 A. Well I've never seen --

17 Q. -- looked through that --

18 A. I've never seen this book. And the fact that we sell  
19 the book in the store, I can't comment on the doctor --  
20 what he intends here. I have no idea.

21 Q. Well sir, as you look at it there right now, isn't the  
22 implication to you that from this book that's being sold in  
23 your store that Dr. Balch is recommending that if  
24 somebody's got cancer, they ought to be taking those  
25 products that are listed there?

1 A. I can't -- I can't comment on what Dr. Balch's  
2 intentions are in his book.

3 Q. Okay. I'll tell you what, we'll let the jury decide  
4 whether or not that book and the information that's in  
5 there is implying to -- to consumers that they ought to be  
6 taking those -- those products for the treatment of cancer,  
7 but for right now --

8 A. Are all these -- are all these food supplements here?

9 Q. Sir --

10 A. All foods?

11 Q. -- what I'd like you to do -- what I'd like you to do,  
12 sir, if you could, read into the record all of the  
13 different products or types of products that are -- that  
14 are listed on there for cancer. Could you do that for me,  
15 please?

16 A. Well I'm reading from Dr. Balch's book, who I don't  
17 know or don't know of.

18 Q. And just for the record, too, could you indicate which  
19 page it is you're reading from?

20 A. Page 120.

21 Q. Okay. And this -- and the title of the book is?

22 A. "Prescription for Nutritional Healing: A Practical  
23 A-to-Z Reference to Drug-Free Remedies Using Vitamins,  
24 Minerals, Herbs and Food Supplements."

25 Q. Tell me, sir, does the title sound like it has

1 anything to do with the cure, mitigation or prevention of  
2 disease?

3 A. I -- I don't have an opinion on --

4 This man's a medical doctor. I don't know anything  
5 about him.

6 Q. "Prescription for health" or "prescription for  
7 nutritional health" doesn't imply to you that it has  
8 anything to do with cure or prevention of disease?

9 A. Well I'll just read what he said, this is, "A to Z  
10 Reference to Drug-Free Remedies for Using Vitamins,  
11 Minerals, Herbs and Food Supplements."

12 Q. Does the word "remedy" sound like it has anything to  
13 do with the cure, prevention or treatment of disease?

14 A. I don't know. He's a doctor, I don't know what he  
15 means.

16 Q. Well I'm asking you, sir. Does -- does the word  
17 "remedy" strike you as having to do with the cure,  
18 prevention or treatment of disease?

19 A. Well he's saying a remedy, drug-free remedy. I don't  
20 know really what he means by that.

21 Q. Well how do you --

22 A. I suppose he means if you eat right and get the right  
23 nutrients, that it's helpful to your health. I think  
24 that's what he means.

25 Q. Does the word "remedy" to you have anything to do with

1 the cure or treatment of disease?

2 A. "Remedy." There's a legal term "remedy?"

3 Q. No, I'm just asking for your -- in your mind, sir.

4 A. I would say "remedy" means, you know, it may help.

5 Remedy for --

6 Q. Do you think that a consumer who comes and walks into  
7 your store and sees that title and sees the description  
8 there of that being a remedy or list of remedies, that --  
9 you think they might think it has something to do with the  
10 cure, treatment or prevention of disease, sir?

11 A. I don't know what they think. I don't know what they  
12 think. I think anybody who would buy this book is looking  
13 for answers to better health.

14 Q. Okay, sir. Could you read to me from that page there  
15 that we have, the section on cancer -- what was it, page  
16 161?

17 A. No, 120 --

18 Q. One twenty.

19 A. -- is what you gave to me.

20 Q. Okay. Could you just read off into the record, so  
21 that we've -- we've got an indication, all the different  
22 products there or types of products that Dr. Balch has  
23 listed in the cancer section?

24 A. Beta-carotene, Q -- Coenzyme Q10, DMG, which  
25 parenthetically says Gluconic from DaVinci Labs, Garlic

1 capsules, parentheses Kyolic, close parentheses, Germanium,  
2 Proteolytic enzymes or Wobe-Mugos-N-Dragees -- I can't  
3 pronounce the name, Selenium, Superoxide dis --

4 Q. Dismutase.

5 A. -- dismutase, parentheses, SOD, close parentheses,  
6 Vitamin A and E emulsion or capsules, Vitamin B complex and  
7 brewer's yeast, Vitamin C plus ribo -- riboflavinoids.  
8 That's the end of the suggested -- of the essential.

9 Q. Okay. And what about the rest of the list?

10 A. Then under the term of "Helpful," the caption of  
11 "Helpful," is Aerobic 07 from Aerobic Life Products or  
12 Dioxychlor from American Biogenic -- Biologics,  
13 Comprehensive mineral and trace element supplement rich in  
14 potassium and calcium and magnesium.

15 Q. And it goes over to the other side of the page;  
16 correct?

17 A. Goes to the next column. Shall I continue?

18 Q. Please.

19 A. Carnitine derived from fish liver, L-Cysteine and  
20 L-methionine, L-Taurine, Maxidophilus or Megadophilus or  
21 Primadolophilus DDS, Multiple enzyme digestive formula,  
22 Multivitamin, Niacin and folic acid and chlorine, PABA, Raw  
23 glandular complex with extra raw thymus, Seaweed or kelp,  
24 Vitamin B12.

25 Q. And sir, I'll represent to you that when I bought that

1 book in the Plano, Texas store, that it was surrounded by  
2 shelves of products sold by GNC. I didn't make a listing  
3 of them all, but from some of the ones you listed there  
4 tell me, sir, does GNC sell garlic capsules?

5 A. Yes, I believe we do.

6 Q. Sir, has -- has GNC done any research or is it aware  
7 of any research that garlic capsules is -- has any effect  
8 on the cure or treatment of cancer?

9 A. We don't represent that it does. And I --

10 MR. SUGGS: Sir, I'm going to move to strike your  
11 answer as not responsive.

12 Q. My question is: Has GNC done any research or aware of  
13 any research which indicates that garlic samples -- garlic  
14 capsules are effective in the treatment of cancer?

15 Simple "yes" or "no" question.

16 A. We may have done research from literature. I don't  
17 believe we've ever done any pure research. I don't know.

18 Q. Okay. Are you personally aware of any research that  
19 garlic capsules are effective in the treatment of cancer?

20 A. I'm not, because we don't represent it as a treatment  
21 for cancer.

22 MR. SUGGS: Sir, I'm going to move to strike your  
23 answer as not responsive.

24 Q. My question is a simple straight "yes" or "no"  
25 question: Are you aware of any research, you

1 personally, --

2 A. Not personally.

3 Q. -- that garlic capsules --

4 A. I'm not personally aware of --

5 Q. Sir, let me finish my question. I'll try not to  
6 interrupt you, but you should let me get my question out  
7 first before you answer. Is that agreeable?

8 A. Sure.

9 Q. Okay. Are you personally aware of any research,  
10 whether done by GNC or anyone else, that garlic capsules  
11 are useful in the treatment of cancer?

12 A. I'm personally not aware of any, no.

13 Q. Okay. Now does garlic -- pardon me. Does GNC sell  
14 brewer's yeast?

15 A. Yes.

16 Q. Are you aware of any research by GNC or anyone else  
17 that brewer's yeast is effective in the treatment of  
18 cancer?

19 A. Wrong person. I'm not personally, no.

20 Q. Okay. That's -- that's all I'm asking for, whether  
21 you're aware. That's -- that's a fine answer.

22 Now GNC also sells L-cysteine, which is one of the  
23 items mentioned in there; correct?

24 A. I don't -- I don't believe so. I never heard of that.

25 Q. Well it's an amino acid that was at least on the shelf

1 of the Plano, Texas store that I was at on Saturday.

2 A. I'm not -- I'm not aware of it.

3 Q. Okay.

4 A. I've never heard of that product.

5 Q. You wouldn't dispute that I saw it on the shelf of the  
6 store in Plano.

7 A. I have no basis to dispute it, no.

8 Q. Well, sir, are you aware again of any research by GNC  
9 or anyone else that L-cysteine, a form of amino acid, is  
10 effective in the treatment of cancer?

11 A. I never heard of it, so I don't know.

12 Q. Okay. How about seaweed or kelp, does GNC sell  
13 seaweed or kelp?

14 A. I don't know.

15 Q. Okay. Are you aware of any research by GNC or anyone  
16 else that taking seaweed or -- or kelp is effective in  
17 treatment of cancer?

18 A. I'm not personally, no.

19 Q. Okay. GNC is in the business, and has been, of  
20 selling products which it knows are going to be literally  
21 consumed and ingested by humans; correct?

22 A. Yes.

23 Q. Many of those products are sold in pill form; correct?

24 A. Yes.

25 Q. And consumers can't tell what's in those pills; can



1 they?

2 A. Read the label.

3 Q. Well, the consumer doesn't have any personal knowledge  
4 of what's in those -- those pills; correct?

5 A. Ah --

6 Q. You don't -- you don't expect consumers to take the  
7 pills out of the store and go and test them or anything  
8 like that; do you?

9 A. No, we don't expect that.

10 Q. In fact you know that consumers have to rely on GNC to  
11 provide them what the label says; correct?

12 A. Yes.

13 Q. Okay. And they have to -- have to assume that GNC  
14 isn't going to sell them some product that's going to kill  
15 them or cripple them for life; correct?

16 A. That's correct.

17 Q. Now the preform tryptophan that you sold was in -- in  
18 pill form; correct?

19 A. Yes.

20 Q. Okay. And GNC knew that people were -- were taking  
21 those pills -- strike that.

22 GNC knew that people were not taking those pills for  
23 the pleasure of swallowing a pill or for any taste  
24 associated with the pill.

25 MR. MERCURIO: Object to the form of the

1 question.

2 Q. Didn't you know that?

3 A. Well I make the assumption that people are  
4 swallowing -- are taking the pill for whatever their reason  
5 for taking it. It's a food -- it's a food product.

6 Q. Well sir, you -- you said that a quite a few times and  
7 we'll -- we'll talk about that in some more detail, but  
8 your answer isn't really responsive to my question.

9 People weren't -- let me break it down for you. You  
10 knew that people weren't taking L-tryptophan pills because  
11 they liked the taste of the pills; correct?

12 A. That's correct.

13 Q. And you knew that people weren't taking the pills  
14 because they derived some pleasure from swallowing a pill;  
15 correct?

16 A. I would assume not.

17 Q. When you took L-tryptophan back in 1982, you didn't  
18 take it for the taste; did you?

19 A. No.

20 Q. You didn't take it for the pleasure of swallowing a  
21 pill; right?

22 A. No.

23 MR. SUGGS: We'll wait for the train to go by.

24 BY MR. SUGGS:

25 Q. When people are thinking about taking an L-tryptophan

1 pill, they're not going to sit down and try to figure out  
2 which wine goes with it or anything like that; are they?

3 A. I would assume not.

4 Q. Okay. You knew that people were -- were buying and  
5 taking the pills you sold because they believed they were  
6 going to derive some benefit from doing so; correct?

7 A. Yes.

8 Q. In fact when you took tryptophan back in 1982 at the  
9 suggestion of your doctor, you took it because you thought  
10 you were going to derive some benefit; correct?

