

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

DEPARTMENT NO. 2103

HON. KEVIN A. ENRIGHT,
JUDGE

MABVAX THERAPEUTICS HOLDINGS,
INC., a Delaware corporation,

PLAINTIFF,

VS.

BARRY HONIG, JOHN STETSON,
MICHAEL BRAUSER, JOHN
O'ROURKE III, PHILLIP FROST,
MARK GROUSSMAN, STEVEN RUBIN,
JOHN H. FORD, ROBERT PRAG,
ROBERT HAAG, ANDREW HAAG,
GRQ CONSULTANTS, INC.,
GRQ CONSULTANTS, INC. 401K,
GRQ CONSULTANTS, INC.
ROTH 401K FBO BARRY HONIG,
GRQ CONSULTANTS, INC. ROTH
401K FBO RENEE HONIG, BARRY
AND RENEE HONIG CHARITABLE
FOUNDATION, INC., SOUTHERN
BIOTECH, INC., HS CONTRARIAN
INVESTMENTS, LLC, GRANDER
HOLDINGS, INC., GRANDER
HOLDINGS, INC. 401K, AIRY
PROPERTIES, 11 EAST AIRY
STREET PARTNERSHIP, ATG
CAPITAL, LLC, OPKO HEALTH,
INC., FROST GAMMA INVESTMENTS
TRUST, MELECHDAVID, INC.,
MELECHDAVID, INC. RETIREMENT
PLAN, ALPHA CAPITAL ANSTALT,
THE DEL MAR CONSULTANT GROUP,
INC., THE DEL MAR CONSULTANT
GROUP RETIREMENT PLAN TRUST
and IRTH COMMUNICATIONS, LLC,

DEFENDANTS,

BARRY HONIG, JOHN STETSON,
GRQ CONSULTANTS, INC., GRQ
CONSULTANTS, INC. 401K, GRQ
CONSULTANTS, INC. ROTH 401K
FBO BARRY HONIG, GRQ

CERTIFIED
TRANSCRIPT

CASE NO.
37-2019-00018398-
CU-SL-CTL

CIVIL JURY TRIAL

REPORTER'S
TRANSCRIPT OF
PROCEEDINGS

APRIL 3, 2024

REPORTED BY:
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CONSULTANTS, INC. ROTH 401K
FBO RENEE HONIG, and HS
CONTRARIAN INVESTMENTS, LLC,

CROSS-COMPLAINANTS,
v.

JOHN DAVID HANSEN, an
individual; and GREGORY P.
HANSON, an individual,

CROSS-DEFENDANTS,

MICHAEL BRAUSER, an
individual, GRANDER HOLDINGS,
INC., a Florida corporation,
AND GRANDER HOLDINGS, INC.
401K, a Florida trust,

CROSS-COMPLAINANTS,
v.

JOHN DAVID HANSEN, an
individual; and GREGORY P.
HANSON, an individual,

CROSS-DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APRIL 3, 2024

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I N D E X

MABVAX THERAPEUTICS HOLDINGS,
INC., A DELAWARE CORPORATION
VS.
BARRY HONIG, ET AL.

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1 SAN DIEGO, CALIFORNIA; WEDNESDAY; APRIL 3, 2024;

2 1:32 P.M.

3
4 ---oOo---

5 (The jury enters the courtroom.)

6 THE COURT: Good afternoon, ladies and
7 gentlemen. Hope y'all had a great morning.

8 And good afternoon, Mr. Hansen.

9 THE WITNESS: Good afternoon.

10 THE COURT: And Mr. Hansen, you recall you're
11 still under oath?

12 THE WITNESS: I do.

13 THE COURT: All right. Ms. Rubenstein.

14 MS. RUBENSTEIN: Thank you, Your Honor.

15
16 JOHN DAVID HANSEN,

17 called as a witness on behalf of the plaintiff,
18 having been previously duly sworn, testified as
19 follows:

20
21 DIRECT EXAMINATION RESUMED

22 BY MS. RUBENSTEIN:

23 Q. All right. Welcome back, Mr. Hansen.

24 MS. RUBENSTEIN: Welcome back, ladies and
25 gentlemen. Hope everybody had a nice half day. And
26 there's new candy.

27 BY MS. RUBENSTEIN:

28 Q. So are you ready to roll, Mr. Hansen?

1 A. I am.

2 Q. All right. When we left off yesterday, we had
3 just wrapped up our discussion of that poster
4 presentation from the ASCO conference.

5 Do you recall that?

6 A. Yes, I do.

7 Q. All right. Did MabVax do any other
8 presentations of its clinical trial progress or the
9 interim results of the trial other than that -- that
10 presentation at the ASCO conference?

11 A. Yes, we did.

12 Q. All right. And similar to the run-up that we
13 saw yesterday to ASCO conference, did MabVax make a public
14 announcement saying, "Heads up, everyone. We're going
15 to be presenting a poster at this conference"?

16 A. Yes, we did.

17 MS. RUBENSTEIN: All right. If we could
18 please pull up Exhibit 1259, Mr. Hutton.

19 (Court's Exhibit No. 1259, Press Release:
20 MabVax Therapeutics to Present Three Posters
21 at the AACR-NCI-EORTC International Conference
22 on Molecular Targets and Cancer Therapeutics
23 (3 pages), first identified.)

24 BY MS. RUBENSTEIN:

25 Q. Do you recognize this document, Mr. Hansen?

26 A. Yes. This is a press release announcing,
27 actually, three posters.

28 MS. RUBENSTEIN: All right. Your Honor, I'd

1 move to admit Exhibit 1259 in evidence.

2 MR. WEBER: No objection.

3 THE COURT: Received.

4 (Court's Exhibit No. 1259 received into
5 evidence.)

6 BY MS. RUBENSTEIN:

7 Q. All right. Mr. Hansen, this press release is
8 titled "MabVax Therapeutics to Present Three Posters at
9 the AACR-NCI-EORTC International Conference on Molecular
10 Targets and Cancer Therapeutics."

11 And it's dated October 26, 2017, correct?

12 A. It is.

13 Q. All right. First tell us -- yesterday we
14 talked about the ASCO conference. Tell us, what is this
15 AACR conference?

16 A. Well, where the ASCO conference focuses on
17 practicing physicians treating cancer, this is more of a
18 research meeting. So the American Academy of Cancer
19 Researchers along with the National Cancer Institutes of
20 Health and its equivalent European organization, EORTC,
21 are the sponsors of this particular conference.

22 Q. And who is able to attend this conference?

23 A. Anyone who wants to pay the fee to get in.

24 Q. Okay. Could people like defendants attend if
25 they wanted to?

26 A. Could have, yes.

27 Q. All right. And tell us, what was the point of
28 putting out this press release, sir?

1 A. well, we wanted to alert people that we wanted
2 to announce several things at the same time. One is
3 update on the clinical program that we've been talking
4 about, plus some other research that we've done.

5 Q. All right. And, in fact, if we can go to the
6 bottom of this page 1, please. Keep going. Yep, that's
7 perfect.

8 MS. RUBENSTEIN: Can we just zoom in on that
9 bottom, "Presenting Author," and the paragraph below it,
10 the information below it?

11 Perfect.

12 BY MS. RUBENSTEIN:

13 Q. Mr. Hansen, did you, in fact, tell the public
14 where and when they could go to attend MabVax's
15 presentation on the clinical trial results?

16 A. Yes, we did.

17 Q. All right.

18 MS. RUBENSTEIN: So we can take that down.

19 Let's now take a look at what MabVax presented
20 at that conference.

21 If we could have Exhibit 1260, please,

22 BY MS. RUBENSTEIN:

23 Q. And Mr. Hansen, do you recognize this
24 document?

25 A. Yes. This is the poster that we presented.

26 Q. All right. I think you may need to lean
27 forward a little, because you're going in and out.

28 A. Okay.

1 Q. One more time. What is this document?

2 A. Yes, this is the poster that we presented.

3 Q. All right. And the poster presented at the
4 AACR conference?

5 A. Yes, that's right.

6 Q. And what was the date of this presentation?

7 A. It would be October 25th -- the 30th of 2017.

8 MS. RUBENSTEIN: All right. Your Honor, I'd
9 move to admit 1260 in evidence.

10 MR. WEBER: Objection. Foundation and
11 hearsay.

12 THE COURT: If it's the same ruling as the
13 previous poster, is that agreeable, or is there an
14 objection?

15 MR. WEBER: I think I'm -- would like the
16 record to note my objection, but I would understand if
17 Your Honor would -- would choose to overrule it.

18 THE COURT: Response?

19 MS. RUBENSTEIN: Well, Your Honor, in the
20 first instance, we would admit it as a business record,
21 and I can ask some foundational questions of Mr. Hansen,
22 if you would like.

23 THE COURT: Okay. I think the ruling will
24 probably be the same, but you may.

25 MS. RUBENSTEIN: All right.

26 BY MS. RUBENSTEIN:

27 Q. Mr. Hansen, was this poster created in the
28 ordinary course of MabVax's business?

1 A. Yes, it was.

2 Q. And was it created at or around the time that
3 it was presented at the AACR conference?

4 A. Yes, it was.

5 Q. How was this poster put together?

6 A. It was put together by Dr. Paul Maffuid, some
7 of the other folks at -- at -- at our company, along
8 with Dr. Gutheil from SciQuus, and then our clinical
9 investigators had a -- a say in what went into the
10 poster.

11 MS. RUBENSTEIN: All right. Your Honor, I'd
12 move to admit 1260 under Evidence Code 1271.

13 MR. RICHARD: Objection. Hearsay.

14 THE COURT: Sustained.

15 MS. RUBENSTEIN: All right. Then, Your Honor,
16 I'd move it solely for the purpose of showing what
17 MabVax presented at that conference.

18 MR. WEBER: I mean, we --

19 MR. RICHARD: Same objection.

20 MR. WEBER: Defense would stipulate that a
21 poster was presented. But to the extent that MabVax
22 seeks to offer it for the truth of the information
23 contained therein, that's, I think, the hearsay
24 objection.

25 THE COURT: And hearsay is sustained. But for
26 the non-hearsay purpose, any response?

27 MR. WEBER: The non-hearsay purpose being that
28 there was a poster presented?

1 THE COURT: Well, Ms. Rubenstein.

2 MS. RUBENSTEIN: Your Honor, I would offer it
3 for the non-hearsay poster [sic] of showing what MabVax
4 presented at this conference.

5 MR. WEBER: Your Honor, we would stipulate
6 that a poster was presented. Again, I think it's --

7 THE COURT: All right.

8 MR. WEBER: -- tough -- tough -- tough to --
9 tough to distinguish between what was presented and the
10 truth of the matter.

11 THE COURT: All right. So hearsay is
12 sustained. The Court will receive it in evidence,
13 again, for the purpose stated, not for the truth of the
14 matter.

15 (Court's Exhibit No. 1260 received into
16 evidence.)

17 BY MS. RUBENSTEIN:

18 Q. All right. Mr. Hansen, is this, in fact, the
19 presentation that -- the poster that was presented at
20 the AACR conference by MabVax in 2017?

21 A. Yes, it is.

22 Q. All right. You testified yesterday that the
23 poster presented at the ASCO presentation focused on the
24 monotherapy arm.

25 Was there a particular focus of this poster?

26 A. It was focused on results from the
27 accommodation arm of the study.

28 Q. Okay. And we'll go through it, but just tell

1 us generally, what did MabVax disclose in this poster?

2 A. Well, we thought it was important to disclose
3 sort of where we are in the -- in the clinical trial
4 process; what the experience had been from the patients
5 that were treated; what we observed in terms of success
6 in terms of finding a dose that worked for the patient;
7 what kinds of reactions and side effects we might have
8 encountered from those patients that we treated; as well
9 as outlining anything else that might have been
10 important to note, severe adverse reactions, that kind
11 of thing.

12 Q. All right. Mr. Hansen, let's zoom in -- let's
13 go to the left-hand side, the "Abstract" section and
14 specifically the paragraph called "Results."

15 MS. RUBENSTEIN: If we can Zoom in on that,
16 Mr. Hutton.

17 BY MS. RUBENSTEIN:

18 Q. All right. Mr. Hansen, in this presentation
19 did MabVax disclose the existence of dose-limiting
20 toxicities and other adverse events that were -- that
21 were experienced by patients in the combination arm?

22 A. Yes, we did.

23 Q. All right. And see the sentence sort of
24 halfway in the middle of this paragraph that says:

25 "Combination MVT-5873 DLTs at 1 mg/kg were
26 persistent ALT and bilirubin elevations and resulted in
27 significant dose de-escalation."

28 Do you see that?

1 A. Yes, I do.

2 Q. What was MabVax disclosing here?

3 A. Well, this was the first three patients that
4 we treated at -- at the 1 milligram per kilogram dose in
5 combination with chemotherapy, and two of those had
6 elevations in their liver function tests and bilirubin
7 elevation. So we declared those as dose-limiting
8 toxicities and decided that the 1 milligram dose was --
9 was too -- too potent -- or -- and decided to reduce the
10 dose.

11 MR. WEBER: Your Honor, objection. Move to
12 strike. The document speaks for itself. The -- the
13 witness, who has not established foundation, is going
14 beyond what the document says.

15 MR. RICHARD: We have an objection based on
16 foundation as to whether this witness was even there.

17 THE COURT: Overruled. Same ruling stands.
18 Motion is denied.

19 BY MS. RUBENSTEIN:

20 Q. Mr. Hansen, did you attend this conference?

21 A. Yes, I did.

22 Q. Did you see this presentation being given by
23 Dr. Maffuid?

24 A. Yes, I was standing next to him during the
25 entire time.

26 Q. Thank you.

27 Let's move on. The next sentence says
28 "Combination MVT-5873 dosed at 0.125 mg/kg was generally

1 well tolerated with peripheral neuropathy and delayed
2 (8wk) pneumonitis observed."

3 Mr. Hansen, please tell us what the company
4 was disclosing here.

5 A. Well --

6 MR. WEBER: Objection. The document speaks
7 for itself.

8 THE COURT: Overruled.

9 THE WITNESS: We had reduced the dose by eight
10 fold and were now seeing that patients are tolerating
11 the dose much better. There was some peripheral --
12 peripheral neuropathy observed and a delayed eight-week
13 pneumonitis, so that was all reported.

14 BY MS. RUBENSTEIN:

15 Q. And we are going to come back to the topic of
16 pneumonitis, but let me just ask you right now, do you
17 recall in opening statements counsel for the defendant
18 suggested that MabVax hid the cases of pneumonitis from
19 the public?

