Testimony of Malini Moorthy
before the Advisory Committee on Civil Rules

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Good afternoon Mr. Chairman and members of the Committee.

My name is Malini Moorthy, I am Vice President and Assistant General Counsel at Pfizer Inc. Specifically, I head the company's Civil Litigation Group, which includes oversight of our Discovery Operations team.

Pfizer is frequently a defendant in a wide variety of civil litigation matters, including products liability, securities and antitrust. But Pfizer is also occasionally a plaintiff in litigation. It is from those dual perspectives that I'm speaking here today.

Rather than reviewing point by point the proposed amendments, I'd like to give you a concrete narrative of Pfizer's experience. This narrative compliments our written comments, which were submitted earlier today, and illustrates how the current rules have forced Pfizer to preserve, collect and produce staggering amounts of information at even more staggering costs. And much of the information has no bearing on the litigation we face.

In the Hormone Therapy litigation, Wyeth, which was subsequently acquired by Pfizer, was subject to a discovery preservation order under Rule 26 that required us to preserve 1.2 million back-up tapes over the course of six years.

Back-up tapes are intended for disaster recovery to enable us to restore data on our systems in the face of a catastrophic event.

Like most companies, Pfizer's policy is to recycle its back-up tapes at regular intervals as the data on the tapes becomes duplicative and it is expensive to purchase new tapes and store huge volumes of old ones.

In connection with the Hormone Therapy preservation order, we estimate that Wyeth and Pfizer spent nearly 40 million dollars to buy and store the 1.2 million back-up tapes that were preserved.

Each one of the tapes holds roughly 100 gigabytes of data.

So, in total they hold approximately 100 petabytes of data.

Until recently, I was unfamiliar with the term "petabyte" and the number meant very little to me, but I've since learned that 50 petabytes is roughly equivalent to the entire written literary works of ALL mankind in ALL languages since the beginning of recorded time.

And we preserved twice that much.

The most remarkable fact is that despite preserving 100 petabytes of information, we never went back to those back-up tapes to retrieve a single document. Not once as the information on those tapes was completely redundant.

There was no need to go to the back-up tapes because in this same litigation, Pfizer collected millions and millions of documents from its 'live' data environment which included retrieving data from more than 170 custodians and more than 75 centralized information systems.

From those collection efforts, Pfizer produced approximately 2.5 million documents, representing more than 25 million pages.

Of those 2.5 million documents, we estimate that only about 400 company documents were marked as exhibits in the 23 trials that have taken place in the litigation. Over the course of those trials, Plaintiffs consistently used the same 400-odd documents, most of which were produced early on in the litigation, notwithstanding our continued production of documents.

This means that for every one document used at trial, about 625,000 additional documents were produced.

Another point to consider is that fortunately, or unfortunately, depending on your perspective, Pfizer was able to comply with the overbroad preservation order and plaintiffs' discovery demands, notwithstanding the significant expense and burden.

The Hormone Therapy litigation is only one example. Pfizer dedicates substantial time and resources to complying with overbroad discovery obligations on a daily basis. In order to support these efforts, Pfizer employs 10 full-time colleagues and 3 full-time contractors to manage legal discovery exclusively.

In addition, we have a team of dedicated vendors, including 13 people devoted exclusively to document collection; 8 people responsible for the technology side of electronic discovery; and on average 215 people reviewing documents at any given time.

Surely the great majority of defendants cannot bear this expense. The impact of burdensome preservation and discovery obligations on small and mid-sized companies must be immense, and even though many companies will not have the volume of data that Pfizer generates—preserving even one back-up tape has the potential to directly impact the bottom line of a company.

Yet, under the current rules, companies like Pfizer preserve, collect and produce documents that, as the Hormone Therapy example illustrates, bear little if any relationship to the real claims and defenses raised by the litigation it faces and serve no business purpose whatsoever.

I thank the Committee for the opportunity to testify and its efforts to address much-needed amendments to the Federal Rules.