11 A. Yes.

12 Q. And the benefit that you thought that you were going  
13 to receive from that was relief from stress, I think you  
14 said?

15 A. Yes.

16 Q. Okay. Would you agree that consumers who purchased  
17 GNC's products thought they were going to be healthier or  
18 feel better if they bought and took the pills that you  
19 sold?

20 A. I would assume that they thought they would get  
21 some -- some benefit from it.

22 Q. And GNC encouraged that belief; correct?

23 A. We certainly don't discourage that belief, but --

24 Q. Well in fact you positively encouraged that belief;  
25 did you not?

1 A. In what way?

2 Q. You encouraged people to believe that your products  
3 were going to make people healthier and make them feel  
4 better; didn't you?

5 A. Inasmuch as they're healthy nutrients and the body  
6 needs nutrients, yes, we --

7 Q. Well I mean let's get real specific here. You talked  
8 about some of your -- your catalogs and how you think some  
9 of the catalogs that you talked about earlier, you said,  
10 weren't really your catalogs, they were -- they were  
11 Puritan's Pride catalogs even though they had GNC or  
12 General Nutrition Corporation on them. I want to show you  
13 another catalog here. We'll have this marked as Exhibit  
14 No. 1. For the record, this is actually not the complete  
15 catalog, but it's several pages from a catalog which  
16 indicates that the prices and offers are good through June  
17 31, 1989.

18 (Horn Deposition Exhibit 1 was marked  
19 for identification.

20 THE WITNESS: That would be a Puritan Pride  
21 catalog; would it not?

22 MR. SUGGS: Well let's talk about it, find out.

23 THE WITNESS: We weren't in the catalog business  
24 in 1990.

25 BY MR. SUGGS:

1 Q. Well, sir, who was Kern Gillette. Was he a GNC  
2 employee?

3 A. Yes, he was.

4 Q. Pardon me, he was a GNC employee?

5 A. Yes.

6 Q. Okay. And on the first page of this -- this exhibit  
7 there's no mention of Puritan's Pride at all; is there?

8 A. What date is this catalog? I can't -- I don't see it  
9 here.

10 Q. Well it's kind of hard to make out, but at least in  
11 the upper right-hand corner it seems to me to say the  
12 prices and offers are good until June --

13 A. Well I believe this date here is --

14 Q. -- is that June or May?

15 A. What does that say?

16 Q. It's either 5- or 6-31-89.

17 A. A catalog -- I don't -- I don't want to get too  
18 technical here, but a catalog may expire, you know, much as  
19 a year off in the future.

20 Q. Well that's fine.

21 A. But Kern Gillette was an officer of -- vice-president  
22 of GNC.

23 Q. GNC, right. And right at the top of this, this  
24 exhibit, the only name that's up there is GNC, General  
25 Nutrition Corporation; correct?

1 A. Yes.

2 Q. So can we assume from this that since it has Mr. Kern  
3 Gillette's name on the front of it, that this is in fact a  
4 genuine, bona fide GNC catalog as opposed to a Puritan's  
5 Pride catalog?

6 A. It -- it would appear so, but the dates are certainly  
7 suspicious. I would want to know when this catalog was  
8 actually issued. '89 seems awfully late, but --

9 Q. Well --

10 A. -- it would appear it is our catalog, yes.

11 Q. Sir, I don't know when it was issued.

12 A. We could find that out.

13 Q. It was produced to us in this fashion.

14 But in any event, to get back to my question, on the  
15 cover of this catalog is what purports to be a letter from  
16 Kern Gillette, vice-president, Mail Order Division of  
17 General Nutrition Corporation.

18 A. Uh-huh. Uh-huh.

19 Q. Do you see that, sir, the first -- on the first page?

20 A. Yes, uh-huh.

21 Q. Okay. And the last sentence of his letter says, "We  
22 trust this very special 10 percent discount will help you  
23 to lead a healthier life through our low priced quality  
24 products." Correct?

25 A. Uh-huh.

1 THE REPORTER: Your answer?

2 THE WITNESS: Yes.

3 Q. And isn't that encouraging people to believe that  
4 GNC's products are going to make people healthier?

5 A. That's the business we're in.

6 Q. Right. And that's what Mr. Gillette says right here  
7 on the -- on the front page of the catalog; correct?

8 A. Yes.

9 Q. And you wanted people to believe that if they took GNC  
10 products they were going to be healthier; correct?

11 A. Yes.

12 Q. Okay. Oh, by the way, on the second page of the  
13 exhibit at the top there's a blurb on L-tryptophan; isn't  
14 there?

15 A. Yes.

16 Q. Could you read that, that into the record, the  
17 description up there, that paragraph?

18 A. "L-Tryptophane. One of the essential building blocks  
19 of life. L-Tryptophane is one of the essential amino  
20 acids, which means your body cannot make it by itself. The  
21 only way to get this vital amino acid is to include it in  
22 your diet. You need L-Tryptophane for your body to produce  
23 serotonin" --

24 Q. Serotonin.

25 A. --"serotonin -- a powerful blood vessel constrictor

1 which helps close off bleeding. GNC offers you two  
2 potencies...choose from the one that fits your daily good  
3 health program."

4 Q. Sir, are you aware that the Food, Drug and Cosmetic  
5 Act also defines drug -- a drug as an article which affects  
6 the structure or function of the body?

7 A. No, I'm not aware of that.

8 Q. Okay. Sir, would you agree that if something  
9 functions to act as a powerful blood constrictor, that that  
10 would be affecting the function and structure of the body?

11 A. I -- I'm -- I'm not qualified to comment on that.  
12 That's -- that's medical. I can't comment on that.

13 Q. Well sir, can you tell me whether GNC ever did any  
14 research that supports the statement in here that you need  
15 L-tryptophan for your body to produce serotonin, a powerful  
16 blood constrictor which helps close off bleeding?

17 A. Are you speaking about pure research or --

18 Q. Research --

19 A. -- document research?

20 Q. Research of any kind. Research --

21 A. I don't know. I don't know in either case.

22 Q. Okay. Sir, is it your understanding that serotonin is  
23 a powerful blood constrictor?

24 A. I don't know what serotonin is.

25 Q. Sir, if in fact serotonin doesn't function as a blood



1 vessel constrictor, would you say that this representation  
2 in the catalog is -- is misleading?

3 A. I'm not familiar enough with the technical properties  
4 of serotonin or L-tryptophan to -- to give you an opinion.  
5 You'd have to ask our -- our technical food scientists or  
6 attorneys that question.

7 Q. And you're not aware of any research that would show  
8 that L-tryptophan was in fact a powerful blood constrictor.

9 A. I'm not personally aware, no.

10 Q. Okay. Are you aware of any research by GNC or anybody  
11 else that taking tryptophan is going to help close off  
12 bleeding?

13 A. Personally not aware. There are others in the company  
14 that you should ask that question to.

15 Q. Okay. You don't know one way or the other whether  
16 there's any medical support for that position at all; is  
17 that correct?

18 A. I don't personally know, no.

19 MR. SUGGS: Okay. Why don't we go off the  
20 record. I think we need to change tapes here.

21 (Discussion off the record.)

22 BY MR. SUGGS:

23 Q. Mr. Horn, would you agree that any time anyone ingests  
24 something into their body, that there's a potential risk  
25 that the substance may be harmful?

1 A. I don't know that, no.

2 Q. Well, if I were to take a pill out of my pocket and  
3 hand it to you, it could be that that pill might be  
4 inherently harmful for all people or inherently harmful for  
5 someone, or that the substance might be contaminated in  
6 some fashion; is that right?

7 A. Well our products are food products and we put  
8 everything in the product on the label, fully disclosed,  
9 so --

10 MR. SUGGS: Sir, I'm going to move strike your  
11 answer as non-responsive.

12 Q. Sir, isn't it true that any time you ingest something  
13 into your body, there's a potential that it may be harmful?

14 A. I suppose anything -- I suppose anything is --  
15 Yeah, it's possible, yes.

16 Q. You sold -- you sold L-tryptophan in your stores to  
17 people and it had a label on it and people got sick when  
18 they took GNC's product; didn't they?

19 A. Allegedly people got sick when they took L-tryptophan  
20 from a certain period of time only.

21 Q. And whatever was said on the label didn't -- didn't do  
22 anything to protect people from getting sick; did it?

23 A. I don't know how they got sick or what they got sick  
24 from.

25 Q. But any time anybody takes anything into their body,

1 there's a potential risk that it may be harmful; correct?

2 A. Might be allergic to apples, sure.

3 Q. Or that water that you've got over there may have  
4 something bad in it; correct?

5 A. It could.

6 Q. Okay. Would you agree that people shouldn't ingest  
7 something into their bodies unless it will in fact provide  
8 some benefit and unless the substance is safe?

9 MR. MERCURIO: Object to the form of the  
10 question.

11 A. Certainly shouldn't ingest something that's not safe.

12 Q. Uh-huh. And because of the potential risk that --  
13 that goes with ingesting anything into your body, shouldn't  
14 there also be some benefit that is trading off that risk?

15 MR. MERCURIO: Object to the form of the  
16 question.

17 Q. Wouldn't that be the prudent thing?

18 MR. MERCURIO: Object to the form of the  
19 question.

20 A. I would say it sounds prudent, yes.

21 Q. Okay. Would you agree that your people shouldn't sell  
22 people pills to take into their bodies unless the pills  
23 will in fact provide a benefit and unless they're safe?

24 A. I don't know why individual -- each individual buys  
25 the product they buy from us. It's personal to them.

1 Q. Sir, maybe you didn't understand my question.  
2 Wouldn't you agree that your company shouldn't sell people  
3 pills unless those pills will provide a benefit and unless  
4 it's safe?

5 A. People shouldn't buy products that aren't safe --

6 Q. I'm talking about --

7 A. -- unless they have some reason for taking them.

8 Q. I'm talking about your company selling them at this  
9 time, sir. Would you agree that your company shouldn't  
10 sell --

11 A. We make products available for sale, sir, --

12 Q. Sir, let me --

13 A. -- that are safe.

14 Q. Sir, as a general principle would you agree that your  
15 company shouldn't sell pills to people to take unless the  
16 pills provide some benefit and unless the pills are safe?

17 MR. MERCURIO: Object to the form of the  
18 question. If you want to break it up and ask it two -- as  
19 two questions, it is two questions, he'll answer if he  
20 can.

21 MR. SUGGS: I like the question to stay as it  
22 is.

23 MR. MERCURIO: I object to the form of the  
24 question, it's inappropriate as framed.

25 BY MR. SUGGS:

1 Q. Sir, wouldn't you agree that your company shouldn't  
2 sell people pills to take unless there is in fact some  
3 benefit and the pills are safe?

4 MR. MERCURIO: Object to the form of the  
5 question.

6 A. The latter part, we shouldn't sell any products that  
7 are not safe.

8 Q. Okay. How about the benefit part?

9 A. The benefit to each individual is up to them.

10 Q. Well are you --

11 A. We don't tell them what kind of groceries to buy in  
12 the grocery store.

13 Q. Well, are you telling --

14 Well you weren't selling groceries in your stores;  
15 were you?

16 A. We were selling food.

17 Q. Sir --

18 A. Food products.

19 Q. Sir, people were taking your products and people  
20 weren't taking tryptophan for food purposes; were they?

21 MR. MERCURIO: Object to the form of the  
22 question.

23 A. I would say many of them are.

24 Q. Okay, we'll get --

25 A. You know, like broccoli, you might buy broccoli in

1 pill form.