20 A. I certainly do.

21 Q. Is that claim true?

22 A. No, it's not.

23 Q. And what was MabVax intending to do here?

24 A. We were intending to be fully disclosed about
25 what we were experiencing and seeing and what the
26 patients were experiencing.

27 Q. All right. There's also a box in the middle
28 of this chart.

1 MS. RUBENSTEIN: If we can get out of the
2 blowup.

3 BY MS. RUBENSTEIN:

4 Q. The chart says -- or I'm sorry -- the box says
5 "Results," and there's a chart under it --

6 MS. RUBENSTEIN: Yep, perfect --

7 BY MS. RUBENSTEIN:

8 Q. -- that says, "All Adverse Events, All
9 Grades."

10 what is intended to be disclosed here?

11 A. Well, if you -- this is 2017, so we're still
12 actively recruiting and treating patients in this
13 combination therapy.

14 And so this is all of the information data
15 that had been relayed back to SciQuus at the time that
16 the poster was created.

17 So there is a lag. There are probably a few
18 patients whose data is not incorporated, simply because
19 we haven't received it yet.

20 Q. Mr. Hansen, was this poster available to
21 anyone who attended the conference?

22 A. Yes. We actually had copies of it.

23 Q. And did the company make this poster available
24 on its website following the conference?

25 A. Yes, we did.

26 Q. Was this poster available to anybody who asked
27 for it?

28 A. Yes, it was.

1 Q. All right.

2 MS. RUBENSTEIN: We can take that down.

3 BY MS. RUBENSTEIN:

4 Q. And I want to continue talking about progress
5 in the clinical trial and what the company was learning
6 over time about the 5B1 antibody.

7 MS. RUBENSTEIN: So can we please pull up
8 Exhibit 1308, please.

9 (Court's Exhibit No. 1308, MV-0715 Safety
10 Committee Meeting Expanded Cohort B0, first
11 identified.)

12 BY MS. RUBENSTEIN:

13 Q. Do you recognize this document, Mr. Hansen?

14 A. This is another of the Safety Committee
15 meeting minutes that we -- like we reviewed yesterday.

16 Q. Well, actually, we did not review this one
17 yesterday --

18 A. No, no, this was similar to.

19 Q. Oh, similar. I understand what you're saying.

20 MS. RUBENSTEIN: All right. Your Honor, at
21 this time I would move to admit 1308.

22 MR. WEBER: No objection.

23 THE COURT: Received.

24 (Court's Exhibit No. 1308 received into
25 evidence.)

26 BY MS. RUBENSTEIN:

27 Q. All right.

28 MS. RUBENSTEIN: And let's please -- let's go

1 down to page 20, please, for the safety discussion.

2 BY MS. RUBENSTEIN:

3 Q. All right. There is -- the second bullet
4 point under "Safety Meeting Summary" says:

5 "No Cycle 1 DLTs reported in 3 of 3 subjects
6 dosed."

7 And that's in this B0 cohort.

8 Just remind us, is that -- that's the -- the
9 group in the combination trial getting the reduced
10 dosage of .125 milligrams per kilogram?

11 A. That's correct.

12 Q. All right. And the next bullet says:

13 "Based on available data, toxicity was
14 primarily manifest as low-grade GI symptoms,
15 infusion-related reactions and LFT elevations."

16 Tell us what that means, Mr. Hansen.

17 A. well, it means that there weren't any
18 dose-limiting toxicities, even those related to the
19 things that we observed, like the GI symptoms, the
20 infusion reactions, and these liver function tests.

21 Q. All right. And below that, it says:

22 "2 subjects developed Grade 3 pneumonitis (1
23 unrelated to MVT-5873 and 1 related to study drugs)."

24 who was making the decision about whether or
25 not the cases of pneumonitis were related to the
26 antibody or not?

27 A. well, that is in the sole authority of the
28 investigator, the clinician at the site.

1 Q. Did MabVax have any vote in that
2 determination?

3 A. No. We can't.

4 Q. All right. So the doctors saw these two cases
5 of pneumonitis and determined one of them was unrelated
6 to MVT-5873 and one of them was?

7 A. That's correct.

8 Q. All right. Below that, it says:

9 "Disease Assessments: 2 partial responses
10 (PR) and 1 stable disease (SD)."

11 Tell us what this means.

12 A. Well, it means that we treated three patients
13 and three patients responded. So we have -- I think you
14 said two partial responses, which means that we have
15 some fairly dramatic results.

16 we had patient tumors shrinking by 40 percent
17 in one patient and 70 percent in another and then one
18 stable disease. Even though the tumors were reduced, it
19 didn't reach the threshold of calling it a partial
20 response. So that was -- that was very encouraging.

21 Q. All right.

22 MS. RUBENSTEIN: Let's go to page 21, please,
23 where it says, "Cohort B0 Conclusions/Plan."

24 BY MS. RUBENSTEIN:

25 Q. It says:

26 "The current cohort is declared safe based on
27 a single DLT observed in 6 subjects."

28 who made the determination to declare this

1 dosage safe?

2 A. That would have been the investigators, plus
3 Dr. Gutheil, the safety monitor.

4 Q. All right. Below that, it says:

5 "Encouraging antitumor activity is observed
6 with PRs in 4 of 6 subjects and measurable tumor
7 reductions in the remaining 2 subjects."

8 what does that mean?

9 A. That means that we've now treated six
10 patients, and all six patients are now responding with
11 reductions in tumor volume, which is pretty dramatic.

12 Q. All right. Then it says:

13 "Based on the safety and encouraging efficacy
14 observed at this dose level" -- and then it goes on to
15 say -- "the safety committee elected to expand the
16 cohort up to a total of 10 subjects."

17 Mr. Hansen, whose words were "the safety and
18 efficacy observed at this dose level"?

19 A. Well, it's --

20 MR. WEBER: Objection. Hearsay.

21 THE COURT: Sustained.

22 BY MS. RUBENSTEIN:

23 Q. I just want to know who wrote the words?

24 MR. WEBER: Objection. Foundation.

25 THE COURT: Sustained.

26 BY MS. RUBENSTEIN:

27 Q. Do you know who was responsible for creating
28 these meeting minutes?

1 A. Yes, I do.

2 Q. who?

3 A. That would be SciQuus.

4 Q. Thank you.

5 All right. Let's go to Exhibit 1328, please.

6 (Court's Exhibit No. 1328, Press Release:

7 MabVax Therapeutics Announces Positive Interim

8 Data from Expanded Cohort in Phase 1 Trial

9 Evaluating MVT-5873 in Combination with

10 First-Line Chemotherapy in Pancreatic Cancer

11 (3 pages), first identified.)

12 BY MS. RUBENSTEIN:

13 Q. Do you recognize this document, Mr. Hansen?

14 A. It is a press release that we released in
15 February of 2018.

16 MS. RUBENSTEIN: All right. Your Honor, I'd
17 move to admit 1328 in evidence.

18 MR. WEBER: No objection, Your Honor.

19 THE COURT: Received.

20 (Court's Exhibit No. 1328 received into
21 evidence.)

22 BY MS. RUBENSTEIN:

23 Q. All right, Mr. Hansen. This press release is
24 titled "MabVax Therapeutics Announces Positive Interim
25 Data from Expanded Cohort in Phase 1 Trial Evaluating
26 MVT-5873 in Combination with First-Line Chemotherapy in
27 Pancreatic Cancer," correct?

28 A. Correct.

1 Q. Tell us, what was the purpose of putting out
2 this press release?

3 A. Well, we wanted to alert people that we were
4 seeing some really positive, even dramatic, results from
5 the first patients that we were treating, so we wanted
6 to make that known.

7 Q. Okay. Let's go to the second paragraph of the
8 actual release that starts with "In the Phase 1 study,"
9 please.

10 All right. And I'm going to start reading
11 from the second sentence.

12 It says:

13 "MVT-5873 at a dose of .125 mg/kg when added
14 to first-line chemotherapy was generally well tolerated
15 by all subjects. The Company reported that all six
16 patients had measurable tumor reductions, with four
17 patients meeting the criteria for partial response and
18 two patients meeting the criteria for stable disease."

19 Mr. Hansen, was this disclosure truthful?

20 A. Yes, it was.

21 Q. What information was the statement based on?

22 A. This was the observations and the reports from
23 the clinical trial sites back to SciQuus.

24 Q. And is -- I'm sorry. Back to SciQuus, you
25 said?

26 A. Yes.

27 Q. And is this disclosure consistent with the
28 meeting minutes we just looked at in the last exhibit?

1 A. Yes, they are.

2 MR. WEBER: Your Honor, objection. Hearsay,
3 actually, the last two questions. I was slow on the
4 gun. My apologies. And move to strike.

5 THE COURT: Response?

6 MS. RUBENSTEIN: I'm not even sure I
7 understand the hearsay objection. It came from a
8 document we just looked at where there wasn't a hearsay
9 objection.

10 MR. WEBER: Ms. Rubenstein asked him the
11 source for the statement that's on the board. That
12 would be hearsay.

13 THE COURT: She's saying it's the meeting
14 minutes we just looked at.

15 MR. WEBER: But the prior question was who
16 wrote the meeting minutes, not this witness.

17 THE COURT: Sustained as to the second-to-last
18 question.

19 MR. WEBER: Thank you, Your Honor. Move to
20 strike.

21 THE COURT: Granted.

22 BY MS. RUBENSTEIN:

23 Q. Mr. Hansen, did MabVax have support from what
24 it was learning in the Safety Committee meeting for
25 these statements in this press release?

26 A. Yes.

27 Q. Okay. All right. We began a discussion
28 earlier about a condition called "pneumonitis," so I

1 want to go back to that.

2 First of all, what is pneumonitis?

3 A. It's -- as Mr. Cohen pointed out, it's an
4 inflammation of the lining of the lungs.

5 Q. And did there come a time when some patients
6 on the clinical trial developed that condition?

7 A. Yes, they did.

8 Q. How many total patients on the trial developed
9 this condition?

10 A. Four.

11 Q. And do you recall when each incidence was
12 observed?

13 A. I don't think I can give you the dates, but it
14 occurred in 2017 and '18.

15 Q. Okay. What was done to address the cases of
16 pneumonitis?

17 A. Well, the way that --

18 MR. WEBER: Objection. Foundation.

19 THE COURT: Overruled.

20 THE WITNESS: The way that pneumonitis is
21 normally treated is that you hospitalize the patient.
22 You give them oxygen therapy, as well as in- -- infuse
23 steroids. And in each of the cases that we had, these
24 patients were resolved and went home anywhere from three
25 to seven days.

26 BY MS. RUBENSTEIN:

27 Q. Did MabVax report the cases of pneumonitis to
28 the Food and Drug Administration?

1 A. Yes, we did.

2 MS. RUBENSTEIN: All right. Can we please
3 pull up 1421, please.

4 (Court's Exhibit No. 1421, Letter from P.
5 Maffuid to Office of Hematology and Oncology
6 Products Re: IND 126424 for MVT-5873
7 (HuMab-5B1) eCTD Sequence Number 0012 (Serial
8 Number 0009) – IND Safety Report Protocol
9 Number MV-0715-CP-001.01, first identified.)

10 BY MS. RUBENSTEIN:

11 Q. Mr. Hansen, do you recognize this document?

12 A. Yes. This is the report that we provided to
13 the FDA for the pneumonitis cases.

14 Q. All right. And what is the date of the
15 document?

16 A. July 3rd of 2018.

17 Q. All right.

18 MS. RUBENSTEIN: Your Honor, I move to admit
19 1421 in evidence.

20 MR. WEBER: Can you please scroll down to the
21 bottom, please. Sorry, page 3, end of the document. My
22 apologies.

23 Foundation, Your Honor.

24 THE COURT: Sustained.

25 BY MS. RUBENSTEIN:

26 Q. Mr. Hansen, did you -- did you see this letter
27 before it went to the Food and Drug Administration?

28 A. Yes, I did.

1 Q. Did you discuss its contents with Dr. Maffuid?

2 A. I did.

3 Q. All right. And are you familiar with its
4 contents?

5 A. Yes, I am.

6 MS. RUBENSTEIN: Your Honor, I move to admit
7 1421 in evidence.

8 MR. WEBER: No objection now, Your Honor.

9 THE COURT: Received.

10 (Court's Exhibit No. 1421 received into
11 evidence.)

12 BY MS. RUBENSTEIN:

13 Q. All right. Mr. Hansen, please tell us what is
14 being reported to the FDA in this letter.

15 A. Well, the company is obligated to report
16 severe adverse events. And so pneumonitis is considered
17 a severe adverse event, and so we were reviewing each of
18 the three cases that we were reporting at this time.

19 MS. RUBENSTEIN: Okay. And -- and if we can
20 scroll down just a little.

21 BY MS. RUBENSTEIN:

22 Q. All right. And is this a description of
23 the -- you said at this time three patients had
24 developed pneumonitis?

25 A. Yes.

26 Q. All right. So does this letter take -- go
27 through the facts of each of those patients?

28 A. Yes, it does.

1 Q. All right. Did the FDA direct MabVax to stop
2 the clinical trial after receiving this letter?

3 A. No, it did not.

4 Q. All right. At some point, however, did MabVax
5 halt enrollment in the trial?

6 A. Yes.

7 Q. And when did that occur?

8 A. That was in August of 2018. So we had three
9 occurrences of pneumonitis. We hadn't seen it at all in
10 the monotherapy trial. And so we were on the lookout
11 for it and we had a fourth case occur in August. So we
12 convened a Safety Committee meeting and the Safety
13 Committee decided that it would be in the best interest
14 to suspend the study for the period of time until we
15 knew more about what's causing this.

16 Q. Who was involved in making the decision to
17 suspend the study?

18 A. Well, in -- in this kind of a decision it is
19 the clinical investigators plus the medical monitor,
20 Dr. Gutheil.

21 Q. All right. Mr. Hansen, did anyone disagree
22 with the decision to suspend enrollment?

23 A. Actually, yes, the investigators -- there was
24 at least one that wanted to continue --

25 MR. WEBER: Objection. Hearsay.

26 THE COURT: Sustained.

27 BY MS. RUBENSTEIN:

28 Q. Let me ask this: Mr. Hansen, when -- when the

1 decision was made to halt enrollment at this time, was
2 the whole clinical trial canceled at this point?

3 A. No, it was only suspended.

4 Q. All right. Did any patients remain on
5 treatment after enrollment in the combination arm was
6 suspended?

7 A. Well, we -- we -- we stopped the -- any
8 treatment with the combination, but we -- patients who
9 were doing well on -- on the monotherapy continued.

10 Q. All right. Mr. Hansen, we've spent a lot of
11 time discussing the clinical trial in certain --
12 including certain adverse events like pneumonitis.

13 what is your perspective on -- on those
14 adverse events?

15 A. Well, they were unexpected, although it's not
16 unusual. When you combine different drugs together you
17 get something that you didn't expect, but we wanted to
18 figure out how to go forward. We were getting pretty
19 dramatic results in reductions of tumor volumes in
20 patients and thought that it was important for us to
21 continue.

22 Q. And what about the incidences of serious
23 adverse events?

24 A. Well, there were really only five in the
25 entire study, and you add the four pneumonitis cases
26 plus one case of fever, and that was pretty much it.

27 Q. And when you say there were "only five in the
28 entire study," can you tell us what you mean by that.

1 A. well, five that are possibly related or
2 related to the study drug.

3 Q. And who made the determination of what was
4 related to the study drug or not?

5 A. Again, it was the clinical investigators at
6 the site.

7 Q. When you say "clinical investigators," you
8 mean the doctors, right?

9 A. Yes, I do.

10 Q. All right.

11 MS. RUBENSTEIN: If we could please pull up
12 Exhibit 4116.

13 (Court's Exhibit No. 4116, Serious Adverse
14 Events Reported as of 21 December 2018, first
15 identified.)

16 BY MS. RUBENSTEIN:

17 Q. Mr. Hansen, do you recognize this document?

18 A. Yes.

19 Q. Okay.

20 MS. RUBENSTEIN: Your Honor, I'd move to admit
21 Exhibit 4116 into evidence.

22 MR. WEBER: Foundation.

23 THE COURT: Sustained.

24 BY MS. RUBENSTEIN:

25 Q. Mr. Hansen, are you familiar with the contents
26 of this document?

27 A. Yes, I am.

28 Q. And how did you become familiar with the

1 contents of this document?

2 A. This is -- this is something that we produced
3 on a regular basis throughout the study and that I
4 reviewed every time it was produced.

5 Q. When you say "we produced" who -- who produced
6 it?

7 A. Well, SciQuus was responsible for assembling
8 and -- and producing the document, but it was reviewed
9 by myself and others at MabVax.

10 Q. Okay.

11 MS. RUBENSTEIN: Your Honor, I'd move to admit
12 Exhibit 4116 in evidence.

13 MR. WEBER: Same objection.

14 THE COURT: Sustained.

15 BY MS. RUBENSTEIN:

16 Q. Can you tell us what this document is,
17 Mr. Hansen?

18 A. It's a listing of all serious adverse events
19 that are reported as of the end of -- or December 21st
20 of 2018.

21 MS. RUBENSTEIN: Okay. Your Honor, I'd move
22 to admit Exhibit 4116.

23 MR. WEBER: Same objection.

24 THE COURT: Same ruling.

25 BY MS. RUBENSTEIN:

26 Q. All right. Let's move on.

27 Actually, Mr. Hansen, I want to quickly return
28 to a topic from yesterday, which was the investor

1 questionnaires.

2 MS. RUBENSTEIN: So I'd like to pull up
3 redact -- a redacted version of Exhibit 64, please.

4 All right. And if we can just scroll through
5 it for the witness, please.

6 BY MS. RUBENSTEIN:

7 Q. Mr. Hansen, do you recognize this as a
8 compilation of investor questionnaires?

9 A. I do.

10 MS. RUBENSTEIN: All right. Your Honor, I'd
11 move to admit redacted -- a redacted -- this redacted
12 version of Exhibit 64 in evidence.

13 MR. KIRBY: Objection, Your Honor, this is
14 cumulative. It is hearsay and there's no foundation and
15 we did this yesterday -- can I explain?

16 THE COURT: Well, I'm wondering, isn't 64
17 already in, in a redacted form?

18 MS. RUBENSTEIN: It's not, Your Honor. I
19 tried to introduce this yesterday. Defendants objected.
20 So instead I introduced some separate investor
21 questionnaires, not this exhibit. I have not introduced
22 this exhibit.

23 MR. KIRBY: This is not one exhibit document.

24 THE COURT: You're referring to Exhibit 39 et
25 seq.?

26 MS. RUBENSTEIN: Correct.

27 MR. KIRBY: Yesterday, Your Honor -- we have
28 no objection to individual documents, but this is

1 presented as though it's one single document and it is
2 not. It is multiple documents lumped together to make
3 it look like one document.

4 THE COURT: Okay. So has 64 in total been
5 redacted?

6 MS. RUBENSTEIN: It's been -- all of the
7 information to which defendants objected yesterday has
8 been redacted within Exhibit 64. I believe this is
9 their only remaining objection to the document, that
10 it's a compilation.

11 MR. RICHARD: Your Honor, this is not a --

12 THE COURT: Go ahead.

13 MR. RICHARD: Objection. This -- may I state
14 my objection?

15 THE COURT: I'm wondering if this can wait
16 until the afternoon recess.

17 MS. RUBENSTEIN: We can come back to it,
18 Your Honor.

19 THE COURT: Let's do that.

20 MR. KIRBY: Okay. Thank you, Your Honor.

21 BY MS. RUBENSTEIN:

22 Q. All right. Mr. Hansen, the jury has heard
23 that there was an SEC investigation. So let's turn to
24 that now.

25 when did MabVax first become -- sorry -- when
26 did you first become aware that there was an SEC
27 investigation?

28 A. When we received a letter from the SEC at the

1 end of January of 2018.

2 MS. RUBENSTEIN: All right. Now, let's bring
3 up -- let's please bring up Exhibit 19, which is already
4 in evidence.

5 BY MS. RUBENSTEIN:

6 Q. Mr. Hansen, do you recall seeing this letter
7 when you received it from the SEC?

8 A. Oh, yes.

9 Q. All right. Well, what was your reaction to
10 receiving this letter?

11 A. We really didn't know what -- what was going
12 on. We were worried about it, highly concerned. We
13 certainly wondered what we had done to attract the
14 attention of the Securities and Exchange Commission. We
15 certainly didn't think we had done anything that would
16 do that. But nonetheless, we got this letter, and so
17 that -- we knew that a subpoena was coming, so --

18 Q. What did the company do when it first received
19 this letter?

20 A. Well, a couple of things. First of all, we --
21 we certainly circulated it to the board of directors
22 immediately. And then we also issued a press release,
23 or an 8-K, letting the investing community know that we
24 had received this letter.

25 Q. And did you -- did you consult legal counsel
26 with respect to this letter?

27 A. Excuse me. Yes, we did.

28 Q. Who did you consult about this?

1 A. At this time, our SEC attorney was Mr. Harvey
2 Kesner of the Sichenzia firm.

3 Q. And Mr. Kesner is the lawyer we talked about
4 yesterday that was forced to be hired by some of the
5 investor defendants?

6 MR. RICHARD: Objection, Your Honor. Leading.

7 THE COURT: Sustained.

8 BY MS. RUBENSTEIN:

9 Q. How did MabVax come to hire Mr. Kesner?

10 A. We were required to hire Mr. Kesner as a term
11 in the term sheet for financing.

12 Q. Okay. So you told me you consulted
13 Mr. Kesner, and you put out a press release, correct?

14 A. Correct.

15 Q. Okay.

16 MS. RUBENSTEIN: Let's look at Exhibit 20,
17 please.

18 (Court's Exhibit No. 20, Press Release -
19 MabVax Receives Notice of SEC Investigation
20 and Examination of Certain Registration
21 Statements (Exhibit 99.1), first identified.)

22 BY MS. RUBENSTEIN:

23 Q. Do you recognize this document, Mr. Hansen?

24 A. Yeah, this is the press release where we
25 announced receipt of the letter.

26 MS. RUBENSTEIN: All right. Your Honor, I'd
27 move to admit Exhibit 20 in evidence.

28 MR. WEBER: No objection, Your Honor.

1 THE COURT: Received.

2 (Court's Exhibit No. 20 received into
3 evidence.)

4 BY MS. RUBENSTEIN:

5 Q. All right. Mr. Hansen, this press release is
6 entitled, "MabVax Receives Notice of an SEC
7 Investigation and Examination of Certain Registration
8 Statements."

9 And the date is January 30, 2018, correct?

10 A. Correct.

11 Q. Why did MabVax put out this press release?

12 A. Well, this is a -- this is a significant
13 event. This is -- when -- when the SEC decides that it
14 wants to investigate, that is a material fact that a
15 company needs to get out to the investing community.

16 Q. Did the company fully cooperate with the SEC's
17 investigation?

18 A. Yes, we did.

19 Q. All right. Let's now pull up Exhibit 21,
20 which is already in evidence.

21 All right. Mr. Hansen, you recognize this as
22 the subpoena to the company from the SEC?

23 A. Yes, I do.

24 Q. All right. Did -- when you received this
25 subpoena, did it give you any more insight into what the
26 investigation was actually about?

27 A. A little. It gave us some insights into what
28 they might be looking at.

1 Q. All right. Let's go to page 11, please.

2 Mr. Hansen, what was your reaction to seeing
3 these names contained in the subpoena?

4 A. Well, this was very concerning. I mean, this
5 was the primary group of investors that we had in the
6 company at the time and their affil- -- and their
7 entities that they invested in, or with.

8 Q. So at this time, in February of 2018, what did
9 you understand the SEC was looking for?

10 A. Well, the request was for --

11 MR. RICHARD: Objection. Objection,
12 Your Honor. The document speaks for itself, what
13 they're seeking in the subpoena.

14 THE COURT: Overruled.

15 THE WITNESS: The SEC was seeking literally
16 all of our documents that we had -- emails, deal docs,
17 term sheets, registration statements -- everything that
18 we had that touched these names and entities. So we
19 produced to the SEC something like 300,000 documents.

20 BY MS. RUBENSTEIN:

21 Q. And after the company received the subpoena
22 that we're talking about here, did you yourself receive
23 a personal subpoena?

24 A. Yes, I did.

25 Q. When did that happen?

26 A. That was in April of -- of '18.

27 Q. All right. And so then in April --

28 MS. RUBENSTEIN: We can take this down,

1 Mr. Hutton.

2 BY MS. RUBENSTEIN:

3 Q. In April, what were you thinking then?

4 A. Well, I think the SEC was trying to be
5 thorough. They were looking to see if there was any
6 complicity by me in anything that they might be looking
7 into, although the subpoena from -- that I received, in
8 its latter pages, mirrored exactly what the -- that
9 the -- the company received.

10 Q. Well, let me ask you this: Mr. Hansen, did
11 the SEC ever take action against you personally?

12 A. No.

13 MR. WEBER: Objection, Your Honor.

14 THE COURT: Ground?

15 MR. WEBER: Prior motions, prior discussions
16 with the Court, 352, relevancy, hearsay, foundation.

17 MR. RICHARD: (Inaudible.)

18 THE REPORTER: I can't hear, Mr. Richard.

19 MR. RICHARD: Oh, I'm saying my objection is
20 redundancy. Asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: No, I was never charged.

23 BY MS. RUBENSTEIN:

24 Q. Did the SEC ever take action against MabVax as
25 a company?

26 A. No.

27 MR. WEBER: Same objections, Your Honor.

28 THE WITNESS: It did not.

1 THE COURT: Same ruling.

2 THE WITNESS: No, we did not.

3 BY MS. RUBENSTEIN:

4 Q. No --

5 A. No, they did not.

6 Q. Thank you.

7 A. Sorry.

8 Q. Mr. Hansen, did there come a time when
9 Mr. Kesner, Harvey Kesner, resigned from representing
10 MabVax with respect to the investigation?

11 A. Yes, there was.

12 Q. And how did that come about?

13 A. I got a call from Mr. Kesner regarding the
14 fact that he'd had a conversation with the attorneys
15 at -- at the SEC and the --

16 MR. WEBER: Objection, Your Honor. Hearsay.

17 THE COURT: So overruled.

18 Next question.

19 BY MS. RUBENSTEIN:

20 Q. What was your reaction to Mr. Kesner resigning
21 as your lawyer in the middle of an SEC investigation?

22 A. That was troubling. The -- the SEC indicated
23 that they didn't think that he was --

24 MR. RICHARD: Objection. Hearsay.

25 THE COURT: Sustained.

26 BY MS. RUBENSTEIN:

27 Q. Why was it troubling?

28 A. Troubling because I lost counsel in the middle

1 of an SEC investigation, number one. And number two is
2 there appeared to be some sort of conflict preventing
3 him from going forward.

4 Q. All right.

5 MR. RICHARD: Objection. Motion to strike.

6 THE COURT: Granted as to the last portion.

7 BY MS. RUBENSTEIN:

8 Q. Mr. Hansen, did you ultimately retain separate
9 counsel to represent you in the SEC investigation?

10 A. Yes, I did.

11 Q. And who was that?

12 A. That was Mr. Jonathan Shapiro.

13 Q. This Jonathan Shapiro (indicating)?

14 A. That's the one.

15 Q. All right. And did Mr. Shapiro also take over
16 representation of the company as a whole, with respect
17 to the SEC investigation?

18 A. Yes, a short period of time later.

19 Q. All right. Mr. Hansen, before Mr. Kesner
20 resigned, did you have any idea of how close and
21 intimate the relationship was between Mr. Kesner and
22 Mr. Honig?

23 A. I didn't really have a clear idea.

24 Q. All right. And how about the relationship
25 between Mr. Kesner and Mr. Groussman? Did you have any
26 idea about that before he resigned?

27 A. No.

28 Q. Did you have any idea about the close

1 relationship between Mr. Kesner and Mr. O'Rourke before
2 he resigned?

3 A. No.

4 Q. All right. Since then, have you seen evidence
5 of the close, intimate nature of the relationship among
6 the people I just mentioned and Mr. Kesner?

7 MR. WEBER: Objection. Hearsay.

8 THE COURT: Sustained.

9 BY MS. RUBENSTEIN:

10 Q. Mr. Hansen, when Mr. Kesner resigned as
11 counsel to MabVax with respect to the SEC investigation
12 and resigned from representing MabVax altogether, did
13 Mr. Kesner turn over files to your new counsel?

14 A. Yes, he did.

15 Q. And did you have occasion to look through
16 those files?

17 A. I saw some of them.

18 Q. Okay. And what did you learn from looking
19 through those files?

20 MR. WEBER: Objection. Hearsay.

21 THE COURT: Sustained.

22 MS. RUBENSTEIN: Can I respond, Your Honor?

23 THE COURT: Yes.

24 MS. RUBENSTEIN: Statements of party opponents
25 and coconspirator statements.

26 THE COURT: So same ruling at this point.

27 MS. RUBENSTEIN: Okay. Can we pull up
28 Exhibit 203, please?

1 Your Honor, I'd offer 203 in evidence.

2 MR. WEBER: Your Honor, we have -- objection
3 for the reasons we said yesterday.

4 THE COURT: So same status. The Court
5 continues to reserve.

6 MS. RUBENSTEIN: Okay.

7 BY MS. RUBENSTEIN:

8 Q. All right. Mr. Hansen, do you recall that
9 Mr. Cohen testified to the jury about the company's
10 decision to disclaim reliance on its past financial
11 statements?