2 Q. Sir, we'll get into -- we'll get into that in a little  
3 more detail here.

4 Is it your testimony, sir, that it's -- as far as  
5 you're concerned as someone who was the former CEO of GNC  
6 and who is now chairman of the board, that it's perfectly  
7 okay for GNC to put products on its shelves to sell pills  
8 to people if those pills have no benefit?

9 A. No, it's not okay.

10 Q. Okay. So you would agree, then, wouldn't you, sir,  
11 that your company shouldn't sell pills to people to take  
12 unless they provide both a benefit and that the pills are  
13 safe? Doesn't that logically follow?

14 MR. MERCURIO: Object to the form of the  
15 question.

16 A. I would agree that we would not sell any -- should not  
17 sell any products and do not sell any products that are not  
18 safe.

19 Q. Again I want to get back to the benefit. Wouldn't you  
20 agree that the pills, in addition to being safe, also ought  
21 to have some benefit to them?

22 A. From each individual's perspective, according to their  
23 needs, their desires, their thought processes, their  
24 personal diet, we make the assumption that they make the  
25 decision based upon some perceived benefit, yes.

1 Q. Sir, isn't it a fact that at least with respect to  
2 taking some item into your body, whether or not it is going  
3 to benefit your body is a question of science and a  
4 question of fact?

5 A. Limited science.

6 Q. Okay. Well don't you think that GNC, before it sells  
7 pills for people to take, ought to make some evaluation of  
8 the science and the facts to find out and determine whether  
9 there is in fact some benefit in people taking those pills  
10 into their bodies?

11 A. No. I would say no, we should not. We do -- are not  
12 compelled to do that.

13 Q. Okay. So far as you're concerned, and this is you  
14 speaking as the chairman of the board of GNC, it's  
15 perfectly all right for GNC to sell people pills to take  
16 even if those pills have no benefit whatsoever, there's no  
17 scientific basis for any benefit; is that correct?

18 A. That's not what I said.

19 Q. Well, are you saying, then, that there -- that there  
20 should be a benefit?

21 A. The benefit to them is from their perception, their  
22 need, their diet, how they're trying to supplement. We  
23 don't --

24 Q. So in other words --

25 A. -- know each individual's supplemental needs to their

1 diet, if any.

2 Q. So in other words it's okay for GNC to sell pills for  
3 people to take them into their bodies even if there's no  
4 scientific basis that there will in fact be a benefit, as  
5 long as some customer is under the belief or perception  
6 that they're going to get some benefit; is that what you're  
7 telling me? Is that what you're telling the ladies and  
8 gentlemen of the jury?

9 A. I'm telling you that it's up to the individual. They  
10 are purchasing these products, we assume, based upon their  
11 personal diet and their needs and their deficiencies in  
12 their diet and whether they're smokers or non-smokers or  
13 all the various habits or non-habits they have. They make  
14 the decision what -- how they want to supplement their diet  
15 with these food supplements.

16 Q. And where do people get their information?

17 A. I don't know. I can tell you what our research tells  
18 us.

19 Q. Well one place where they can get their information is  
20 from books that GNC sells in its stores, like Prescription  
21 for Nutritional Healing; isn't that right?

22 A. I'm sure there's a great many book stores and other  
23 stores that sell the same book, public libraries.

24 Q. Yeah. And this contains -- this one, though, was sold  
25 in your store right next to shelves of your products;



1 correct?

2 A. You said you bought it there, yes.

3 Q. Sir, would you agree that your company shouldn't sell  
4 people pills to take for a particular purpose if in fact  
5 the pills or the use of those pills will not satisfy that  
6 particular purpose?

7 THE WITNESS: Would you read the question back to  
8 me, please.

9 (Record read by the court reporter.)

10 MR. MERCURIO: Object to the form of the  
11 question.

12 A. I -- I don't know how to answer that question.  
13 There's a --

14 Thousands of different customers visit our stores --

15 Q. Well let me give you --

16 A. -- for thousands of different reasons, and I don't  
17 know all those reasons.

18 Q. Let me give you an example, sir. You keep focusing on  
19 the customer and my questions are directed as to what your  
20 company does, not what's in the minds of -- at least for  
21 the time being, not what's in the minds of some person or  
22 some consumer who comes into your store. Let me give you a  
23 more -- more precise example of what I'm -- I'm after here,  
24 sir.

25 Would you agree that your company shouldn't sell pills

1 under the pretext that they're a dietary supplement or that  
2 they're food if in fact the pills don't have any  
3 nutritional value?

4 MR. MERCURIO: Object to the form of the  
5 question.

6 A. If they have absolutely no nutritional value, like a  
7 placebo or something; is that your question?

8 Q. If they have no nutritional value, should you be  
9 selling them as dietary supplements or calling them dietary  
10 supplements?

11 A. We shouldn't -- we shouldn't be selling a product that  
12 on the label we don't disclose exactly what is there. If  
13 it has no nutritional supplement, why would anyone -- or  
14 benefit, why would -- would the customer buy it? I don't  
15 understand the question.

16 To my knowledge we sell no products that don't have  
17 some nutritional --

18 Q. Sir, --

19 A. -- benefit.

20 Q. -- in fact your company sold pills and called them  
21 dietary supplements when in fact people were taking them  
22 for their drug-like or therapeutic effects; isn't that  
23 right?

24 A. I don't know that.

25 Q. We'll talk about that some more.

1           Sir, you knew that customers, consumers were relying  
2 on your company to provide a product that was effective for  
3 the purpose for which it was sold; correct?

4           MR. MERCURIO: Object to the form of the  
5 question, assumes facts not in evidence.

6       A. We make no claims on any of our labels for what the  
7 benefits or features of the products are.

8       Q. But you contain materials in your store that give  
9 descriptions of all sorts of different products that are  
10 available in your stores and tout various health benefits  
11 with respect to the consumption of those products; don't  
12 you?

13      A. We don't tout the health benefits. Some third-party  
14 doctor who I don't know in that book --

15      Q. And you circulate this book with those recommendations  
16 in your stores; correct?

17      A. In -- in some stores perhaps that or other books are  
18 offered, based on customer demand.

19      Q. And sir, have you ever made any inquiry as to whether  
20 any particular state, in Minnesota for example, has a  
21 consumer-fraud statute that addresses the legality of  
22 circulating that type of material?

23      A. You should ask our legal people that. I --

24      Q. Well my question --

25      A. I don't know.

1 Q. I wasn't asking you for your opinion. I was only  
2 asking you whether you had consulted with anybody about the  
3 legal status of that, in various states such as Minnesota.

4 MR. MERCURIO: I object to the question. Is the  
5 suggestion to the question it is illegal to sell a certain  
6 book in Minnesota. Is that the question?

7 MR. SUGGS: My question was --

8 MR. MERCURIO: Because that's the implication of  
9 the question.

10 MR. SUGGS: Well the question stands as it is.

11 Q. Sir, have you ever had any discussion with anybody as  
12 to the legality of -- of having books like this with this  
13 type of information in it in your store, and the types of  
14 claims that are made in books like this in your store where  
15 you're selling your products?

16 A. To my knowledge we are allowed under regulations to  
17 sell books that's appropriate to good health.

18 MR. SUGGS: Sir, I'm going to strike your answer  
19 as not responsive. It's not really answering my question.

20 Q. My question was whether you had had any discussions  
21 with anybody about that subject. It's a simple "yes" or  
22 "no."

23 A. Well when I first came to the company, I had a lot of  
24 discussions with a lot of people about a lot of things, and  
25 our -- in fact our -- we had a book section at that time

1 and our book business was -- was terrible, we sold very few  
2 books. We did not sell books for a long period of time  
3 until then. And the customer demand for some books  
4 apparently has risen. Apparently the company has -- is  
5 selling -- selling books such as that. But we do not have  
6 a comprehensive book section in the store.

7 Q. Sir, my -- my question was have you had any discussion  
8 with anybody in the company about whether it's appropriate  
9 to have books in your store for sale right next to products  
10 which make the type of claims that are in books like this  
11 book called Prescription for Nutritional Healing? Have you  
12 had any discussions with anybody? That's all I'm asking.

13 A. Yes, I think -- I think we discussed that back in 1985  
14 before we dismantled our book section.

15 Q. Well now at least some stores have books in them;  
16 right?

17 A. The advice on stopping selling books at that time was  
18 not based upon what you're alluding to, it was based upon  
19 the non-productive nature of the books.

20 Q. Well when did you start selling books again?

21 A. I don't know.

22 Q. Sir, would you agree that consumers were relying on  
23 GNC to provide a product that was safe?

24 A. Yes.

25 Q. Would you agree that consumers had a right to rely on

1 GNC to provide a product that was safe?

2 A. Yes.

3 Q. Would you agree that if your company sold a product  
4 that was not safe and caused harm to a customer, that your  
5 company ought to be responsible for paying the harm that  
6 was caused by the product?

7 A. Well that's a legal question. I don't think I can  
8 answer that. I think you ought to refer that to --

9 Q. No, I'm asking -- I'm asking for you in your mind what  
10 you think is right. I'm asking you as the chairman of the  
11 board whether or not you think it's right --

12 A. Well it depends on whether there's negligence involved  
13 or whether we did something wrong or whether -- you know,  
14 it depends on a lot of things. I can't answer the  
15 question; that's a legal question. You know, --

16 Q. I'm just asking --

17 A. -- that's what this trial -- that's what this whole  
18 process is about.

19 Q. I'm just asking you, sir, as the chairman of the  
20 board, do you think the customer --

21 A. Well if we willfully --

22 Q. Sir, please let me finish the question.

23 Do you think that customers who relied on GNC to  
24 provide a safe product, and if the product that -- that  
25 they took wasn't in fact safe and they suffered harm, do

1 you think that GNC ought to pay for the harm that was  
2 caused to them?

3 A. I would say it depends on the circumstances, whether  
4 it was willful and -- and negligent and other factors, and  
5 I don't know how I can answer that question. That's why we  
6 have the court system in this country, to answer those kind  
7 of questions.

8 Q. Sir, in your stores, each store carries dozens if not  
9 hundreds of different products; correct?

10 A. Yes.

11 Q. Okay. Would you agree that your company has an  
12 obligation to test those products before they're sold for  
13 human consumption to determine whether or not they are in  
14 fact beneficial?

15 A. No more than a grocery store does foods coming in.  
16 We're a retailer.

17 Q. Well you also manufacture those products; don't you?

18 A. We manufacture a portion of our line.

19 Q. Okay. Well with respect to the products that you  
20 manufacture, --

21 A. Well --

22 Q. -- would you agree that GNC has an obligation to test  
23 those products to make sure that they are in fact  
24 beneficial?

25 MR. MERCURIO: That's a new question. Is that

1 right? Before you were talking about safety, now you're  
2 talking about benefit.