12 A. Yes, I do.

13 Q. All right. I'm not going to retread all of
14 that ground with you, but let me ask you, who were all
15 the people involved in the decision to disclaim reliance
16 on prior financials?

17 A. well, certainly the board of directors and
18 management; also our auditors, CohnReznick; the new SEC
19 counsel -- well, "new" meaning reestablished SEC
20 counsel, Mintz, Levin, the local law firm; and -- and
21 Baker Botts.

22 Q. Now, I want to go back to the MabVax 8-K that
23 was received in evidence already with redactions, but I
24 want to pull up the unredacted version of Exhibit 23,
25 please, and let me ask you a few questions before I ask
26 to admit this version.

27 First of all, Mr. Hansen, can you --

28 MS. RUBENSTEIN: well, let's pull it up.

1 TRIAL TECHNICIAN: The unredacted version?

2 MS. RUBENSTEIN: The unredacted version of
3 Exhibit 23, yeah, just for the witness and -- and the
4 Court and counsel.

5 BY MS. RUBENSTEIN:

6 Q. well, while it's coming up, let me ask you
7 some questions.

8 MS. RUBENSTEIN: Oh, it's up?

9 TRIAL TECHNICIAN: Yes.

10 MS. RUBENSTEIN: All right. Great.

11 BY MS. RUBENSTEIN:

12 Q. Do you recognize the document, Mr. Hansen?

13 A. Yes, I do.

14 Q. Okay. What is it?

15 A. It's the 8-K that we published on May 20th of
16 2018.

17 Q. Okay. Was the document created in the regular
18 course of MabVax's business?

19 A. Yes, it was.

20 Q. And was it created at or near the time of the
21 events that were being reported about in the 8-K?

22 A. Yes, it was.

23 Q. Do you know how it was prepared?

24 A. I think it was a combination of legal counsel,
25 meaning Mintz, Levin, and our auditors, with input from
26 Baker Botts. It was a -- and the board of directors had
27 a large say in what was going in there.

28 Q. And did you have a say into what was going

1 into it as well?

2 A. Yes.

3 MS. RUBENSTEIN: All right. Your Honor, I'd
4 move to admit the unredacted version of the 8-K as a
5 business record of MabVax.

6 MR. RICHARD: Objection, Your Honor. We had a
7 detailed argument about this during the recess, and Your
8 Honor sustained the objection and required --

9 THE COURT: Well, so for me to intelligently
10 rule, I need to see the redacted and unredacted side by
11 side. That may take some time depending on the amount
12 of redactions.

13 MS. RUBENSTEIN: It's a very small redaction,
14 Your Honor. It's -- if you want to scroll down for
15 him -- page 3. It's that last paragraph on page 3. You
16 may -- you may recall it.

17 THE COURT: I do. So let's reserve to the
18 break.

19 BY MS. RUBENSTEIN:

20 Q. All right, Mr. Hansen. So we've seen the 8-K
21 before. That is the document in which MabVax announces
22 to the public that it's withdrawing reliance on its
23 prior financial statements and will not be filing its
24 next 10-Q; is that fair?

25 A. That's fair.

26 Q. All right. What were the consequences to the
27 company for withdrawing reliance on its past financial
28 statements and deciding it was not going to keep filing

1 reports with the SEC?

2 A. well, I think Mr. Cohen actually described it
3 pretty well as a death knell of the company. I mean, if
4 you don't have your -- if you're not up to date on your
5 financial reports, you can't be traded on -- on a stock
6 exchange. And so that was really the beginning of -- of
7 a very difficult period, if not the end.

8 Q. And you said you can't be traded on a stock
9 exchange.

10 Did MabVax, in fact, get delisted from NASDAQ?

11 A. we did in July.

12 Q. July of 2018?

13 A. 2018, yes.

14 Q. Did the company ever get back on NASDAQ after
15 that?

16 A. No. There was no way to do it.

17 Q. All right. What kind of effect did the
18 delisting have on the company?

19 A. well, it cut us off from equity financing, so
20 we couldn't raise any more capital. Our registration
21 statements were not going to be approved, so we couldn't
22 register any shares.

23 MR. WEBER: Objection, Your Honor. Calls for
24 speculation, that last bit starting with "our
25 registration statements." Lacks foundation and
26 speculation.

27 THE COURT: Sustained.

28 MR. WEBER: Move to strike, please.

1 THE COURT: Granted.

2 MR. WEBER: Thank you.

3 THE COURT: As to the last -- as to the last
4 portion.

5 MS. RUBENSTEIN: Understood.

6 BY MS. RUBENSTEIN:

7 Q. Sir, you said it cut the company off from
8 access to capital; is that what you said?

9 A. Yes, it did.

10 Q. All right. At that time MabVax was still in
11 the middle of a clinical trial; isn't that true?

12 A. Yes, it was. We were still enrolling patients
13 and treating them.

14 Q. Did you have concerns at that point about
15 being able to continue with the trial?

16 A. Absolutely.

17 Q. Okay. Other than disclaiming financials and
18 deciding not to file a 10-Q, did the company take any
19 other steps with respect to the financial confusion that
20 was being experienced with the company?

21 A. Yes, we did. So we looked at all the options,
22 and the option that counsel was presenting at the time
23 was to go to Delaware, to the Delaware Chancery Court to
24 see if there's a way for them to correct the situation
25 that we found ourselves in.

26 Q. And what did you ask the Delaware Chancery
27 Court to do?

28 A. Well, primarily two things: Since there was

1 dispute about whether the preferred shares that were
2 converted into common shares at the time, the resulting
3 common shares were invalid because those were
4 inappropriate conversions, so that meant that roughly a
5 third of all of our stock out there was -- or at least
6 common stock -- was invalid.

7 Q. Let me ask a question before you go on. Are
8 we talking about shares that were converted from
9 preferred into common by the investor defendants?

10 A. Exactly, and then sold into the market.

11 Q. Okay. Please continue.

12 MR. RICHARD: Your Honor, we object and move
13 to strike the sentence about his conclusion as to
14 whether the shares were --

15 THE REPORTER: "As to whether the shares..."

16 MR. WEBER: His conclusion as to whether the
17 shares were valid.

18 BY MS. RUBENSTEIN:

19 Q. Mr. Hansen --

20 THE COURT: Wait just a minute.

21 Granted.

22 BY MS. RUBENSTEIN:

23 Q. Mr. Hansen, did the company have questions
24 about whether its shares were valid as a result of the
25 conversions requested by the investor defendants?

26 A. Yes, we did.

27 Q. And due to that uncertainty over the validity
28 of shares, what did the company do?

1 A. That's why we went to the Delaware Chancery
2 Court.

3 Q. Okay. What was the result of going to the
4 Delaware Chancery Court?

5 A. The Delaware Chancery Court accepted the
6 request from MabVax and did two things: They -- they
7 said that the invalid shares that existed, the common
8 shares --

9 MR. RICHARD: Objection, Your Honor.

10 THE WITNESS: -- could be made valid.

11 MR. RICHARD: Objection. Hearsay.

12 THE COURT: Sustained.

13 BY MS. RUBENSTEIN:

14 Q. All right. Let me ask this --

15 MR. RICHARD: And move to strike.

16 THE COURT: Granted.

17 BY MS. RUBENSTEIN:

18 Q. Let me ask this: Did the result at the
19 Delaware Chancery Court allow MabVax to move forward as
20 a company?

21 A. At least as -- had -- it had a chance to move
22 forward, yes.

23 Q. Okay. And did the company have to hire
24 counsel to help with this process at the Delaware
25 Chancery Court?

26 A. Absolutely, we did.

27 Q. Who did -- who did MabVax hire?

28 A. A firm based in Delaware by the name of Morris

1 Nichols.

2 Q. Okay. And did the firm also have to hire
3 auditors to help sort out this situation?

4 A. Yes, because the result of disclaiming our
5 financials caused our primary auditor to eventually
6 resign, and then we had to hire a new set of auditors.

7 Q. And, Mr. Hansen --

8 MR. RICHARD: Excuse me, I have an objection.
9 The answer is nonresponsive and hearsay. Move to
10 strike.

11 THE COURT: Denied.

12 BY MS. RUBENSTEIN:

13 Q. Mr. Hansen, how much money did the company
14 spend on counsel to represent it in Delaware and on
15 auditors to sort out this situation?

16 A. I remember it as being almost \$2 million.

17 Q. And are you referring to --

18 A. Well, you're talk --

19 Q. Actually, let me -- let me ask a different
20 question.

21 A. Sorry.

22 Q. How much money did the company spend
23 specifically on the Morris Nichols Law Firm to represent
24 it -- represent the company in front of the Delaware
25 Chancery Court and on -- on the auditors to help with
26 the financials?

27 A. That number is about three hundred and fifty
28 or seventy thousand dollars.

1 Q. All right. Mr. Hansen, did you ever meet with
2 the SEC in the midst of the investigation?

3 A. Yes, I did.

4 MR. WEBER: Objection. Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MS. RUBENSTEIN:

7 Q. Who attended that meeting?

8 MR. WEBER: Objection, Your Honor. 352,
9 subject of motion in limine.

10 THE COURT: As to that question, overruled.

11 BY MS. RUBENSTEIN:

12 Q. Just who attended.

13 A. So I was represented by Baker Botts, and Baker
14 Botts had, I think, four attorneys there that helped
15 support. And then there were multiple attorneys from
16 the SEC and more attorneys on a telephone conference
17 call as well. And then there was the assistant U.S.
18 attorney --

19 MR. RICHARD: Objection, Your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: -- the assistant U.S. attorney
22 for Northern California was there, and an FBI agent.

23 MR. RICHARD: Objection. Move to strike and a
24 mistrial.

25 THE COURT: All right. Let's take our
26 afternoon recess. We'll be in recess 15 minutes.
27 Remember the admonition.

28 (The jury exits the courtroom.)

1 THE COURT: We're outside the presence of the
2 jury. Please be seated.

3 Mr. Richard, my suggestion in the future is
4 not to make a motion for mistrial of the case in front
5 of the jury. We were about ready to take an afternoon
6 recess. Even if we didn't, it can wait until the end of
7 the day. If we take no more recesses, there's going to
8 come a time when we're going to stop in front of the
9 jury. My suggestion is don't make a motion like that
10 using the word "mistrial" in front of the jury.

11 MR. RICHARD: I understand, but --

12 THE COURT: You -- you don't waive anything by
13 doing that.

14 So your motion is?

15 MR. RICHARD: My motion is that there is a
16 pending motion that has not been ruled on, I -- I -- I
17 believe, on this issue, and there was a deliberate
18 blurting out of "FBI." That's a bell that cannot be
19 unrung, and it was blurted out after the Department of
20 Justice, the department -- or the -- the assistant U.S.
21 attorney. Everybody in this room knows that that motion
22 was pending; that Your Honor had it under consideration,
23 and, in fact, I believe, provided, "Don't do it until
24 and unless I rule on it." And that's the basis and --
25 of the motion. We can't unhear those three letters.

26 THE COURT: Ms. Rubenstein.

27 MS. RUBENSTEIN: He didn't say anything about
28 there being a criminal investigation. He didn't say

1 anything about anything other than who attended the
2 meeting, and that's the truthful answer. They objected
3 to the question, "who" -- "who attended the meeting."
4 You overruled the objection. I said just answer who
5 attended, and that's the truthful answer. There --
6 there's nothing more to that. Maybe the jury thinks at
7 the time the FBI was investigating him. There's no
8 implication about anything other than these are the
9 people who attended that meeting.

10 THE COURT: I think the -- the -- the concern
11 is that the FBI connotes crime, and what's before the
12 jury already is MabVax was not charged; Mr. Hansen was
13 not charged.

14 MS. RUBENSTEIN: But they don't know what was
15 discussed at the meeting, nor will I ask him to delve
16 into it further, and -- and they don't know who -- they
17 don't have any idea why the FBI was involved or why the
18 U.S. Attorney's office was involved at that meeting.
19 Mr. Hansen himself said from the witness stand, "I
20 didn't know, maybe they were investigating me. Maybe
21 there was some complicity by me."

22 And so right now that's -- that's what the
23 jury might be thinking. And all I asked -- and, again,
24 they objected; you overruled the objection -- was, "who
25 attended the meeting?" If he -- if he was allowed to
26 answer the question but didn't say who attended the
27 meeting or didn't include everybody, that would not have
28 been a truthful answer. So once he was allowed to

1 answer the question, I think he answered it truthfully.

2 MR. WEBER: Your Honor, if I may.

3 MR. RICHARD: A reply on that.

4 MR. WEBER: For -- for the record, this is
5 precisely -- precisely why we brought our Motion in
6 Limine No. 3. We have already -- we just heard five
7 minutes before this that MabVax had taken the actions
8 that it took in response to the SEC investigation. This
9 meeting -- he hasn't said it yet, but we know from the
10 deposition testimony that this meeting occurred in early
11 June 2018.

12 Mr. Hansen had just finished testifying five
13 minutes ago that MabVax disclaimed reliance on its SEC
14 filings, decided not to make further SEC filings, went
15 to Delaware. All those things happened before this
16 meeting. So there's no causal reason, right? There's
17 no probative effect, no probative value to the fact that
18 this meeting occurred and the FBI was there.

19 The fact that the FBI and DOJ is mentioned is
20 extremely prejudicial. We've said that from the
21 beginning. You heard it from one of the potential
22 jurors, right, Mr. Shapiro I believe was the name of
23 that juror; if the DOJ is investigating something, that
24 probably means somebody did something wrong. Okay?

25 We have another law enforcement officer on the
26 jury now, Mr. Capilla, right? This -- this -- this is
27 exactly -- it's incredibly disappointing that this
28 happened because this is exactly what we tried to avoid.

1 I think now there's been a prejudice that might be
2 irreparable prejudice, and -- and maybe we need to renew
3 the -- the -- the mistrial motion at the end of the day,
4 but I'm not sure how we unring this bell absent a clear
5 instruction that -- that it's stricken, it must be
6 disregarded, it -- it -- it -- you know, I -- I -- I
7 would request a very extensive instruction, Your Honor,
8 and I would also request an instruction that there be no
9 mention made that the SEC filed a complaint, because
10 that's for sure what's coming next.

11 MR. RICHARD: Your Honor, may I reply?

12 THE COURT: Yes.

13 MR. RICHARD: No instruction can cure this. I
14 disagree with Mr. Weber. Assuming that plaintiff's
15 counsel did not know the answer to the question that was
16 asked -- and this time it's plaintiff's client; that's
17 not like the last situation where it was Cooley's
18 client -- and assuming that plaintiff's counsel did not
19 prepare the witness in advance and did not ask these
20 witnesses in advance -- even assuming all of those
21 things, even if this was purely inadvertent and --
22 and -- and the indication is that it's not because of
23 the sequence in which it was presented -- it is the --
24 what the member of the jury said -- venire said was,
25 "Guilty; it means they're guilty." And every one of
26 these people heard that. And any instruction would just
27 complicate and further create irreparable and -- and
28 unring bells -- bells that cannot be unring.

1 MR. WEBER: And let me suggest one more thing,
2 which I don't want to get into in front of the jury, but
3 I think Your Honor's experience and common sense will
4 tell you this: How is it -- how is it that there just
5 happens to be a meeting with the SEC, four lawyers from
6 Baker Botts, the FBI, and the U.S. attorney with
7 Mr. Hansen? I would suspect that's a proffer session
8 that was set up by Mr. Hansen's attorney so that
9 Mr. Hansen could perhaps cooperate. I don't want to get
10 into this. I think all of this is entirely
11 inappropriate.

12 But now what's happening is they're turning
13 the proffer session that Mr. -- presumably -- I'm only
14 presuming. Maybe they just happened to all be there by
15 coincidence -- they're -- they're turning this now as --
16 to -- to -- to prejudice the defense.

17 Thank you.

18 MR. KNAIER: Your Honor, I would just add
19 there's no possible confusion about who the FBI and the
20 rest were inquiring about. Not seconds, maybe minutes,
21 before that question was answered the witness said, "we
22 were not charged." The implication was clear that the
23 investigation and the meeting wasn't into them,
24 including -- including the listing of my own client's
25 name.

26 THE COURT: So, Ms. Rubenstein, why -- why ask
27 those questions about -- well, the FBI, the DOJ?

28 MS. RUBENSTEIN: Well, I didn't ask a question

1 about the FBI and DOJ. I just asked, "who attended the
2 meeting?" I think -- look, as I've said --

3 THE COURT: Well, isn't -- isn't a truthful
4 answer going to be what came forth?

5 MS. RUBENSTEIN: Sure. As I've said --

6 THE COURT: And wouldn't you know the answer
7 to that by asking who's there?

8 MS. RUBENSTEIN: Yes, Your Honor. What I
9 believe has been going on since the very beginning is
10 that the defendants have painted a very misleading
11 picture about what happened in the aftermath of all of
12 this, and that this all -- this all leads -- all of
13 these events flow one into another. The SEC
14 investigation, withdrawing reliance on financials, the
15 meeting with the SEC and these other governmental
16 entities, the SEC Complaint, bankruptcy, all of it flows
17 one into the other, and it's -- as I've said from the
18 very beginning, it's very hard to pull all the pieces
19 apart.

20 They have said from Day 1, "Mr. Hansen put the
21 company into bankruptcy for his own personal enrichment;
22 to make money."

23 That is not true. They all know that the
24 reason MabVax had to enter a bankruptcy process was to
25 clear title to the assets that were clouded as a result
26 of all of these government actions. The government sued
27 most of the investor defendants, and that created a
28 cloud over the title to MabVax's assets.

1 So when MabVax is limping along and has no
2 money and decides to sell its assets, the only way to do
3 that was through a bankruptcy process.

4 It wasn't because Mr. Hansen wanted to enrich
5 himself and put money into his own pocket. It was
6 because of all of this. There was a progression towards
7 all of this.

8 And they opened this door in their openings
9 when they said the whole lawsuit was ginned up by
10 Jonathan Shapiro and the reason that Dave entered
11 bankruptcy was to line his own pockets.

12 we should be entitled to rebut those
13 arguments, and this is the evidence to do that. It is
14 that the company -- the company was under SEC
15 investigation.

16 Dave met with the SEC and these other
17 governmental entities. Then the SEC sued the investors.
18 The company had no idea if its shares were valid or not.
19 There was all sorts of confusion over who had clear
20 title to MabVax's assets.

21 Dave realizes, after the -- after the
22 defendants were sued by the SEC, "I have a legitimate
23 claim here. The SEC has alleged that these defendants
24 pumped and dumped my company's stock."

25 what is he thinking? Then he's thinking,
26 "Maybe I have a lawsuit on my hands."

27 This wasn't ginned up by Jonathan. It was
28 because of the SEC Complaint.

1 All of this led to the end of the company.
2 And they opened the door to this, Your Honor, way back
3 on day one. So that's why I asked the question, and
4 that's why I'm getting into all of this.

5 MR. RICHARD: May I, Your Honor?

6 THE COURT: Yes, but at some point I need to
7 rule, and we've already been going a long time. But
8 it's your motion, so go ahead.

9 MR. RICHARD: I understand. Plaintiff's
10 counsel has now conceded that she knew the answer. She
11 knew he was going to say "FBI." She knew he was going
12 to say "Assistant U.S. Attorney." It was deliberate.

13 Your Honor explicitly reserved ruling on this
14 issue and cautioned counsel not to get into it until
15 there was a ruling.

16 Everything that was just argued is irrelevant
17 to what the predicate is for this objection and
18 motion -- we're not in front of -- for the record, for a
19 mistrial.

20 MS. RUBENSTEIN: The last thing I'll say,
21 Your Honor, is the motion was directed at very specific
22 things.

23 Their motion in limine did not say, "We move
24 to exclude from all evidence the words 'DOJ,' the words
25 'FBI,' the words 'U.S. Attorney.'"

26 They -- well, they're all laughing, but it's
27 true. They've moved --

28 THE COURT: Okay. We're not going to do this.

1 I know you have strong opinions about the merits or lack
2 thereof of each other's case. But guffaws, rolling of
3 eyes, nonverbal communications to the Court are not
4 accepted. Go hard. It's an adversary system --

5 MR. WEBER: My apologies.

6 THE COURT: -- but be professional.

7 MR. WEBER: My apologies, Your Honor.

8 THE COURT: Be courteous. We're not going to
9 do it that way. It's just inappropriate. If they were
10 doing that every time you said it, would you like that?
11 No. So don't do it.

12 Enough said.

13 Go ahead.

14 MS. RUBENSTEIN: The motion was directed at
15 very specific things. If Your Honor goes back to it, it
16 was directed at the SEC investigation, the SEC
17 Complaint, the DOJ action, and an SEC investigation
18 against IRTH. That was it. There were four things at
19 issue in that motion.

20 I did not ask the witness anything about those
21 four things. So I did not think there was any chance I
22 was crossing a line with respect to that motion.

23 THE COURT: Okay.

24 Mr. Weber, anything else?

25 MR. WEBER: No, Your Honor. I'll -- I think
26 we've said enough.

27 THE COURT: Mr. Richard, anything else?

28 MR. RICHARD: We're looking up the motion. We

1 believe it was broader than what counsel says, and we
2 believe the argument on it was broader than what
3 plaintiff's counsel asserts.

4 THE COURT: All right. This -- I know we've
5 had a standing rule that when one defense counsel makes
6 an objection, you are all deemed to join, so that we're
7 not doing that all day and all -- all weeks and all
8 months.

9 On this one, on the motion for mistrial, I
10 need to have a record of whether all defendants are
11 making the motion for a mistrial or just some and if
12 there's caveats.

13 I think I understand Mr. Richard's position,
14 and I think I understand Mr. Weber's position, and I
15 think I understand Mr. Knaier's position, meaning
16 they're all joining. They have different things to say,
17 but they're joining the motion for mistrial.

18 If that's not correct, please correct the
19 record.

20 If you are joining, I'd like you to state
21 affirmatively.

22 MR. WEBER: Your Honor, my clients, Mr. Honig
23 and Mr. Stetson, along with their entities, join the
24 motion for mistrial. We believe that this is
25 irreparable harm, irreparable prejudice. Thank you.

26 MR. KIRBY: Your Honor, my client,
27 reluctantly, but I think has to join the motion for
28 mistrial. And being prejudiced by it, but, you know,

1 they try to lump us all as one group and now you've
2 heard FBI -- FBI doesn't do civil work; FBI does
3 criminal work.

4 And the most disturbing thing is she admits
5 she knew what the answer was going to be. She knew that
6 the words that were going to lead to this motion were
7 going to come out of the witness's mouth. And I think
8 it has to be granted.

9 MR. OZANNE: Join, Your Honor, on behalf of
10 IRTH and Andrew and Robert Haag.

11 MR. KNAIER: Join on behalf of Mr. Groussman
12 and the Melechdavid entities. We believe that this has
13 caused irreparable harm.

14 THE COURT: All right. What I'm going to
15 do -- well, let me just say this. So this is -- this
16 arises out of discussions we've had before.

17 And the discussions we've had are relative to
18 Defense Motion in Limine No. 3. And we've talked a lot
19 about Defense Motion in Limine No. 3, and the result is
20 I've denied it in part and I've reserved it in part as
21 we speak.

22 So I won't recite all the hearings and
23 arguments we've had, but I will say this; that with
24 regard to -- there was a discussion after the opening
25 statements were made, and -- and I think we had started
26 with the testimony of Mr. Cohen.

27 And so the Court, in denying in part, denied
28 as to Exhibit 19 and denied as to Exhibit 21. And 19 is

1 the January 26th letter from the Securities and Exchange
2 Commission; 21 is the subpoena of February 2 of the same
3 date.

4 The Court also denied as to the fact of an SEC
5 investigation. And that was, as I say, in the context
6 of what the Court had heard at that point.

7 The Court, on subsequent occasions -- and I
8 don't know how many there is because I've lost count --
9 has also continued to reserve after argument with regard
10 to what I saw as two significant issues: One -- I
11 should say three:

12 One is the SEC Complaint coming in. And I
13 have made it quite clear to all counsel on numerous
14 occasions going back to -- well, again, I don't know how
15 many arguments we've had, but we've had a lot of
16 arguments -- the SEC Complaint, the Court was continuing
17 to reserve.

18 There was also, as I understood it, and maybe
19 this -- maybe my -- my understanding was incorrect, but
20 my understanding was -- and I'm not sure on the order --
21 that there was a discussion between Mr. Hansen and the
22 SEC. And I thought that's what the line of inquiry was
23 now.

24 Then there was a second discussion -- and
25 maybe the second discussion predated the first
26 discussion with Mr. Hansen -- with Mr. Shapiro and, as I
27 understand it, at least the Department of Justice, if
28 not the SEC as well. And I had explicitly reserved on

1 whether those conversations were going to come into
2 evidence. And we talked long and hard about hearsay,
3 352, et cetera.

4 And so -- and I might -- like I say, I might
5 have it wrong. Maybe there were more than two
6 discussions. Maybe there were -- maybe there's only one
7 discussion.

8 But this line of inquiry, I thought, was going
9 to -- what I thought was the first line of discussion,
10 and that's between Mr. Hansen and the SEC. And maybe it
11 was just stated -- I'm not blaming anyone or -- and it
12 may be entirely the Court's fault, but my understanding
13 was that discussion occurred.

14 And the question is, is Mr. Hansen going to be
15 able to testify to what SEC told him relative to issues
16 such as effect on the hearer versus hearsay? And the
17 larger context was 352.

18 Then with regard to the second discussion,
19 apparently, between Mr. Shapiro and maybe the SEC, but
20 maybe the Department of Justice, I thought, again, it
21 came later.

22 And I thought that that discussion had the
23 same ramifications: hearsay, effect on hearer, assuming
24 it was reported to Mr. Hansen.

25 The context there was advice of counsel, at
26 least in part, as to why MabVax did or did not do what
27 they did, such as putting out the press release after
28 receiving information from the SEC and then ultimately

1 resulting in the delisting of MabVax from NASDAQ.

2 So I'm reciting all this because I want to
3 state on the record what my understanding was. And
4 maybe I'm completely listening to a different case.
5 Maybe I got it all wrong. But that was my
6 understanding.

7 The main two things that I had that I was
8 reserving on was, one -- it should be technically
9 three -- but one, the SEC Complaint, and we all know you
10 both argued to your hearts' content on the SEC complaint
11 and whether that should be admitted or not.

12 And the second thing was either one or two --
13 and I think it was two conversations: One with
14 Mr. Hansen; one with Mr. Shapiro. Maybe it was one
15 conversation. Maybe everybody was there at the same
16 time on both conversations. And maybe there was a third
17 conversation.

18 But the issue for the Court was: Is that
19 conversation, is that information, is that -- assuming
20 there was documentation -- is any of that coming in
21 through Mr. Hansen?

22 So that's what I reserved on. And the
23 mistrial is now made in relation to the question and
24 answers just made, which are different than what I just
25 relayed.

26 what I'd like to do is consider this further.
27 And part of the reason I'm considering it further is I
28 would like the defense, who is making the motion, to

1 draft a curative instruction for my consideration. Show
2 it to plaintiff and I will consider it.

3 And I recognize that at least one of you is
4 taking the position -- that's Mr. Richard -- that a
5 curative instruction is ineffective. But I would still
6 like, Mr. Richard, for you to participate. If you don't
7 want to participate in that, you don't have to.

8 But I'm asking from the defense side -- not
9 the plaintiff, the defense side, who is making the
10 motion -- to draft a curative instruction for my
11 consideration, and I will consider that.

12 And I want to give you time to do that. And I
13 want to be able to think about whether I should do that
14 or whether I should just grant the motion or just deny
15 the motion.

16 And so -- but I want to give the defense that
17 opportunity, because I think one of you suggested, and I
18 would like to see what you have in mind. And so I'm
19 reserving.

20 And let's come back at 8:45 tomorrow so that
21 you can do that this evening. Bring it at 8:45. I'll
22 look at it, and I'll make a ruling on the motion for
23 mistrial.

24 So we've been going now for a long time. I
25 wanted to talk about Exhibit 64 and I wanted to talk
26 about the unredacted 8-K, but let's not do that.

27 Let's continue, Ms. Rubenstein. From your
28 point of view, you can reserve on those two issues. In

1 other words, if you're going to finish your direct, you
2 can turn it over to Mr. Weber on cross, reserving on
3 those two issues. I just don't want to do this the rest
4 of the afternoon.

5 MS. RUBENSTEIN: I totally understand.

6 THE COURT: We have a half day anyway.

7 MS. RUBENSTEIN: I totally understand. So are
8 you saying that I can finish my exam without reaching
9 those two issues, cross can start, and we can -- I can
10 still go back to those?