3 MR. SUGGS: Well I'm going to ask him about both.

4 A. Well you can't test these products. You test drugs I  
5 understand, but food products --

6 Q. Well sir --

7 A. You can't test whether an apple a day really does keep  
8 the doctor away. I don't -- there's no way to test that  
9 that I know of.

10 Q. Sir, your tryptophan pills came in a -- in a plastic  
11 bottle; right?

12 A. Came in a bottle. I'm not sure it is plastic, but --

13 Q. You obviously have taken drugs before; correct?

14 A. Have I taken drugs?

15 Q. Prescription drugs. Prescription drugs,  
16 over-the-counter drugs.

17 A. I try not to, but I've taken some over-the-counter  
18 drugs, yes.

19 Q. But you've done it from time to time.

20 A. Aspirin and that type of thing, yeah.

21 Q. You get them out of a little bottle that looks a lot  
22 like the bottle that you take tryptophan pills out of;  
23 right?

24 A. Could be, yeah.

25 Q. And the pills that you pour in your hand from the



1     tryptophan bottle look a lot like pills that you take that  
2     are a drug product; correct?

3     A.    They could be similar in tablet size and all, yes.

4     Q.    Yeah.  And drug companies test -- test their products  
5     before they're marketed to find out if they're -- if  
6     they're beneficial; don't they?

7     A.    We're not a drug company.

8     Q.    Well the --

9     A.    I don't know what drug companies do.

10    Q.    Sir, you don't know whether drug companies test their  
11    products before they put them out on the market --

12    A.    That's not --

13    Q.    -- to find out if they're beneficial?

14    A.    I don't know whether they test them or a third party  
15    tests them or a government agency.

16    Q.    But you know --

17    A.    I know there's an approval process --

18    Q.    You know for sure they're tested.

19    A.    I know there's an approval process before you get  
20    approval for a drug.

21    Q.    And you know for sure the drug -- drugs are tested  
22    for -- to see whether they are beneficial; correct?

23    A.    I -- I don't know for sure.  It's my understanding  
24    there's an approval process for drugs, yes.

25    Q.    Okay.  And so it's your understanding that the

1 technology for being able to test whether or not something  
2 that you take into your pill -- into your mouth that's in  
3 pill form is beneficial; correct? The technology exists.

4 A. I don't know that, no. Do you know that?

5 Q. Well yes, sir, I think I do. But I can't testify.

6 A. I think you're wrong.

7 Q. I can't testify.

8 Sir, have you ever heard of things like safety studies  
9 or toxicology studies or Phase I clinical studies or Phase  
10 II clinical studies or Phase III clinical studies? Any of  
11 those terms ever --

12 A. Some.

13 Q. Okay. And -- and what do those terms relate to?

14 A. I believe to the drug industry.

15 Q. And they relate to various testing that's done on  
16 drugs; correct?

17 A. We're not in the drug business, we're in the food  
18 business --

19 Q. Well, sir --

20 A. -- as defined by the FDA.

21 Q. Well, sir, that's a matter of some dispute in this  
22 litigation. You take the position that what you sold was a  
23 food and I say it was a drug.

24 A. Yeah. I've never varied from that position from the  
25 day I came to work until this time.

1 Q. Well I've never varied from my position from the time  
2 I got involved in this litigation. But that's a -- that's  
3 a sideline?

4 MR. MERCURIO: I'm glad we established that. Can  
5 we now move on?

6 Q. That's a sideline. Let's move on here.

7 You would agree, sir, that the technology is available  
8 to do some type of testing to determine whether or not  
9 drugs are beneficial; correct?

10 A. No, I would not agree to that.

11 Q. Okay. You just don't --

12 A. For drugs, for drugs, I beg your pardon. I would  
13 agree to it for drugs.

14 Q. Well they could do the same thing for pills that you  
15 sold in bottles that were tryptophan pills.

16 (Discussion off the record.)

17 Q. Sir, if GNC had chosen to, it could have done -- it  
18 could have contacted someone and said, "We want to -- we  
19 want to have this product tested to see if it in fact acts  
20 as a powerful blood constrictor" as was in the brochure  
21 that we were looking at. It could have done that; couldn't  
22 it?

23 MR. MERCURIO: Object to the form of the  
24 question.

25 A. It says here, I believe, that serotonin is the

1 powerful blood vessel constrictor.

2 Q. It says, "You need L-Tryptophane for your body to  
3 produce serotonin -- a powerful blood vessel constrictor  
4 which helps close off bleeding."

5 A. That's what this ad says. This ad says that  
6 serotonin, as I interpret it, is the powerful blood vessel  
7 constrictor.

8 Q. And sir, doesn't that imply to you that if you take  
9 tryptophan, you're going to -- your body is going to  
10 produce this serotonin which is going to act as a powerful  
11 blood vessel constrictor?

12 A. It says you need L-tryptophan to produce serotonin.

13 Q. And could your --

14 GNC could have done testing to determine whether or  
15 not taking of tryptophan was going to act as producing --

16 Let me repeat the question. We had a -- we're going  
17 to have another.

18 MR. MERCURIO: We have a whole lot of them.

19 MR. SUGGS: Trying to ask Mr. Horn questions and  
20 the horn keeps blowing.

21 THE WITNESS: My friend out there.

22 MR. SUGGS: Moral support.

23 BY MR. SUGGS:

24 Q. Sir, GNC could in fact have done or contacted someone  
25 to do testing to determine whether taking tryptophan would

1 result in the body producing more serotonin which would act  
2 as a powerful blood constrictor; couldn't it?

3 MR. MERCURIO: I'm going to object to the  
4 question. And because you've asked it three times, I want  
5 to make sure that the nature of my objection is clear. The  
6 question, among other things, implies that such tests were  
7 not done and out there, and -- and there is no evidence on  
8 the record now that there was or was not.

9 MR. SUGGS: Let me rephrase my question so I can  
10 cure that objection.

11 Q. Sir, although I thought I had asked this before, are  
12 you aware of any -- any testing that was done by GNC or by  
13 anybody else to find out whether or not tryptophan acts as  
14 it's represented to act in this brochure, this catalog  
15 brochure that we've had marked as Exhibit No. 1?

16 A. I'm not aware personally of any tests that could  
17 exist, particularly literature research.

18 Q. Okay. Now GNC could, however, have gone to some  
19 outfit that -- that does drug testing or research testing  
20 or biological testing of some sort to -- to find out  
21 whether or not that claim is valid; correct?

22 MR. MERCURIO: That's my objection, Mr. Suggs.  
23 I'm sorry if it's not clear. I mean you've asked him -- he  
24 said that he's not aware personally of whether or not any  
25 tests were done. That -- that does not necessarily imply

1 that the corporation didn't have access to tests done.

2 MR. SUGGS: Counsel, counsel, you know as well as  
3 I do that there's been nothing produced, no documents  
4 produced to us in this litigation that would indicate that  
5 there was any such testing done by that, or that GNC was  
6 aware of that.

7 MR. MERCURIO: Well since you raised that  
8 question, I mean, of me, I will -- I'm not here to testify  
9 but I can tell you that there are tests available --

10 MR. SUGGS: All right. Let's move on.

11 MR. MERCURIO: -- with respect to the properties  
12 of tryptophan, and there is a body of literature available  
13 that will tell you what tryptophan does and does not do in  
14 the body. Mr. Horn has told you that he's not the person  
15 to testify to that.

16 MR. SUGGS: Well let's move on with the  
17 deposition.

18 MR. MERCURIO: I think so.

19 BY MR. SUGGS:

20 Q. Let me put the question to you this way, sir: GNC had  
21 resources, financial resources such that if it had chosen  
22 to do any testing, it could have done testing; correct?

23 MR. MERCURIO: Object to the question.

24 A. Well you're asking me questions that apply to the drug  
25 industry, not to the food industry.

1 Q. Well, sir, I'm going to move to strike your --

2 A. We're not in the drug business.

3 Q. I'm going to move to strike your answer as  
4 non-responsive.

5 A. Then I -- I have to tell you I don't know.

6 Q. Let me restate the question.

7 Okay. You don't know whether GNC had resources,  
8 financial resources to testing; is that correct?

9 A. I don't know how much the tests would cost, how long  
10 they would last. Because you're applying a drug-standard  
11 question to a food business, and I don't know anything  
12 about the drug business.

13 MR. SUGGS: Okay. I'm going to move to strike  
14 the last portion of your answer which is not responsive.  
15 Sir --

16 MR. MERCURIO: I object to that. I think his  
17 answer was responsive.

18 MR. SUGGS: Well it's not, but we'll move on.

19 MR. MERCURIO: Okay.

20 BY MR. SUGGS:

21 Q. Sir, GNC first began marketing L-tryptophan products  
22 back in the 1970s; is that correct?

23 A. I don't know when we began marketing them.

24 Q. Okay. It was certainly on the market when you came on  
25 board; correct, in '85?

1 A. Yes, I believe it was.

2 Q. And you continued to sell L-tryptophan until the EMS  
3 epidemic occurred in 1989; correct?

4 A. Yes.

5 Q. And during that -- that period, GNC sold L-tryptophan  
6 all over the United States; correct? With the exception of  
7 one state.

8 A. It was available to all stores. I don't know  
9 specifically which ones carried the product, but I make the  
10 assumption that most stores carried it.

11 Q. Okay. And isn't it fair to say that GNC sold millions  
12 of dollars' worth of L-tryptophan products yearly?

13 A. I don't know what our annual sales were on  
14 L-tryptophan. We -- we don't have the POS information  
15 available to us.

16 Q. Sir, do you recall that in December of 1989 a Robert  
17 Dunn, who I believe was your senior vice-president, wrote  
18 to the FDA and informed the FDA that it was GNC's best  
19 estimate that there would be approximately 7.7 million  
20 dollars of annual sales affected by the recall of  
21 tryptophan?

22 A. Over what period of time was that?

23 Q. Well I'm just reading from the letter.

24 A. I don't -- I don't know what he means by that.

25 Q. This was -- this would be annual sales.



1 A. That sounds like a surprisingly high number.

2 Q. Well sir, let me hand -- hand this document to you.

3 A. Am I copied on that?

4 Q. Don't appear to be.

5 MR. SUGGS: We'll have this marked as Exhibit  
6 No. 2.

7 (Horn Deposition Exhibit No. 2  
8 was marked for identification.)

9 BY MR. SUGGS:

10 Q. For the record, this document with the Bates stamp  
11 numbers 0000026 is a letter dated December 13, 1989 from  
12 Robert V. Dunn, senior vice-president of General Nutrition  
13 Incorporated to Mr. Michael J. Filyo, resident investigator  
14 of the U.S. Food and Drug Administration. Did I accurately  
15 describe the document?

16 A. Yes, you did. Uh-huh.

17 Q. And in this letter he notes that Mr. Filyo had  
18 apparently asked Mr. Dunn to forward GNC's best estimate of  
19 the yearly sales of GNC brand of product which was subject  
20 to the recent recall; correct?

21 MR. MERCURIO: Well the letter says that Mr. Dunn  
22 promised to do that, it doesn't say that he was asked to do  
23 it. But --

24 MR. SUGGS: Okay.

25 MR. MERCURIO: -- the record will speak -- the

document will speak for itself.

Q. In any case, Mr. Dunn said that he was going to get in contact with Mr. Filyo about the best estimate of yearly sales of GNC's tryptophan; correct?

A. Apparently so.

Q. And in this letter he -- he states that, quote, "Our best estimate is that there would be approximately 7.7 million dollars of annual sales affected by the recall;" correct?

A. That's what the letter says, yes.

Q. Okay. Do you have any concrete information or basis to dispute that particular figure by this --

A. No, it -- it seems a little high to me, but I don't have any --

Q. You don't have any alternative figure to suggest.

A. No. That's at the selling price, incidentally, not at --

Q. That's what people bought it for; is that right?

A. That's right. That's what he means there, 7.7 in annual sales would be the selling price.

Q. If the annual sales were 7.7 million dollars, since you brought up that point about the selling price, can you give me here today just a ballpark estimate of what the cost was to GNC of that 7.7 million dollars in sales?

A. I couldn't. We -- we don't have -- we don't allocate

1 costs to individual products. We apply all costs to all  
2 products, and you can't sort it out by product.

3 Q. Okay. Mr. Horn, do you recall that in the industry as  
4 a whole, amino acid sales had been increasing from 1986  
5 through 1989?

6 A. Yes, I believe they had.

7 Q. Okay. And in fact that was in contrast to a number of  
8 other products in the industry; correct?

9 A. As I recall, amino acid sales have been strong, as  
10 have multivitamins, during the years in question, yes.

11 Q. But --

12 A. Stronger than the average.

13 Q. Okay. Stronger than the average product.

14 A. Stronger than the average, than the aggregate of all  
15 sales, yes.

16 Q. Is it fair to say that amino acids were one of the  
17 best products of -- in the GNC line?

18 MR. MERCURIO: Object to the form of the  
19 question.

20 A. We have a great many products and I -- I wouldn't feel  
21 comfortable without reviewing the rankings of which were  
22 our best products at that time.

23 MR. SUGGS: Okay. Well let's have marked as  
24 Exhibit No. 3 a June 19, 1989 memo from J.B. Cordaro to CRN  
25 executive contacts regarding industry data report.

1 (Horn Deposition Exhibit No. 3  
2 was marked for identification.)

3 A. Should I read this document?

4 Q. Yes. Just sort of glance over it.

5 A. Yes, I've -- I've looked at it.

6 Q. Sir, as I noted, this is a memo to CRN, Council for  
7 Responsible Nutrition, to the executive contacts, and I  
8 believe you said this morning that you were one of the  
9 executive contacts at GNC; correct?

10 A. At that time I probably was not, but -- I could have  
11 been at that time.

12 Q. Okay. You recall receiving this particular memo?

13 A. No. This -- this -- may I tell you how this report  
14 comes out?

15 Q. Actually I'm not particularly interested in that,  
16 but --

17 A. Okay.

18 Q. -- I would like to ask you some questions about it.

19 A. It is not -- it is not at all --

20 No one assumes any degree of accuracy. It's about --  
21 input from about six or eight companies only, intended to  
22 give you sort of a benchmark --

23 Q. Ballpark?

24 A. -- of the industry, but not comprehensive at all.

25 Q. Okay. Well sir, this -- this memo discusses sales in

1 various categories of products including multivitamins, B  
2 complex, Beta-carotene, vitamin E, calcium, amino acids,  
3 minerals, iron, fish oil, niacin and so forth; correct?

4 A. Yes.

5 Q. And at least on page two, in this memo it's indicated  
6 that amino acids had strong increases across the board;  
7 correct?

8 A. Yes.

9 Q. Up 19 percent in 1989 versus 1988; correct?

10 A. Yes, that's right.

11 Q. And up 23 percent in 1988 from 1987; correct?

12 A. I think that means from -- the increase of '89 over  
13 '87 was 23 percent.

14 Q. Ah, okay.

15 A. Two years.

16 Q. Okay. In any event, it's showing that amino acids are  
17 doing pretty good; correct?

18 A. Yes.

19 Q. Okay. In fact it's fair to say that amino acids --  
20 and tryptophan is an amino acid -- at least according to  
21 this report was one of the better product lines of people  
22 in the industry; correct?

23 A. On a relative basis, but not on a real basis.

24 Q. When you say "on a real basis," what do you mean?

25 A. Percent of increase --

1 Q. Dollar amount?

2 A. -- over the prior year could be substantial, but --  
3 for instance, multivitamins, a 10 percent increase in  
4 multiple vitamins could be much greater than a hundred  
5 percent increase in another category.

6 Q. In terms of dollars that come in?

7 A. What I'm telling you is amino acids is a small  
8 category, although it increased nicely, compared to the  
9 multiple vitamin category.

10 Q. Okay. Amino acids -- it's fair to say that amino  
11 acids were a nice little product; right?

12 A. Yes, they were, yes.

13 Q. All right.

14 A. A nice product line.

15 MR. MERCURIO: I object to the form of the  
16 question.

17 MR. SUGGS: Okay.

18 Q. How long have you been in marketing?

19 A. I don't consider myself in marketing. I consider  
20 myself a general manager.

21 Q. Okay. But you've been in industries when you were  
22 with Sears and with REI and also with GNC to be familiar  
23 with -- with what makes the market work, what makes sales  
24 work; right?

25 MR. MERCURIO: Object to the form of the

1 question.

2 A. I've never had a job that was specifically marketing.  
3 I -- my background is almost exclusively in general  
4 management.

5 Q. Okay. But you're familiar enough with how the  
6 marketplace works to have an opinion as to whether consumer  
7 demand is what makes sales go up; correct?

8 MR. MERCURIO: Object to the form of the  
9 question.

10 A. Well --

11 Q. I mean --

12 A. Yeah.

13 Q. -- it's almost a truism; isn't it?

14 A. Got to be a demand for a product --

15 Q. Exactly.

16 A. -- or it won't exist.

17 Q. Consumer demand goes up, sales go up; correct?

18 A. Sales go up for some.

19 Q. Yeah.

20 A. Not necessarily for all, but for some.

21 Q. And -- and what makes consumer demand go up?

22 A. Well the only thing -- way I can answer that question  
23 is from our research, our research in our industry says  
24 that the number-one reason customers come and request  
25 products from us is on the advice of their physician, and

1 the number-two reason is by reading from magazines and  
2 periodicals and that type of thing.

3 Q. Also books like Prescription for Nutritional Healing  
4 and other such books?

5 A. I don't recall the literature -- that the research  
6 specified books, but I do recall it was magazines and  
7 periodicals, and I would assume that books would be  
8 included.

9 Q. Now is it fair to say that between 1986 and 1988 there  
10 had been some leveling off in the industry of sales?

11 A. For vitamin products, that's true.

12 Q. And in fact the Council for Responsible Nutrition or  
13 the CRN and its members were concerned about that; weren't  
14 they?

15 A. Yes.

16 Q. They were concerned that the nutritional supplement  
17 market was eroding; correct?

18 A. It was flat to small increases.

19 Q. Okay. And the CRN members got together and -- and  
20 talked about that problem; didn't they?

21 A. CRN board of directors, it was --

22 Sales, you know, the question of how is business was  
23 spoken to at -- at board meetings, yes.

24 Q. And you were part of those board meetings.

25 A. Yes.



1 Q. And the CRN and its board members came up with a plan  
2 to generate a media campaign and a public-relations  
3 campaign --

4 A. Yes.

5 Q. -- with respect to the supplements; correct?

6 A. Well it was -- it came up with a campaign much like  
7 the other trade groups have done, the Beef Council, the  
8 Milk Council and the Egg Council and that type of thing.  
9 That was the -- the campaign that was -- that was  
10 conceived.

11 Q. And the -- the theme of that campaign was "Fill the  
12 gap;" correct?

13 A. "Fill the Nutrition Gap."

14 Q. Okay. And the theme was that people weren't getting  
15 enough -- or the appropriate nutrients and that they ought  
16 to be taking supplements to -- so that they didn't have any  
17 gaps in their -- in their nutrition; correct?

18 A. Would you like to know the -- the real reason behind  
19 the theme?

20 Q. Well was my statement correct?

21 A. Not quite, no.

22 Q. Okay. What -- what would the be would be -- what  
23 would be the correct statement of that theme?

24 A. From the research from the Department of Agriculture,  
25 when they tested some -- I believe it was 25,000, it was in

1 the thousands of people who took -- kept their diary on  
2 their precise diet individually over a period of time  
3 against the minimum daily requirement for each nutrient,  
4 there was not one single individual in that entire body of  
5 thousands of people who had all the nutrients that were  
6 recommended on a daily basis.

7 From that research the -- the vitamin --  
8 fill-your-vitamin-gap campaign was introduced.

9 Q. Okay. And isn't it also fair to say that the CRN and  
10 its members were concerned because other organizations,  
11 such as the -- correct me if I'm wrong here, but I think it  
12 was the National Council of Science or some governmental  
13 research agencies, were saying that the way to fill the gap  
14 was by eating the right food; correct?

15 A. Well I can't testify who said what. General feeling  
16 in the industry is that if you can get all the nutrients  
17 you need from proper diet you should do so. And that's our  
18 position as well in our company.

19 Q. Well --

20 A. As I just mentioned to you, the research indicated  
21 that of thousands of people tested, not one did get all the  
22 nutrients they needed from just eating a proper diet.

23 Q. Well there were a number of organizations that had the  
24 imprimatur of being government agencies, for example, that  
25 were taking the positions that people shouldn't be taking

1 supplements and instead should be eating right food;  
2 correct?

3 A. Well there's been controversy among health  
4 professionals on the balance between nutrition and  
5 nutritional supplements. You'd have to get more  
6 specific --

7 Q. Okay.

8 A. -- for me to answer the question.

9 Q. It's fair to say that in the mid-'80s you had one  
10 group of folks who were saying if there is in fact a  
11 nutritional gap, what people ought to be doing is eating  
12 the correct types and amounts of food, and other people,  
13 such as the CRN and its -- its members, who were saying,  
14 no, the way to do it is by supplements; correct?

15 A. No, that's not true. The case that General Nutrition  
16 and the CRN has taken, has made, is that you should eat a  
17 proper diet. However, if you do not eat a proper diet,  
18 supplementation is a way that you can make certain you're  
19 getting the essential nutrients that you need.

20 Q. Okay.

21 A. Because the -- as I said, the evidence is not many  
22 people in America do eat the proper diet.

23 Q. Okay. Well the CRN and its members got together and  
24 pooled their financial resources to finance this -- this  
25 media and public-relations campaign; correct?

1 A. Yes. We had a -- we made presentations on the  
2 research, the background and the concept of the -- of the  
3 trade association ads and asked for volunteer capital.

4 Q. Okay. And how much money was raised to carry out that  
5 media/public-relations campaign? Just roughly.

6 A. I've forgotten. Roughly it was a million eight or  
7 maybe two million. I'm not sure.

8 Q. Okay. And how much did GNC contribute?

9 A. I believe our share was 300 to 500 thousand dollars  
10 over the two-year period. I -- we can give you the precise  
11 amount. I don't happen to recall the precise amount.

12 Q. Okay. But it's fair to say GNC ponied up a  
13 substantial portion of the -- the funds that were used for  
14 that campaign.