11 THE COURT: Well, when you say "those two
12 issues," stay away from what we just talked about.

13 MS. RUBENSTEIN: Yes, I will stay away from --

14 THE COURT: And so the two issues --

15 MS. RUBENSTEIN: -- I'm going to move on.

16 THE COURT: Yes, 64 and 8-K -- the 8-K. The
17 one paragraph that has been redacted that you want in, I
18 wanted to talk about those things.

19 MS. RUBENSTEIN: Okay.

20 THE COURT: I don't -- we need to talk about
21 those outside the presence of the jury, but I don't want
22 to go till 4:30 doing that.

23 MS. RUBENSTEIN: Understood. Well, I --
24 there's -- there's -- there's other documents that I
25 think are now clouded by this discussion that I don't
26 want to get into with Mr. Hansen.

27 THE COURT: And you can reserve.

28 MS. RUBENSTEIN: Okay. So can I tell you what

1 I would like to reserve on?

2 THE COURT: Yes.

3 MS. RUBENSTEIN: Okay. So I would like to
4 reserve on --

5 THE COURT: But just so you understand, I'm
6 allowing you to reserve, so you don't necessarily have
7 to tell me.

8 MS. RUBENSTEIN: Okay.

9 THE COURT: I'm allowing you to reserve on
10 anything that's in issue.

11 MS. RUBENSTEIN: Okay.

12 THE COURT: So what's in issue is the mistrial
13 and the related questions.

14 MS. RUBENSTEIN: Right.

15 THE COURT: 64 and the 8-K unredacted, those
16 are -- I'm allowing you to reserve.

17 MS. RUBENSTEIN: And the video.

18 THE COURT: If you want to reserve on other
19 things, you may. So I -- suit yourself. You can, but
20 you're not required to. I'm allowing you to reserve.

21 MS. RUBENSTEIN: Meaning -- meaning cross can
22 go forward, and I can come back to these?

23 THE COURT: You can come back on redirect.

24 MS. RUBENSTEIN: Okay. All right. So fine.
25 So then I think we can move forward safely without --

26 THE COURT: And if you want to state just so
27 it's clear what you're reserving on, this would be --
28 but what I'm telling you is I'm going to allow you to

1 reopen, because I don't want to spend the rest of the
2 day doing this.

3 MS. RUBENSTEIN: I understand. So that's
4 fine.

5 THE COURT: I want to get time with the jury.

6 MS. RUBENSTEIN: I understand.

7 THE COURT: So...

8 MS. RUBENSTEIN: I will reserve on a number of
9 things.

10 THE COURT: All right. Is that all right with
11 defense? That seems to be a logical approach?

12 MR. WEBER: That is the logical approach.

13 I hate to bring up the last thing, though, but
14 there was a question that was asked just before you
15 dismissed the jury and an objection given. What's Your
16 Honor's intention on informing the jury when it comes
17 back?

18 THE COURT: Wasn't that, like, about two hours
19 ago?

20 MR. WEBER: Yeah, something like that,
21 Your Honor.

22 THE COURT: I'm kidding. It's more like about
23 a half hour.

24 MR. WEBER: It's hanging, right?

25 THE COURT: So, Christina, could you read back
26 the last question and answer, please.

27 (Record read as requested.)

28 THE COURT: So we're back on the record.

1 Granted.

2 MR. SHAPIRO: Granted?

3 MS. RUBENSTEIN: What's granted?

4 THE COURT: Granted. The motion to strike the
5 last answer that I heard --

6 MS. RUBENSTEIN: Okay.

7 THE COURT: -- that Christina just read back.

8 MS. RUBENSTEIN: Okay.

9 MR. WEBER: Your Honor, may we request when
10 the jury comes back that the jury is instructed that the
11 last response was stricken and they should not consider
12 it?

13 THE COURT: That's fine.

14 MS. RUBENSTEIN: That's fine.

15 MR. RICHARD: Just so our position is clear,
16 we believe that --

17 MR. WEBER: Is insufficient.

18 MR. RICHARD: -- is insufficient.

19 MR. WEBER: Right. But at least while the
20 jury is sitting here.

21 THE COURT: Wait. I -- I thought I
22 understood. Now I don't. So you're -- I'm asking you
23 for a curative instruction.

24 MR. WEBER: Yes.

25 THE COURT: This is not in a curative
26 instruction.

27 MR. WEBER: Right.

28 THE COURT: You're just asking me to tell them

1 that the last answer was --

2 MR. RICHARD: Stricken.

3 THE COURT: -- stricken.

4 MR. WEBER: And should not be considered.

5 THE COURT: Or are you saying that that's the
6 curative instruction, or you want another --

7 MR. WEBER: No.

8 (Simultaneous speakers.)

9 THE COURT: Okay. And I didn't think so, but
10 I didn't understand Mr. Richard's position there. So
11 what would you like?

12 MR. RICHARD: No, no, I just wanted it clear
13 that that was not the curative instruction.

14 And then --

15 THE COURT: Okay.

16 MR. RICHARD: -- before we resume, we'd like a
17 humanitarian break.

18 THE COURT: Okay. Fine. Let's take five
19 minutes.

20 (Recess.)

21 (The jury enters the courtroom.)

22 THE COURT: All right. Welcome back, ladies
23 and gentlemen. I want to thank you very much for your
24 patience again.

25 with regard to the last answer that was given
26 just before we took the break, there was a motion to
27 strike that was made, and the Court has granted that
28 motion, which means you are -- the answer is stricken,

1 and you are to disregard the answer, treat it as though
2 it never occurred.

3 MS. Rubenstein.

4 MS. RUBENSTEIN: Thank you, Your Honor.

5 BY MS. RUBENSTEIN:

6 Q. Mr. Hansen, the jury has heard that MabVax
7 entered bankruptcy. So I want to turn to that topic
8 now.

9 During the bankruptcy process, MabVax sold its
10 assets to a company called "BioNTech," correct?

11 A. Yes, that's right.

12 Q. All right. Tell us about BioNTech.

13 A. BioNTech is a German biotechnology firm.
14 They've got a lot of things going in the anticancer
15 area. And then they also have mRNA vaccines.

16 MR. RICHARD: Objection. Objection,
17 Your Honor. Foundation.

18 THE COURT: Sustained.

19 BY MS. RUBENSTEIN:

20 Q. That's fine. Thank you --

21 A. Okay.

22 Q. -- Mr. Hansen.

23 When did MabVax start discussions with
24 BioNTech about a possible transaction?

25 A. In January of 2019, I met with two principals
26 from BioNTech that were introduced to me by Greenhill in
27 what's called the JP Morgan conference. It's an annual
28 investor meeting in San Francisco.

1 Q. And did you tell BioNTech anything about
2 MabVax's financial situation at the time?

3 A. Yes, I did. I indicated that we were
4 desperately short of cash, and so if there was an
5 interest in any of our assets, they'd need to move
6 pretty quickly.

7 Q. And how did conversations with BioNTech
8 progress after that initial meeting?

9 A. Very -- very quickly. The -- the chief
10 executive officer and founder of BioNTech was very
11 interested in the work that we were doing and so saw an
12 opportunity that he wanted to take advantage of.

13 Q. And how did bankruptcy come into play during
14 the discussions about a sale of assets to BioNTech?

15 A. Well, all through the latter part of 2018 and
16 going into 2019, you know, we had been speaking to
17 bankruptcy counsel and -- and looking at different
18 options about what are the -- what are the possibilities
19 of going forward.

20 And so bankruptcy was discussed, and we
21 educated ourselves regarding some of those issues that
22 are in bankruptcy. So that's where we started.

23 Q. Okay. Did MabVax hire bankruptcy counsel?

24 A. Yes, we did. We hired a firm called the
25 Rosner Law Group based in Delaware.

26 Q. And how did MabVax have the money to hire
27 bankruptcy counsel when it was so short on cash?

28 A. Well, one of the -- of the early work that

1 BionTech did with MabVax was that they actually made a
2 loan, a promissory note, to MabVax to keep us afloat for
3 us to be able to hire bankruptcy counsel and begin a
4 process of going to a Chapter 11.

5 Q. All right. And how much money over time has
6 MabVax paid to bankruptcy counsel at the Rosner Law
7 Group?

8 A. So far I think the number -- the last number I
9 saw was 1,400,000.

10 Q. All right. Who was involved in putting
11 together the bankruptcy petition?

12 A. Well, primarily it was the Rosner Law Group
13 with some help from myself.

14 Q. And did the board of directors have to consent
15 to MabVax entering bankruptcy?

16 A. Yes, absolutely.

17 Q. All right.

18 MS. RUBENSTEIN: If we could pull up
19 Exhibit 28, please.

20 (Court's Exhibit No. 28, Mabvax Therapeutics
21 Holdings, Inc.'s Voluntary Petition for
22 Bankruptcy, In re MabVax Therapeutics Holdings
23 Inc., et al., ECF No. 1, Case No. 19-10603-JTD
24 (Bankr. D. Del.), first identified.)

25 BY MS. RUBENSTEIN:

26 Q. Mr. Hansen, do you recognize this document?

27 A. It's not up yet.

28 Q. Is it on your screen?

1 A. No.

2 MS. RUBENSTEIN: Some technical trouble?

3 THE COURT: Yes.

4 TRIAL TECHNICIAN: Is it on your screen,
5 Your Honor?

6 THE COURT: It's on mine.

7 THE WITNESS: Maybe I kicked it.

8 THE COURT: Thank you.

9 MS. RUBENSTEIN: Thank you.

10 BY MS. RUBENSTEIN:

11 Q. All right. Mr. Hansen, do you recognize this
12 document?

13 A. Yes. This is the voluntary -- this is our
14 filing for a voluntary petition for bankruptcy.

15 MS. RUBENSTEIN: All right. Your Honor, I'd
16 move to admit Exhibit 28 in evidence.

17 MR. WEBER: Could you scroll down a bit,
18 please?

19 How many pages is this?

20 TRIAL TECHNICIAN: 14.

21 MR. WEBER: Oh, that's it? Okay. No -- no
22 objection, Your Honor.

23 THE COURT: Received.

24 (Court's Exhibit No. 28 received into
25 evidence.)

26 BY MS. RUBENSTEIN:

27 Q. All right. So, Mr. Hansen, you testified that
28 going into bankruptcy required the consent of the board

1 of directors.

2 So if we could go to page 6 of this document,
3 I'd like you to tell us what's reflected on page 6.

4 A. This is a unanimous written consent of the
5 board of directors to enter bankruptcy.

6 Q. All right. And did the -- did the board of
7 directors deem the bankruptcy process to be in the best
8 interests of the company?

9 A. Yes, we did.

10 Q. Okay.

11 MS. RUBENSTEIN: Let's go to page 7, please.

12 BY MS. RUBENSTEIN:

13 Did the board of directors deem the
14 bankruptcy -- I'm sorry.

15 Did the board of directors deem it in the best
16 interests of the company to enter into an asset purchase
17 agreement with BionTech?

18 A. Yes, they did.

19 Q. Okay.

20 MS. RUBENSTEIN: And let's go to page 9. I
21 want to see who voted on the resolution.

22 If you could scroll down, please.

23 BY MS. RUBENSTEIN:

24 Q. Mr. Hansen, who voted on this resolution?

25 A. These were the three board members that we had
26 at the time. Myself, Gregory Hanson, and
27 Dr. Phillip Livingston.

28 Q. Okay.

1 MS. RUBENSTEIN: You can take that down.
2 Thank you, Mr. Hutton.

3 BY MS. RUBENSTEIN:

4 Q. So, Mr. Hansen, please tell us what happened
5 during the bankruptcy process as far as how it was
6 decided to whom MabVax would sell its assets.

7 A. So the -- the bankruptcy process that we
8 entered into was -- is a Chapter 11, what's called a 363
9 process. And essentially it's an auction process. So
10 anyone who is interested in acquiring the -- the
11 assets --

12 MR. RICHARD: Objection. Foundation.

13 THE COURT: Sustained.

14 BY MS. RUBENSTEIN:

15 Q. Mr. Hansen, do you have personal knowledge of
16 what happened during the course of MabVax's bankruptcy?

17 A. Yes, I do.

18 Q. All right. And do you have personal knowledge
19 of how the auction for MabVax's assets took place?

20 A. Yes, I do.

21 Q. All right. Could you please go ahead and
22 explain that auction process to us.

23 MR. RICHARD: Objection, Your Honor. Hearsay.

24 THE COURT: Overruled.

25 THE WITNESS: So I was -- I was at the auction
26 process. I had recruited Scale Therapeutics to be a
27 competitive bidder to BionTech for the assets, so each
28 entity that wanted to acquire the assets could place

1 bids. We were all in one room and they each placed a --
2 a -- a bid and they -- they bid over the top of each
3 other for several rounds, and at the end of the -- of
4 the process, BioNTech was the winner of the auction
5 process.

6 BY MS. RUBENSTEIN:

7 Q. All right. And how much was BioNTech's final
8 bid?

9 A. It was -- I remember it was 3.9, almost
10 \$4 million, plus they took on what are called cure costs
11 or debt that MabVax had incurred, and that debt was
12 1.6 million. So the total was about \$5 1/2 million.

13 Q. And how much did Scale Therapeutics end up
14 bidding?

15 A. Well, they were certainly less than the -- the
16 \$4 million BioNTech offer and they would not -- they
17 would not make as much of an effort on the cure costs,
18 so the cure cost bid was much lower.

19 Q. And, Mr. Hansen, can you explain to the jury
20 why you decided to go the bankruptcy route.

21 A. Well, with all that had happened and the SEC
22 investigation hanging over our heads, it was very clear
23 that there was a cloud over the assets that MabVax had.
24 And so one of the advantages of an auction process in
25 bankruptcy is, is that the eventual winner of the -- of
26 the auction process has clear title to the assets that
27 are won during the auction. So -- so that was one of
28 the important reasons for doing it.

1 Q. All right. Can we please pull up
2 Exhibit 1982, please.

3 (Court's Exhibit No. 1982, Order (I) Approving
4 The Sale Of Substantially All Of The Debtors'
5 Assets; (II) Approving The Assumption And
6 Assignment Of Executory Contracts And
7 Unexpired Leases; (III) Authorizing
8 Consummation Of Sale Transaction; And (IV)
9 Granting Related Relief with Exhibits A-B, In
10 re MabVax Therapeutics Holdings Inc., et al.,
11 ECF No. 141, Case No. 19-10603-JTD (Bankr. D.
12 Del.), attaching Asset Purchase Agreement and
13 Exhibits, first identified.)

14 MS. RUBENSTEIN: And I'm going to start on
15 page 24, so it might be helpful to go there so
16 Mr. Hansen can see what that is.

17 BY MS. RUBENSTEIN:

18 Q. Mr. Hansen, do you recognize this document?

19 A. This is the Asset Purchase Agreement between
20 MabVax and BioNTech.

21 Q. And is this the resulting agreement after the
22 auction?

23 A. Yes.

24 Q. All right.

25 MS. RUBENSTEIN: Your Honor, I'd move to admit
26 Exhibit 1982 in evidence.

27 MR. WEBER: Your -- Your Honor, I have no
28 objection to the Asset Purchase Agreement, but I believe

1 it's an exhibit to a larger document and I think the --
2 the preceding pages might have some objectionable
3 content.

4 MS. RUBENSTEIN: Do you want to -- can you
5 jump back to page 1 so they can see it.

6 MR. WEBER: I would have to see it all to be
7 able to -- to -- yeah, as I said, the Asset Purchase
8 Agreement, no objection. I think there's going to be
9 some objections to the preceding pages.

10 MS. RUBENSTEIN: I don't know what the
11 objection is to the preceding pages.

12 MR. WEBER: Hearsay.

13 THE COURT: All right. Just taking the Asset
14 Purchase Agreement portion, any objection?

15 MR. WEBER: No.

16 THE COURT: All right. The asset purchase
17 agreement is received.

18 (Court's Exhibit No. 1982 (Redacted) received
19 into evidence.)

20 MS. RUBENSTEIN: Okay. I'd also move to admit
21 the other portions under 1280.

22 THE COURT: Official record?

23 MS. RUBENSTEIN: As an official record, yes,
24 Your Honor.

25 THE COURT: Response.

26 MR. WEBER: I don't believe that a court
27 record like this qualifies for 1280.

28 THE COURT: How many pages is it?

1 MS. RUBENSTEIN: Twenty -- the -- the -- the
2 part I'm seeking to admit under 1280 is 23 pages, I
3 believe, Your Honor.

4 THE COURT: Independent of the Asset Purchase
5 Agreement?

6 MS. RUBENSTEIN: Correct, the Asset Purchase
7 Agreement begins on page 24.

8 THE COURT: Okay. To be fair, I should
9 probably read that.

10 MS. RUBENSTEIN: Okay.

11 THE COURT: And I don't want to take that time
12 now.

13 MS. RUBENSTEIN: Understood. Let's just
14 start -- let's just only admit starting at page 24, can
15 we do that? Thank you.

16 BY MS. RUBENSTEIN:

17 Q. All right. So, Mr. Hansen, you said this is
18 the Asset Purchase Agreement, the ultimate agreement
19 entered into between BionTech and MabVax?

20 A. Yes, it is.

21 Q. All right.

22 MS. RUBENSTEIN: Can we please go to page 45.

23 BY MS. RUBENSTEIN:

24 Q. I want to take a look at Section 2.08, which
25 refers to the Purchase Price, and it says here:

26 "The aggregate purchase price for the
27 Purchased Assets shall be the aggregate of" 3. -- sorry,
28 "\$3,915,000.00 and Assumed Cure Costs, (the 'Purchase

1 Price'), plus the assumption of the Assumed
2 Liabilities."

3 Mr. Hansen, tell us what that means.

4 A. Well, the 3.915 number is the winning bid in
5 the auction.

6 Q. By BioNTech?

7 A. By -- by BioNTech.

8 Q. Okay.

9 A. And the assumed cure costs are a list of what
10 BioNTech considered to be key vendors that supported the
11 clinical trial program and the assets of MabVax, and
12 they have an option or a -- yeah, an option to pay those
13 debts that MabVax had incurred, and so the cure costs
14 are those payments.

15 Q. All right. Now, let's go down to page 84 and
16 look at those cure costs.

17 MS. RUBENSTEIN: Can you scroll to the top,
18 please, so he can see what this is. Whoops. Go back
19 one more page. There we go.

20 BY MS. RUBENSTEIN:

21 Q. "Assumed Contracts and Related Cure Payments."

22 Is that what you're referring to, Mr. Hansen?

23 A. Yes, it is.

24 Q. Okay.

25 MS. RUBENSTEIN: And let's -- now let's go
26 down to page 88. At the bottom, please.

27 BY MS. RUBENSTEIN:

28 Q. Mr. Hansen, what does this say is the total

1 value of those assumed cure costs and other contracts?

2 A. 1.651 and \$160.

3 Q. All right. So earlier when you testified that
4 the total value of the BioNTech offer was about
5 5.5 million, are you adding this 1.65 plus the cash
6 offer of 3.9 million?

7 A. Yes, I am.

8 Q. All right.

9 MS. RUBENSTEIN: Let's go back to page 70,
10 please.

11 BY MS. RUBENSTEIN:

12 Q. In Subsection H it says:

13 "Each of David Hansen, Greg Hanson and Paul
14 Maffuid shall have entered into an employment or
15 consultancy agreement with Buyer or an Affiliate of
16 Buyer on terms mutually acceptable to Buyer and such
17 individuals."

18 Is -- does "buyer" refer to BioNTech here?

19 A. It does.

20 Q. All right. So explain to us what -- what this
21 means.

22 MR. WEBER: Objection. Calls for a legal
23 conclusion.

24 THE COURT: Overruled.

25 THE WITNESS: BioNTech wanted to have some
26 individuals, key individuals from MabVax participate in
27 a -- a transition of -- of the assets to BioNTech. And
28 so the -- they wanted a -- an opportunity to engage us

1 either as an employment or a consulting agreement.

2 BY MS. RUBENSTEIN:

3 Q. Was this Asset Purchase Agreement publicly
4 available?

5 A. Yes.

6 Q. Was it made available on the bankruptcy court
7 docket?

8 A. Yes, it was.

9 Q. All right. So the fact that you and Greg
10 Hanson and Dr. Maffuid would get an employment or
11 consulting contracts with BionTech, that was a fact that
12 was knowable to the public, correct?

13 A. Yes.

14 Q. Did the bankruptcy court approve the asset
15 sale to BionTech under the terms spelled out in this
16 agreement?

17 A. Yes, they had to for it to take effect.

18 Q. All right. So you mentioned earlier that
19 Scale in the bidding process only -- well, did you --
20 tell us again, how much did Scale offer in the bidding
21 process.

22 A. I don't actually remember the exact number,
23 but it was less than the bid that BionTech put in.

24 Q. Was it less than the 3.9 million bid that
25 BionTech ended up at?

26 A. Yes.

27 Q. So even before adding on the cure costs,
28 Scale's offer was lower?

1 A. Yes.

2 Q. So why didn't MabVax offer -- accept the offer
3 from Scale?

4 A. Because it was not the winning bid. In the
5 363 process -- essentially we don't pick the winner, the
6 winner is the winning bidder.

7 Q. Okay. The jury has also heard about a company
8 called Oncotelic.

9 Do you recall negotiations with a company
10 called Oncotelic?

11 A. Yes, I do.

12 Q. Did Oncotelic make a bid during the auction?

13 A. No, they did not.

14 Q. Why didn't MabVax pursue a separate
15 transaction with Oncotelic?

16 A. We looked into that and actually thought we
17 had a merger agreement and we announced that merger
18 agreement, but a couple of things happened: One is that
19 the banker that Oncotelic wanted to use had raised an
20 objection that as long as certain shareholders were
21 involved --

22 MR. WEBER: Objection. Hearsay.

23 THE COURT: Sustained.

24 MR. RICHARD: Move to strike.

25 THE COURT: Granted.

26 BY MS. RUBENSTEIN:

27 Q. The decision not to move forward with a
28 transaction with Oncotelic, was that MabVax's decision

1 or Oncotelic's decision?

2 A. I received an -- an email from the CEO of
3 Oncotelic telling me that he no longer wanted to pursue
4 it.

5 MR. WEBER: Objection. Hearsay.

6 THE COURT: Sustained.

7 BY MS. RUBENSTEIN:

8 Q. Was it MabVax's --

9 MR. WEBER: Move to strike, please.

10 THE COURT: Granted.

11 MR. WEBER: Thank you.

12 BY MS. RUBENSTEIN:

13 Q. Mr. Hansen, very simple question: Was it
14 MabVax's decision or Oncotelic's decision not to move
15 forward with that transaction?

16 A. Oncotelic's.

17 Q. Okay. Sir, when did MabVax truly cease its
18 operations?

19 A. Well, the -- the company itself truly ceased
20 operations the day of the Asset Purchase Agreement
21 taking place. That was May 7th of 2019.

22 Q. Okay. And when that happened, you got a
23 severance payment, right, we talked about that earlier
24 when we discussed your compensation?

25 A. Well, I filed a claim for a -- a severance
26 payment.

27 Q. And was that claim ultimately paid to you?

28 A. Ultimately paid in 2022.

1 Q. And was that payment approved by the
2 bankruptcy court?

3 MR. RICHARD: Objection, Your Honor.
4 Relevance.

5 THE COURT: Say it again.

6 MR. RICHARD: Irrelevant. Prejudicial.
7 Hearsay.

8 THE COURT: Sustained.

9 BY MS. RUBENSTEIN:

10 Q. You said you filed an application for the
11 payment?

12 A. A claim, yes.

13 Q. I'm sorry. Thank you. You filed a claim for
14 the payment and that claim was paid to you, correct?

15 A. Yes.

16 Q. All right. Why were you entitled to the
17 severance payment?

18 A. Well, I had an employment contract, and at the
19 time that the Asset Purchase Agreement was finalized,
20 there were several provisions in the -- in the
21 employment agreement that triggered the severance. One
22 was loss of job. I -- we terminated all employment.
23 The other was sale of the majority of the assets.
24 That's another condition that triggers a -- a -- a
25 severance payment. So there were several that were
26 available. We just used the termination one.

27 Q. All right. And were you entitled to other
28 benefits as a result of the sale of MabVax's assets?

1 A. well, recovery of unpaid wages, and health
2 benefits for a year, and then there was a proration of a
3 bonus.

4 Q. And under the terms of your employment
5 contract, would you have been entitled to those payments
6 whether you did a deal with BionTech or Scale or any
7 other company?

8 A. Yes.

9 Q. Okay. Mr. Hansen, since MabVax is no longer
10 operational, who will recover if MabVax is awarded
11 damages in this lawsuit?

12 MR. RICHARD: Objection. Foundation.

13 THE COURT: Sustained.

14 BY MS. RUBENSTEIN:

15 Q. Sir, are you familiar with who the -- are you
16 generally familiar with who the remaining shareholders
17 of MabVax are?

18 A. Generally.

19 Q. Okay. And will the remaining shareholders of
20 MabVax, for instance, the common shareholders of MabVax,
21 receive anything if MabVax is awarded damages in this
22 lawsuit?

23 MR. RICHARD: Objection. Foundation.

24 THE COURT: Overruled.

25 THE WITNESS: So the way that this works would
26 be is if there is a recovery, then we would apply to the
27 court for -- and present a plan to distribute those
28 recovery funds to shareholders. And how that is done is

1 really a matter of -- of the court's final decision
2 about that.

3 BY MS. RUBENSTEIN:

4 Q. And are you talking about the bankruptcy
5 court?

6 A. Yes.

7 Q. All right.

8 MS. RUBENSTEIN: Can we pull up Exhibit 1521,
9 please.

10 (Court's Exhibit No. 1521, Chart of MabVax
11 Non-Objecting Beneficial Owners as of 3/20/20,
12 first identified.)

13 BY MS. RUBENSTEIN:

14 Q. Mr. Hansen, do you recognize this document?

15 A. It's a listing of primarily common
16 shareholders that are willing to have their name and
17 holdings listed.

18 Q. Okay.

19 MS. RUBENSTEIN: Your Honor, at this time I'd
20 move to admit 1521 in evidence.

21 MR. RICHARD: Objection.

22 MR. WEBER: Foundation.

23 MR. RICHARD: And hearsay.

24 MR. WEBER: And hearsay.

25 THE COURT: Sustained.

26 BY MS. RUBENSTEIN:

27 Q. All right. Let me ask this, Mr. Hansen: Do
28 you know how many -- approximately how many common

1 shareholders of the company are remaining?

2 A. According to this list, about 2,000.

3 Q. And are those --

4 MR. RICHARD: Objection, Your Honor. Move to
5 strike.

6 THE COURT: Ground?

7 MR. WEBER: Still lacks foundation.

8 MR. RICHARD: Same thing. Hearsay and lacks
9 foundation. He's saying what the document states or how
10 many -- what's on the face of the document.

11 THE COURT: Denied.

12 BY MS. RUBENSTEIN:

13 Q. Sorry, what was your answer?

14 A. I need to hear the question.

15 Q. Yes. How many -- approximately how many
16 common shareholders remain of MabVax?

17 A. According to this list, around 2,000.

18 Q. All right. And assuming you go through the
19 process -- assuming there's a recovery in this case and
20 you go through the process of applying to the bankruptcy
21 court, will those approximately 2,000 shareholders
22 recover money?

23 MR. RICHARD: Objection, Your Honor.

24 MR. WEBER: Objection.

25 MR. RICHARD: Leading, foundation.

26 MR. WEBER: Speculation also.

27 THE COURT: Sustained.

28 ///

1 BY MS. RUBENSTEIN:

2 Q. Mr. Hansen, what's your understanding as to
3 what will happen to any recoveries, if there are any, at
4 the end of this case?

5 MR. WEBER: Same objections.

6 THE COURT: Same ruling.

7 BY MS. RUBENSTEIN:

8 Q. Mr. Hansen, you're the bankruptcy plan
9 administrator, are you not?

10 A. I am.

11 Q. All right. And do you have personal knowledge
12 of how any monies that are received by the estate get
13 distributed?

14 A. Yes, I do.

15 Q. All right. And do you have knowledge of what
16 will happen to any money that is recovered if awarded as
17 damages in this case?

18 MR. RICHARD: Objection. Legal opinion,
19 complex, prejudicial, outweighs --

20 THE COURT: Sustained.

21 MS. RUBENSTEIN: All right. Let's take that
22 down.

23 BY MS. RUBENSTEIN:

24 Q. We were talking earlier about a -- about your
25 agreement, your consulting agreement with BioNTech that
26 came out of the sale of assets.

27 why did you agree to consult with BioNTech?

28 A. I felt an obligation. We had worked so hard

1 for so long to develop the 5B1 antibody and got it into
2 the clinic, and we really felt that we were onto
3 something that would be useful.

4 And so we felt it would be important to
5 transition that to BioNTech, who was very interested in
6 continuing the clinical development process.