15 MR. MERCURIO: Object to the form of the  
16 question. He's told you what his estimate was.

17 MR. SUGGS: Well he said it was about 1.8 or two  
18 million dollars and he came up with about 300 thousand  
19 dollars to 350 thousand dollars. Roughly it's about a  
20 sixth of the amount for the entire campaign; correct?

21 MR. MERCURIO: Okay. If you consider that  
22 substantial, then it's substantial, but I think we don't  
23 need his testimony as to whether it's -- it is or it isn't  
24 until you define what you mean by that.

25 Q. Did you regard it as substantial?

1 A. Well I -- any time you -- anything over \$10,000 is  
2 substantial to me.

3 Q. I would agree with you, sir.

4 A. There were --

5 MR. MERCURIO: Again we agree.

6 MR. SUGGS: Okay.

7 Q. Sir, as part of this public-relations campaign, the  
8 CRN commissioned various studies of the marketplace; did  
9 they not?

10 A. I wasn't hands-on with -- with that campaign. I was  
11 part of their money-raising committee. But as I recall, an  
12 advertising agency and an PR firm were hired on a  
13 consulting basis to advise them and do some research and  
14 search for existing research that was appropriate to this  
15 potential campaign.

16 MR. SUGGS: Okay. Let's have marked as the -- as  
17 the next -- which will be Exhibit 4?

18 THE REPORTER: No, three. Oh, I'm sorry, four.

19 MR. SUGGS: I was right. -- Exhibit No. 4, a  
20 document entitled "Strategic Plan From The Council for  
21 Responsible Nutrition For A Business Expansion And  
22 Nutrition Education Project"

23 (Horn Deposition Exhibit 4  
24 was marked for identification.)

25 A. Did -- did you wish me to read this entire document?

1 Q. No, sir. I just wanted -- I did just want you to  
2 thumb through it, though, to see if you can tell me whether  
3 you recall seeing this particular document before.

4 A. I suspect that I did. I don't recognize it.

5 Q. Okay.

6 A. Tens of thousands of documents I have looked at over  
7 the last few years, --

8 Q. Would you --

9 A. -- but I -- I suspect that I did.

10 Q. Would you agree it is more probable than not that you  
11 did?

12 A. Yeah, I probably saw this.

13 Q. Okay. Sir, if you could turn to the page four,  
14 there's a section there beginning about a third down from  
15 the top entitled "Consumer Motivational Analysis." Do you  
16 see that?

17 A. Yes.

18 Q. Okay. And in that section it notes that -- well, let  
19 me back up for a second.

20 By the way, do you know who it was that prepared this  
21 research that's reflected in Exhibit No. 4?

22 A. You mean on page number four?

23 Q. No. This whole document is Exhibit No. 4, and my  
24 question is do you know who it was that -- that generated  
25 this exhibit?

1 A. No, I do not.

2 Q. Okay. It was someone who was retained by the CRN to  
3 do so, though; correct?

4 A. I assume so. I don't know.

5 Q. Okay. Again, back to page four of Exhibit 4, there's  
6 a heading there labeled -- labeled "Consumer Motivational  
7 Analysis" and in that section it notes that a series of  
8 focus groups were conducted to understand the perceived  
9 role of vitamins and uncover the factors underlying the  
10 decline and use of -- usage of vitamins; correct?

11 A. I don't see -- "Understand the perceived role of  
12 vitamins among current and past customers."

13 Q. Uh-huh.

14 A. "Underscore" -- or "Uncover the factors underlying the  
15 decline in usage of vitamins." Yes.

16 Q. So this research that's set out here is to try to  
17 understand why it is that people take vitamins and why  
18 people, if they're not taking them, why they're no longer  
19 taking them; right?

20 A. Yes.

21 Q. Okay. And then below that they set out the findings;  
22 correct, in various bulleted items?

23 A. The findings from the 10 focus groups that they  
24 conducted in January and February of '88.

25 Q. Right.

1 A. Yes.

2 Q. And the first finding that they note there was that  
3 most people began taking nutritional supplements for some  
4 particular problem; i.e., stress, health problem, fatigue,  
5 emotional trauma, et cetera; correct?

6 A. Uh-huh.

7 THE REPORTER: Your answer?

8 THE WITNESS: Yes. That's what this says.

9 Q. Do you have any basis to dispute that finding?

10 A. I have no basis to dispute it, no. It's the findings  
11 of focus group studies, which usually are eight or 10  
12 people are quizzed.

13 Q. And sir, would you agree that it sounds there that  
14 people are -- are not thinking of these products as food  
15 but as rather some sort of therapeutic agent?

16 MR. MERCURIO: Object to the form.

17 A. I couldn't come to that conclusion.

18 Q. Will sir, if you're suffering from stress and you're  
19 seeking relief from stress, do you take a therapeutic agent  
20 or do you go eat a hot dog.

21 A. Might drink a glass of warm milk --

22 Q. Sir, would you --

23 A. -- or have a cup of cocoa or a cup of tea.

24 MR. MERCURIO: Yeah, and I've been known to have  
25 a hot dog.



1 Q. Sir, if you have a --

2 A. Or maybe a shot of whiskey perhaps.

3 Q. Sir, if you have a -- if you have a health problem,  
4 which is the second item -- item there, to get some relief  
5 from a health problem, do you take a therapeutic agent or  
6 do you go eat a cookie?

7 A. Well if the cookie were fortified, you meet eat a  
8 cookie. I don't know. I -- I don't know.

9 Q. Sir, if you could look to the third item there that's  
10 listed as the third finding, it says, "Users continue  
11 taking supplements for security. Supplements give users  
12 the feeling they are doing all they can for their physical  
13 and psychological health. Supplements are in effect their  
14 means of gaining some kind of control over their traumatic  
15 lives." Do you see that?

16 A. Yes.

17 Q. Do you think people were taking these supplements as  
18 food, or were they taking them for a therapeutic agent?

19 A. I think they were taking them for the nutrition  
20 involved as an insurance, as I read this, as the insurance  
21 or security against a poor diet. They're getting all the  
22 food nutrients they can get. That's why I take vitamins.

23 Q. Is it your testimony that that's why people took  
24 tryptophan?

25 A. I don't know why people took tryptophan.

1 Q. GNC sold, according to Mr. Dunn, 7.7 million dollars'  
2 worth of tryptophan a year and you don't know why they were  
3 taking it?

4 A. I do not. I have no personal knowledge why any  
5 individual takes L-tryptophan. I suspect many of them took  
6 them for many different reasons.

7 Q. You've said many times that tryptophan is a food;  
8 correct?

9 A. Yes.

10 Q. Isn't it fair to say, sir, that prior to the 1970s  
11 when people began -- some companies began marketing  
12 tryptophan in pill form, that no human being ever in the  
13 history of mankind had -- had ingested tryptophan per se?

14 MR. MERCURIO: Is that a question or a  
15 statement?

16 MR. SUGGS: That's a question.

17 A. I don't know the answer, whether anyone ever had or  
18 not.

19 Q. Well you've said before that tryptophan is found in  
20 such things as milk and turkey; correct?

21 A. Yes. My understanding is that's where they're found  
22 naturally.

23 Q. But in fact the tryptophan that is contained in -- in  
24 food items such as that is tryptophan bound up into protein  
25 with other amino acids going up to form that protein;

1 correct?

2 A. I don't know that.

3 Q. You're not aware of that?

4 A. No.

5 Q. Isn't it true that what happens when you get protein  
6 from food is you ingest the food into your body, you ingest  
7 the protein, the body's metabolism digests that protein,  
8 breaks the peptide bonds, and the amino acids that go  
9 together to form those proteins are released and then used  
10 by the body?

11 A. I don't know that.

12 Q. Okay.

13 A. I don't know how the body metabolizes food.

14 Q. Were you aware that the minimum daily requirements of  
15 L-tryptophan for humans is on the order of 175 to 250  
16 milligrams per day?

17 A. I don't know that, no.

18 Q. Do you know whether figures like that are published in  
19 the scientific literature?

20 A. I don't know that they are. I presume they are.

21 Q. If in fact they are published in the scientific  
22 literature, you would agree that GNC and its employees and  
23 the people who were supposedly experts in nutrition could  
24 have obtained that type of information from the literature;  
25 correct?

1 A. Are you talking about the recommended daily allowances  
2 now?

3 Q. Yes.

4 A. Well those, sir, are recommended for, as I understand  
5 it, the lowest amount to prevent some sort of a  
6 deterioration of health. They're not for optimal health at  
7 all.

8 Q. Sir, my --

9 MR. SUGGS: I move to strike your question as  
10 non-responsive.

11 Q. My question is: Isn't it true that if in fact there  
12 is published information regarding the -- the minimum  
13 requirements of tryptophan on a daily basis, that you --  
14 your people, your employees, could have found out that  
15 information; correct?

16 A. Well I'm confident our employees know those facts.

17 Q. Okay.

18 A. Yes.

19 Q. Are you aware that the amount of tryptophan found in  
20 the typical U.S. diet is on the order of a thousand  
21 milligrams a day?

22 A. I'm not aware of that, no.

23 Q. If in fact that is the case, then that would mean that  
24 a normal diet would provide about four or five times the  
25 daily requirement of tryptophan; correct?

1 MR. MERCURIO: Object to the form of the  
2 question.

3 A. I don't know what a normal diet is.

4 Q. Sir, would you agree that there's virtually no one in  
5 the United States who has any need for L-tryptophan for  
6 dietary purposes?

7 A. I certainly don't know that.

8 Q. Do you know how many Americans are deficient in  
9 tryptophan?

10 A. I do not.

11 Q. Are you aware of any scientific or medical research or  
12 literature which supports the position that there is any  
13 person in the United States with a deficiency of  
14 tryptophan?

15 A. I personally have no knowledge of that.

16 Q. Sir, you have claimed that GNC marketed tryptophan as  
17 a dietary supplement; correct?

18 A. Yes.

19 Q. Isn't it true that tryptophan in pill form has zero  
20 nutritional value?

21 A. I don't know that.

22 Q. You don't know one way or the other.

23 A. No.

24 Q. Okay. Sir, isn't it true that even assuming that  
25 someone did have a dietary deficiency of tryptophan, that

1 if you gave them pills of tryptophan, that would not remedy  
2 the deficiency?

3 A. You'll have to take that question to the food  
4 scientists. I don't know the answer to it.

5 Q. You don't know the answer one way or the other.

6 A. No.

7 Q. Okay. Sir, were you made aware at any time that the  
8 ingestion of tryptophan could induce certain physiological  
9 and behavioral effects?

10 A. No.

11 Q. Well sir, you were informed by your physician back in  
12 1982 that it would -- that taking tryptophan would be  
13 useful in relieving stress; correct?

14 A. He suggested I might try tryptophan and he described  
15 it as kind of like drinking a glass of warm milk, so you  
16 might try it, suggested I might try it, told me where to  
17 go.

18 Q. And the reason you were trying it was to see if it  
19 altered your behavior; correct?

20 A. I don't know whether "behavior" is the right word. I  
21 thought -- I was looking for something that would -- that  
22 would have some relaxing, calming effect.

23 Q. Okay. So you thought it would have a physiological  
24 effect; correct?

25 A. I would say that would be more what I expected, yes.

1 Q. Okay.

2 A. Or what he expected.

3 Q. You thought it would alter the function of your body.

4 A. I didn't know what to expect. I was following a  
5 medical doctor's advice, a guy who I had trusted and who  
6 continues to be my -- my physician.

7 Q. And what he told you was that -- in essence was that  
8 if you took tryptophan pills, it would have a physiological  
9 effect and affect your function; correct?

10 A. Well he didn't set any expectation for me that would  
11 be dramatic. It was more like, as he described it, it's  
12 like taking a glass of warm milk tonight, at night. And I  
13 have a high cholesterol and I don't drink milk. He says  
14 you might try this.

15 MR. SUGGS: Sir, I'm going to move to strike your  
16 answer as non-responsive.

17 Q. Isn't it fair to say that as a result of the  
18 conversation you had with your physician, you were under  
19 the impression from the information he imparted to you that  
20 by taking tryptophan, it would have an effect, a  
21 physiological effect and affect your functioning?

22 A. That was his feeling, that it might have some change.

23 Q. That was the --

24 A. I didn't know what to expect.

25 Q. Okay. That was the information he conveyed to you;

1 correct?

2 A. When he said it's like drinking a glass of warm milk,  
3 it implied to me that it would have some calming effect on  
4 me.

5 Q. Okay. So you were under the impression that -- that  
6 tryptophan would have a calming effect, would have a  
7 physiological effect at least as early as 1982; correct?

8 A. I knew -- I didn't know what to expect, but that was  
9 what he suggested to me, and I followed his recommendation.

10 Q. Okay. Were you ever informed that there was any  
11 scientific evidence that the effects of tryptophan pills on  
12 the function of the brain are useful for inducing sleep or  
13 treating depression or dealing with the effects of  
14 withdrawal from alcohol or nicotine?

15 A. I was never informed of that.

16 Q. Sir, in reality, isn't that why people were buying  
17 your tryptophan pills?

18 MR. MERCURIO: Object to the question as asked --  
19 asked and answered.

20 MR. SUGGS: You may answer.

21 A. I don't know why they were buying L-tryptophan.

22 Q. Sir, after the EMS epidemic, you're aware that there  
23 were various epidemiological studies that were done; were  
24 you informed of that?

25 A. I was advised studies were being made and we



1 contributed to the -- to fund some of those studies, and  
2 that the Centers for Disease Control was doing studies. I  
3 don't know -- I'm not -- I don't know the medical  
4 description of the studies.

5 Q. Okay. You do know that one study was carried out in  
6 Minnesota?

7 A. Yes.

8 Q. Okay.

9 A. I believe that was a study we've helped fund.

10 Q. Okay. And sir, were you aware that a study in  
11 Minnesota found that every single one of the patients who  
12 developed EMS while taking tryptophan was taking tryptophan  
13 for therapeutic purposes?

14 A. I -- I was -- no, I was --

15 Q. For such things and insomnia, PMS, depression,  
16 headache, behavior disorder, arthritis and so forth?

17 A. No, I was not aware of that.

18 Q. Sir, you said you were unaware of why people were  
19 coming into the -- into your store and buying tryptophan  
20 pills. Was anybody in your company charged with the  
21 responsibility of finding out why people are using your  
22 product?

23 A. We had people in charge of keeping the product in  
24 inventory, tracking the sales and keeping up with the  
25 demand, but to my knowledge no one knew precisely why

1 people were buying the products. Some of the reasons you  
2 gave me there are -- are new to me. I didn't know that  
3 that was even a perceived use of the product.

4 Q. Sir, I'd like to direct your attention back to Exhibit  
5 No. 4. Remember we were talking about the focus-group  
6 findings there? That first finding there where they note  
7 in the exhibit that, quote, "Most people began taking  
8 nutritional supplements for some particular problem such as  
9 stress, health problem, fatigue, emotional trauma, et  
10 cetera," when you saw that, did that come as any great  
11 revelation to you?

12 A. As I told you, I don't recall this document. As I  
13 said to you, I probably saw it, but I don't recall any  
14 major impact or "Aha" when I -- I saw this document.

15 Q. As you -- as you sit here today and you read that, is  
16 that any big surprise to you, that people began taking  
17 nutritional supplements for particular problems such as  
18 health problems, fatigue and emotional trauma?

19 A. Well I've read lots of research reports and I -- I  
20 would say that most of the ones I've read, Gallop and  
21 others, the second point is more relevant, and that is the  
22 security or sort of insurance that they're getting a proper  
23 diet is the most prevalent answer that I've seen.

24 Q. Sir, I'd like to get back to my question which was  
25 about the first point, and that is -- my question is: When

1 you saw that there, was it any big surprise to you?

2 A. I don't recall what my reaction -- in fact I don't  
3 recall the document specifically.

4 Q. I'm talking about as you sit here today, is it any big  
5 surprise to you?

6 A. Yeah, I'm a little surprised that -- that they would  
7 format this document placing that in the first paragraph  
8 and the insurance-policy-or-security reference in the  
9 second paragraph. I would have thought that the -- the  
10 security to make sure you were getting all the nutrients in  
11 your food would be number one. That's consistent with  
12 most -- most research that I've seen.

13 Q. Sir, can you turn the page to page five.

14 A. Yes.

15 Q. The last finding that they have listed there states,  
16 quote, "Specific vitamins have greater appeal to consumers  
17 who feel they have some specific physical or psychological  
18 problem." Do you see that reference?

19 A. Yes.

20 Q. Is that a surprising finding to you?

21 A. It has no -- no surprise value to me one way or the  
22 other, no.

23 Q. Okay. Were you -- were you aware of that --

24 Well if you -- if you saw this report in '88, you  
25 certainly would have been aware of that finding after that

1 time ,--

2 A. Which report --

3 Q. -- obviously.

4 A. -- are you referring to?

5 Q. The Exhibit No. 4 four we're looking at.

6 A. Ah.

7 Q. Indicates it was prepared --

8 A. Yes.

9 Q. -- on May 26th, 1988.

10 So obviously if you did see it at that time, you would  
11 have been aware of that, that finding, that specific  
12 finding that it must have greater appeal to consumers who  
13 feel they have some specific physical or psychological  
14 problems; correct?

15 A. This -- this research is so cursory that I would not  
16 have relied on it for decisions in our company anyway.  
17 This was trade association research. It was very  
18 fundamental and elemental, and nothing I would have relied  
19 on. We have much greater, deeper research in-house than  
20 this represents.

21 Q. Has that been produced in this litigation?

22 A. I don't know whether it has or not.

23 MR. SUGGS: Counsel?

24 THE WITNESS: Gallop surveys I'm referring to.

25 MR. MERCURIO: Unless they are in the CRN

1 documents that have been produced. They're not  
2 L-tryptophan-specific, counsel.

3 MR. SUGGS: Okay. I would like to have --  
4 request production of those market-research documents that  
5 Mr. Horn has spoken of, regardless of whether they mention  
6 L-tryptophan per se or even amino acids per se. As long as  
7 they have anything to do with anything that's sold in pill  
8 form by GNC, I would like to have those.

9 MR. MERCURIO: We'll take the request under  
10 advisement.

11 BY MR. SUGGS:

12 Q. Sir, was it your understanding back in 1988, at the  
13 time you got this or -- and let's not tie it specifically  
14 to that -- that date that you got this, but was it your  
15 understanding back when you were the active CEO of GNC that  
16 specific vitamins have greater appeal to consumers who feel  
17 they have some specific physical or psychological problems?

18 A. No, that was not my understanding.

19 Q. Did you have a contrary understanding?

20 A. The only way I have of knowing of why people take  
21 vitamins is from the research I read and individuals I  
22 happen to talk to, and the most prevalent answer there  
23 you'll find is this concept of an insurance policy to make  
24 certain I'm getting all the nutrients I need because I know  
25 I eat a poor diet, and I take vitamins to supplement that

1 diet.

2 Q. And this point that we were talking about here sort of  
3 ties in with the first point, that people were taking  
4 specific substances if consumers felt they had some  
5 specific physical or psychological problem that would be  
6 affected by that substance; correct?

7 A. Well, it's very difficult to answer that. You know, I  
8 wasn't at the focus groups. I didn't hear the interviews,  
9 I don't -- not sure what they mean by that, frankly.

10 Q. Well at least the language there seems to imply that  
11 people think they have a particular problem and so they'll  
12 take a specific or particular vitamin or product to remedy  
13 that particular problem. Isn't that what they're saying?

14 A. That's what this says, yes.

15 Q. And that ties in with that first point that was listed  
16 there, that most people begin taking nutritional  
17 supplements for some particular problem; correct?

18 A. Well the first point is a broad statement, and the  
19 following points support that broad statement.

20 Q. Is more specific.

21 A. So the very last point they make in this document, it  
22 would appear, would support the first general,  
23 summarized -- the point summarizing this situation.

24 Q. Uh-huh. But it's your claim as you sit here today  
25 that you never knew anybody was taking GNC tryptophan for

1 therapeutic purposes; correct?

2 MR. MERCURIO: Object to the form of the  
3 question. It mischaracterizes what he said.

4 Q. Were you aware?

5 A. I have never interviewed a customer personally or  
6 discussed in any way, writing, orally or any other way,  
7 about taking tryptophan.

8 Q. Okay. And you're including in that representatives  
9 of -- any discussions you may have had with representatives  
10 of your company. You've never talked with anybody at GNC  
11 or anybody else as to why people were taking tryptophan; is  
12 that right?

13 A. Not specifically, no.

14 Q. Okay. And I believe you said earlier today that you  
15 were -- or GNC was a member of NNFA; is that right?

16 A. Yes.

17 MR. SUGGS: Let's have marked as the next  
18 exhibit, five, a document that -- it actually contains two  
19 documents that came to us stapled together in the  
20 production. I'll just keep it in that form for the time  
21 being. The top one is labeled "NNFA UPDATE," it's dated  
22 November 15, 1989. This will be Exhibit No. 5.

23 (Horn Deposition Exhibit No. 5

24 was marked for identification.)

25 BY MR. SUGGS:

1 Q. Sir, the first page of this exhibit indicates in the  
2 upper right-hand corner that someone was sending this  
3 document to you; is that correct?

4 A. Yes.

5 Q. And you recall receiving a copy of this document?

6 A. I don't recall specifically. My secretary routinely  
7 forwarded materials such as this, saving a copy for me, but  
8 forwarding it to individuals who should have the  
9 information in the company.

10 Q. Okay. In the ordinary course you would have received  
11 this document; correct?

12 A. At some point I would have seen this document. I  
13 don't know whether I saw it on or about November 15th,  
14 however.

15 Q. Okay. When you got documents like this, did you tend  
16 to read them?

17 A. One as -- as important as this, yes.

18 Q. Okay. You would characterize this as an important  
19 document?

20 A. Well it's an informational document. If I needed to  
21 be updated, if I wasn't otherwise updated from some other  
22 source. But normally on a subject this important I  
23 would -- I would read this thoroughly, yes.

24 Q. And the subject of this document is regarding reports  
25 of EMS in connection with L-tryptophan use; correct?



1 A. I'm going to reread it here to refresh myself.

2 MR. MERCURIO: Can we go off the record briefly?

3 MR. SUGGS: Sure.

4 THE REPORTER: Let's go off the record.

5 (Discussion off the record.)

6 BY MR. SUGGS:

7 Q. Mr. Horn, when we were on our break, did you get a  
8 chance to look at this exhibit?

9 A. Yes, I did.

10 Q. And do you recall reading it?

11 A. I don't recall specifically, but it is familiar to me,  
12 yes.

13 Q. Okay. Sir, towards the -- actually it's in the fourth  
14 paragraph of the first page of the exhibit, they note that  
15 the FDA has issued a release in which it encourages that,  
16 quote, "persons taking L-tryptophan for over-the-counter  
17 uses such as sleep disorder or premenstrual syndrome should  
18 temporarily discontinue use." Do you see that?

19 A. Yes.

20 Q. Okay. And then on the -- if you could turn to the  
21 document that's attached --

22 A. The news release?

23 Q. Yeah. That's a news release from NNFA; correct?

24 A. Yes. Yes.

25 Q. The National Nutritional Foods Association?

1 A. Uh-huh. Yes.

2 Q. On the second page of that, on the first sentence it  
3 says, "L-tryptophan as a dietary supplement is commonly  
4 taken for insomnia and premenstrual syndrome." Do you see  
5 that?

6 A. Yes.

7 Q. Now the -- the news of this EMS epidemic first broke  
8 out on -- I believe it was November 11th. Does that square  
9 with your recollection?

10 A. I don't know the exact date.

11 Q. Okay. If that was the date, then this NF -- pardon  
12 me, NNFA -- this NNFA update and the NNFA news release both  
13 would have been within a matter of days after the reporting  
14 of that EMS epidemic; correct?

15 A. Yes.

16 Q. Okay. And apparently within that short period of time  
17 the FDA was aware and the NNFD -- pardon me, NNFA were  
18 aware that people were taking tryptophan for insomnia and  
19 premenstrual syndrome; correct?

20 A. That's what this document says, yes.

21 Q. Yeah. But it's your testimony that -- that GNC was  
22 unaware that people were taking -- that it was -- that  
23 L-tryptophan was commonly taken for insomnia and  
24 premenstrual syndrome?

25 MR. LUDDY: Objection.

1 A. I didn't represent that GNC, I said that I didn't know  
2 personally why people took tryptophan.

3 Q. Well in your discussions with -- with people at GNC  
4 after the EMS epidemic, did you learn -- did you learn that  
5 other people were -- in GNC were aware that L-tryptophan  
6 was commonly taken for insomnia and premenstrual syndrome?

7 A. Well at this time I was not keeping regular office  
8 hours at GNC and wasn't in the office that much, and my  
9 conversation was primarily with Bill Watts, our president  
10 of the company, who was handling this. And I -- you know,  
11 it was no surprise to me that insomnia was a reason perhaps  
12 that some people took L-tryptophan. I'd never heard it  
13 being taken for --

14 Q. PMS?

15 A. -- for PMS.

16 Q. Did Mr. Watts tell you that he was aware that people  
17 had been taking L-tryptophan for insomnia and PMS?

18 A. Not that I recall, no.

19 Q. This morning when you were talking with Mr. Branch,  
20 you told about when it was that you first learned about the  
21 EMS epidemic and you said it was sometime in November of  
22 1989; correct?

23 A. I think I testified that it was sometime in late  
24 October or early November. I don't recall exactly when.

25 Q. Okay. And very shortly after the EMS epidemic was

1 discovered, the FDA ordered that sales of tryptophan  
2 products over 100 milligrams be terminated; correct?

3 A. Yes.

4 Q. And several months later the FDA ordered that sales of  
5 all tryptophan products be stopped; correct?

6 A. Yes.

7 Q. Okay. Do you recall that on November 13, GNC sent out  
8 notices to its stores to pull tryptophan off the shelves?

9 A. I don't recall the precise date, but it was reported  
10 to me by Mr. Watts that he had taken that action.

11 Q. Okay.

12 A. Which I felt prudent.

13 MR. SUGGS: Let's have marked as the next exhibit  
14 a November 13, 1989 memorandum from William E. Watts to  
15 store managers, regional sales directors and distribution  
16 centers.

17 (Horn Deposition Exhibit No. 6  
18 was marked for identification.)

19 A. Yes, I've read this.

20 Q. Okay. Do you recall whether you've seen this  
21 memorandum before?

22 A. I don't recall. I've seen it today. I notice I'm not  
23 on the copy list. But I may have, I just don't recall.

24 Q. Okay. Would Mr. Watts have informed you of what  
25 action he was taking with respect to pulling tryptophan off

1 the shelves?

2 A. He indeed did inform me that he had taken this action,  
3 not being as specific as this document is, but he said  
4 we -- we've -- we've pulled all L-tryptophan and encouraged  
5 the stores to take customers' purchases back and refund  
6 their money.

7 Q. Okay. In this memo Mr. Watts notes that there has  
8 been a rash of negative publicity concerning L-tryptophan;  
9 correct?

10 A. Yes.

11 Q. Okay. And he notes that the FDA has advised that  
12 there may be some connection between the use of tryptophan  
13 and a syndrome characterized by intense eosinophilia;  
14 correct?

15 A. Yes.

16 Q. And he further notes that the -- that the FDA had  
17 recommended that consumers stop using tryptophan; correct?

18 A. He says specifically, "Until the FDA clarifies the  
19 situation, their -- parentheses, their recommendation is  
20 that consumers temporarily stop using L-tryptophan, close  
21 parentheses."

22 Q. And then he goes on to say, quote, "I am instructing  
23 you to take the product off the shelves and hold it in the  
24 back room until further notice." Do you see that?

25 A. Yes.

1 Q. Sir, do you believe that that was an instruction to  
2 GNC's store managers and regional sales directors and  
3 distribution centers that the stores were not supposed to  
4 sell it to customers?

5 A. Yes.

6 Q. Sir, I want you to assume that after November 13, a  
7 customer went to a GNC store and the customer told the  
8 sales manager that she had heard that there was something  
9 going on with L-tryptophan, that there -- that the FDA  
10 had -- had announced some sort of recall, and the store  
11 manager told her that it was nothing to get concerned  
12 about, that the -- that the FDA was overexcited about the  
13 situation, and that he had taken tryptophan for years and  
14 had no problems and he knew the customer for years and she  
15 had taken L-tryptophan for years and there had been no  
16 problem, and that he had tryptophan in the back room that  
17 he could sell her.

18 A. You want me to assume that case?

19 Q. I want you to assume that to be true. Okay?

20 If those facts are true and if in fact that GNC sales  
21 manager sold tryptophan to that customer after November 13,  
22 would you regard his conduct as negligent?

23 MR. LUDDY: Objection, form of the question.

24 A. I would regard his conduct to be disregarding a direct  
25 order.

1 Q. Okay. His conduct would be against company policy;  
2 correct?

3 A. Against a direct order of the president of the  
4 company.

5 Q. And would you regard the company's salesman as being  
6 negligent in that regard?

7 MR. LUDDY: Objection to form.

8 A. I need clarification. You referred to this individual  
9 three ways, sales manager, store manager and salesman. I  
10 don't know what I should assume which he was. Not that it  
11 makes any difference, but just to clarify.

12 Q. Okay. Well if it doesn't make any difference, let's  
13 just -- let's just assume that it was an employee --

14 A. Somebody working for us in the store.

15 Q. Somebody working in a GNC store.

16 My question to you is: You already said that that  
17 conduct of selling the product to a customer would be  
18 against company policy; right?

19 A. Yes.

20 Q. Would you regard that conduct as being negligent?

21 MR. LUDDY: Same objection.

22 A. I'm not an attorney. I don't really know what the  
23 legal definition of "negligent" is.

24 Q. Okay. Well do you think that the -- that the employee  
25 breached some duty to the customer?

1 A. He breached -- he breached a directive of the  
2 president of the company who said to hold this good in the  
3 back room.

4 Q. Okay. Well would you say that the person who sold the  
5 tryptophan to the customer with knowledge of this  
6 directive, and clearly he had knowledge of this directive  
7 because the product was off the shelves and back in the  
8 back room, if he went ahead and sold the tryptophan to that  
9 customer, would you regard that conduct as acting in  
10 conscious disregard for the safety of the customer?

11 MR. LUDDY: Objection.

12 A. Again that's a legal question and I can't respond to  
13 legal questions.

14 Q. Well sir, it's not really --

15 A. He certainly was in direct violation of what -- if he  
16 did this -- what the president of the company had  
17 instructed him to do.

18 Q. Sir, I'm not asking you for a legal -- legal answer,  
19 I'm asking you for -- for your answer as someone who is a  
20 CEO of the company, who is presently the chairman of the  
21 board, and as a human being, and if the store manager gets  
22 a memo like this November 13 memo directing him to take the  
23 product off the store because there may be a connection  
24 between the use of tryptophan and some medical condition,  
25 and he goes ahead and sells the product from the back room



1 to the customer, wouldn't you regard that as him  
2 disregarding the safety of the customer?

3 A. I'd say he disregarded a direct order from the  
4 president of the company.

5 Q. And wasn't he also disregarding the safety of the  
6 customer?

7 A. I don't know what his intent was. I -- I'm not -- if  
8 this is a hypothetical person, I'm not that person. I  
9 don't know what his intent was.

10 Q. Well if you were in his shoes and you were selling  
11 that -- that product to that customer, wouldn't you think  
12 that you would have been disregarding the safety of that  
13 customer?

14 A. I would --

15 MR. LUDDY: Objection.

16 A. That's hypothetical. I wouldn't -- I wouldn't have  
17 done it, because when the president of the company writes  
18 me a memo to take it off sale and keep it off sale until  
19 further notice, that's exactly what I would have done.

20 Q. Would you regard the selling of the product from the  
21 back room to a customer with knowledge there was a possible  
22 connection between that product and a medical illness,  
23 would you regard that conduct as outrageous conduct?

24 MR. LUDDY: Objection.

25 A. I don't know what "outrageous" means. I would call

1 it, you know, a person who disregarded a direct order of an  
2 officer of the company.

3 Q. And in that case, if it could be shown that the  
4 individual contracted EMS as a result of taking that  
5 product, taking that tryptophan, would you agree that GNC  
6 ought to be responsible for paying for the harm that that  
7 individual suffered?

8 A. I can't answer that question.

9 Q. You don't have any opinion one way or the other.

10 A. Well I can't formulate an opinion on the facts that  
11 you've given me, no. Would depend on a lot of  
12 circumstances. The only thing I can give you an opinion on  
13 is what -- I believe he acted, in this hypothetical case  
14 you're giving me, that that manager acted in violation of a  
15 direct order from the president of the company.

16 Q. And you can't tell me one way or the other whether you  
17 think the person, if they were harmed by that conduct,  
18 should have a right to recover against GNC?

19 A. That's why we have judges and juries and courts. I  
20 can't give you that -- give you an opinion.

21 Q. You're right, sir, that's why we have them and I guess  
22 we'll let the jury decide that question. Thank you very  
23 much. I have no further questions.

24 A. Okay.

25 THE REPORTER: Let's go off the record a moment.