7 Q. And what were your responsibilities as a
8 consultant?

9 A. Well, primarily to introduce BioNTech to all
10 of the clinical investigators, to introduce them to
11 SciQuus, and to facilitate the transition of that
12 responsibility to BioNTech. To facilitate, you know, a
13 transition of all of the data that was resident at
14 MabVax, which was a large amount of data for them.

15 And so they had flown in several groups of
16 people to -- that we worked with, and then we actually
17 flew to Germany as well to help with the transition
18 process.

19 Q. What happened during that trip to Germany?

20 A. We met with a whole variety of people at -- at
21 BioNTech to do all this planning to make the transition
22 work.

23 Q. And what was -- what was the purpose of that
24 meeting?

25 A. To facilitate the -- the -- the reinitiation
26 of the clinical trial.

27 Q. Okay. And what is your understanding of the
28 current state of the clinical trial?

1 MR. RICHARD: Objection, Your Honor.

2 MR. WEBER: Objection. Hearsay.

3 THE COURT: Sustained.

4 BY MS. RUBENSTEIN:

5 Q. All right.

6 MS. RUBENSTEIN: Let's -- let's pull up
7 Exhibit 1538, please.

8 (Court's Exhibit No. 1538, ClinicalTrials.gov
9 - Study Details - Study of HuMab-5B1 (MVT
10 5873) in Subjects With Pancreatic Cancer or
11 Other Cancer Antigen 199 (CA19-9) Positive
12 Malignancies, first identified.)

13 BY MS. RUBENSTEIN:

14 Q. Mr. Hansen, do you recognize this document?

15 A. Yes.

16 Q. All right.

17 MS. RUBENSTEIN: Your Honor, I'd move to
18 admit --

19 BY MS. RUBENSTEIN:

20 Q. Well, let me ask you -- let me ask you some
21 foundational questions first.

22 what do you -- where did this document come
23 from?

24 A. This is a website that is run by the
25 National -- the National Library of Medicine. It's
26 called ClinicalTrials.gov.

27 Q. Okay. Is this a federal government website?

28 A. Yes.

1 Q. Okay. And when MabVax was running the
2 clinical trial, did MabVax submit information to be
3 published on this website?

4 A. Yes. U.S. regulations require that anyone
5 doing human clinical trials has to register and keep
6 updated information on their clinical trial.

7 Q. And you said -- I'm sorry, did you say it was
8 run by the National Library of Medicine?

9 A. Yes.

10 Q. And does someone from the National Library of
11 Medicine review information before it gets posted on
12 this ClinicalTrials.gov website?

13 MR. WEBER: Objection. Foundation and
14 hearsay.

15 THE COURT: Sustained.

16 BY MS. RUBENSTEIN:

17 Q. Well, Mr. Hansen, did you say that MabVax
18 itself would submit information to this website while it
19 was running the clinical program?

20 A. Yes, we would.

21 Q. And does -- did a person from the National
22 Library of Medicine then review that information before
23 it got posted?

24 MR. WEBER: Same objections, Your Honor.

25 THE COURT: Sustained.

26 MS. RUBENSTEIN: Your Honor, I'd move to admit
27 1538 as a -- as an official record under 12 -- Evidence
28 Code 1280.

1 MR. RICHARD: Objection, Your Honor, hearsay.

2 THE COURT: Sustained.

3 MS. RUBENSTEIN: Okay.

4 BY MS. RUBENSTEIN:

5 Q. Mr. Hansen, you've been on the stand for many
6 days. Looking back on all of this, I'd like you to tell
7 us, what are the ways in which MabVax was injured by the
8 actions of the defendants?

9 Go ahead.

10 A. Okay. I'm just waiting for --

11 Q. Go ahead.

12 MR. RICHARD: Your Honor, we object to the
13 open-ended nature of the question. And it invites
14 answers that we may not have time to object to.

15 THE COURT: Overruled at this point.

16 MR. KIRBY: Your Honor --

17 THE WITNESS: So MabVax was killed as a
18 company, so there's certainly the death of the company.
19 And the company had value. And we were doing valuable
20 work. And so I think that that's important to try to
21 set forth at the beginning.

22 I think that there's -- there were certainly,
23 as we've gone through in much of what we've said,
24 there's a lot of vendors that were forced upon MabVax
25 and that -- those were vendors that were not wanted
26 and -- and -- and not needed. And so that all had a
27 cost. And that cost was substantial.

28 And also, there was a -- a cost to trying to

1 recover the company by going through the SEC
2 investigation. And the cost associated with that and
3 the Delaware Chancery Court. And so those were also
4 costs that added up into the millions of dollars.

5 So there were a variety of things that
6 occurred.

7 And I think part of the damage also is the
8 fact that there -- there were patients who were
9 benefiting from what we were doing. And we were unable
10 to continue. And I thought that was really important
11 to -- to point out.

12 BY MS. RUBENSTEIN:

13 Q. Mr. Hansen, why did you file this lawsuit on
14 behalf of MabVax?

15 A. Well, as I learned more and more over time, I
16 realized that MabVax had been taken advantage of and
17 that there was a scheme perpetrated by the defendants
18 to -- I'll use a vernacular -- to use MabVax as an ATM
19 machine for their own benefit.

20 It cost us a company. It cost us a lot of
21 money. And we were defrauded and -- and that, I felt,
22 could not be let go. Couldn't walk away from that.

23 MS. RUBENSTEIN: Thank you, Mr. Hansen.

24 I have nothing further at this time, subject
25 to various reservations.

26 THE COURT: Mr. Weber.

27 MR. WEBER: May I move the podium, Your Honor?

28 THE COURT: Yes, yes, and maybe have Steve

1 help you just because --

2 THE BAILIFF: Where would you like it?

3 THE COURT: -- there's a lot of wires and --

4 MR. WEBER: That is a great question. Maybe
5 move it back this way a little.

6 And, Your Honor, it's okay if I wander here on
7 occasion?

8 THE COURT: Yes.

9

10 CROSS-EXAMINATION

11 BY MR. WEBER:

12 Q. Good afternoon, Mr. Hansen.

13 MR. WEBER: Good afternoon, ladies and
14 gentlemen.

15 I'll just put that there.

16 BY MR. WEBER:

17 Q. From the inception of MabVax until it went
18 into bankruptcy, you were the chief person running the
19 company, right?

20 A. I was the chief executive officer, yes.

21 Q. And the president?

22 A. Yep.

23 Q. And the chairman of the board?

24 A. Yes, I was.

25 Q. And one of the cofounders?

26 A. Yes.

27 Q. Okay. The folks over here never were employed
28 by MabVax, were they?

1 A. No, they weren't.

2 Q. Okay. They were never officers or directors
3 of MabVax, were they?

4 A. No, they were not.

5 Q. Okay. The investors sitting here invested
6 tens of millions of dollars into MabVax over a period of
7 five years, right?

8 A. I don't know how many millions. It wouldn't
9 have been tens of millions. Maybe ten and a half
10 millions.

11 Q. Oh, we'll get -- we'll get to that.

12 And you contend that the demise of MabVax is
13 100 percent the fault of the people who gave you money?

14 A. Yes, I do.

15 Q. Okay. One of the ways that you contend the
16 investors damaged MabVax was by pumping and dumping the
17 stock?

18 A. Yes.

19 Q. Okay. You didn't use those words, I think,
20 but you heard your lawyers use them during opening
21 statement, correct?

22 A. I believe so, but I think it's accurate.

23 Q. Okay. And what you're talking about are the
24 articles, blog posts -- I don't know. Do you want to
25 call them "articles" or "blog posts"?

26 A. Whatever you want to call them.

27 Q. Okay. You're talking about blog posts that
28 were posted on this website called "Seeking Alpha"?

1 A. Those were one of the ways, but not an
2 exclusive way, so yes.

3 Q. Okay. But when you talk about a
4 pump-and-dump, what you're talking about is a type of
5 scheme where, as I think you explained yesterday, the
6 perpetrator publishes information about MabVax, yes?

7 A. One of the ways, yes.

8 Q. Okay. And that information is -- is positive,
9 correct?

10 A. It could be negative, as well, if you're -- if
11 you're -- if you've bought options or -- or puts in a
12 stock.

13 Q. Okay. But this particular scheme in regards
14 to MabVax, you alleged that the defendants over here and
15 people with whom they are associated with published
16 positive but false information about MabVax, correct?

17 A. A mixture of positive and negative or positive
18 and false.

19 Q. Well, it was positive statements, but you
20 contend that they were false or overstated, right?

21 A. Again, one of the ways in which to pump.

22 Q. Okay. And for that to be a fraud, the
23 information that's reported has to be false, correct?

24 A. You're telling me. I'm -- I'm not the expert
25 there.

26 Q. Well, I'm not telling you. You're the one
27 who's making the allegation.

28 So in your allegation, you're saying some

1 defendants published false information about MabVax,
2 correct?

3 A. I don't think that we said that.

4 Q. You don't think you said it was false or
5 overstated information?

6 A. On the two articles that we discussed, yes.
7 Again, I'm going to say that that's not the only way
8 that you pump stock, so --

9 Q. Are there -- are there other articles that
10 you're aware of other than the two that you discussed
11 yesterday that are part of this pump-and-dump scheme
12 that you allege the defendants perpetrated against
13 MabVax?

14 A. Yes.

15 Q. Can you identify any of those articles by name
16 or date?

17 A. I can only identify them in a range. There
18 were eight articles published from September until
19 January of 2016 to '17.

20 Q. Concerning MabVax?

21 A. Concerning MabVax.

22 Q. Published by whom?

23 A. That's a good question. We never met any of
24 the people that made those -- that did those articles.

25 Q. Okay. So there's one article that you talked
26 about yesterday that was published by Mr. O'Rourke,
27 correct?

28 A. Correct.

1 Q. And there's another article that you discussed
2 yesterday, and Ms. Rubenstein mentioned in her opening
3 statement, that was published by a gentleman named
4 John Ford, correct?

5 A. Correct.

6 Q. And so you're saying there's some other
7 articles out there about MabVax, but you don't know who
8 published them?

9 A. That is correct.

10 Q. Okay. So you don't know if these people had
11 anything to do with the publication of those articles,
12 do you?

13 A. What I do know is that during --

14 Q. Could you answer my question?

15 A. Yeah.

16 MR. WEBER: Could you read it back, please?

17 THE COURT: Yes, please, Christina.

18 (Record read as requested.)

19 THE WITNESS: The answer is no, not
20 particularly specific.

21 BY MR. WEBER:

22 Q. Okay. So in this pump-and-dump scheme that
23 you allege, defendants and people associated with them
24 published false information about MabVax with the intent
25 of -- positive information with the intent of raising
26 the stock price, right?

27 That's the pump, right?

28 A. That is one way to pump, yes.

1 Q. Okay. And then the theory is the stock price
2 is raised because there's false positive information
3 about the company that encourages other people to buy
4 the stock, right?

5 A. This is -- this is your scenario, so I
6 guess --

7 Q. No, it's -- it's your scenario, sir. You're
8 the one who is alleging the pump-and-dump, right?

9 A. Part of it, yes.

10 Q. Part of what?

11 A. Part of the scheme, yes.

12 Q. You're alleging a pump-and-dump, correct?
13 Yes?

14 A. Part of the scheme, yes.

15 Q. And you alleged that there were false articles
16 published, correct? False articles about MabVax?

17 A. The two -- the two articles that you have
18 mentioned, yes.

19 Q. Yes. And under your theory, the reason why
20 defendants published false articles was to try to get
21 other people to buy the stock, which would raise the
22 stock price, correct?

23 A. Okay.

24 Q. And the theory, that is, that once the stock
25 prices inflated, they would dump, they would sell,
26 that's the scheme that you're alleging. I want the jury
27 to understand what you're alleging.

28 Am I getting this wrong?

1 A. No, you're okay.

2 Q. Okay. Because if somebody publishes truthful
3 information about MabVax, that's appropriate, right?

4 A. Okay.

5 Q. Yes?

6 A. Yes.

7 Q. Okay. I mean, MabVax all the time -- we saw a
8 whole number of press releases that MabVax put out over
9 time, correct?

10 A. Yes, you did.

11 Q. And the purpose, I think you said -- and if
12 I'm misquoting you, let me know -- the purpose is to let
13 the investors and potential investors know the good
14 things that MabVax is doing, right?

15 A. Yes.

16 Q. Okay. Let's look at an example of that.
17 Exhibit 405, please.

18 (Court's Exhibit No. 405, MabVax Press
19 Release - MabVax Therapeutics Announces
20 Closing of Financing (3 pages), first
21 identified.)

22 BY MR. WEBER:

23 Q. So in early -- you testified this -- about
24 this yesterday, I think. In early April 2015, MabVax
25 raised 11-point-something million in a round of
26 investment that was led by OPKO, correct? OPKO and
27 Dr. Frost?

28 A. Yes.

1 Q. And MabVax getting over \$11 million, that's
2 good news?

3 A. That was good news.

4 Q. Okay. And so that's something that you would
5 want the public to know, right?

6 A. Yes.

7 Q. Okay. You approved this press release before
8 it went out, correct? You, Mr. Hansen?

9 A. Can I see farther down in the press release?

10 Q. Absolutely.

11 A. I can't read it.

12 MR. WEBER: Can you make it larger for him,
13 Erik, please?

14 THE WITNESS: Yes, I did review it.

15 MR. WEBER: Okay. Your Honor, may I please
16 publish to the jury, admit No. 405.

17 MS. RUBENSTEIN: No objection.

18 THE COURT: Received.

19 (Court's Exhibit No. 405 received into
20 evidence.)

21 MR. WEBER: Okay. And if you could blow up
22 the top. Yeah, there you go.

23 BY MR. WEBER:

24 Q. So again, for the purpose of the jury, this is
25 MabVax announcing on April 6, 2015, that it had closed
26 a -- an investment round of \$11.6 million led by OPKO
27 and Dr. Frost, correct?

28 A. Correct.

1 Q. Okay. And this was truthful and accurate good
2 news, right?

3 A. It was.

4 Q. And whenever MabVax issued a press release,
5 did MabVax want those press releases to be viewed by as
6 many people as possible?

7 A. I think we sent them out to a standard
8 distribution facil- -- company that did that.

9 Q. Okay. But the more people who see a press
10 release from MabVax, the better, would you agree?

11 A. Yeah.

12 Q. All right. How many people do you think saw
13 this one? Just a guess.

14 MS. RUBENSTEIN: Objection. Speculation.

15 THE COURT: Sustained.

16 BY MR. WEBER:

17 Q. Okay. Now, MabVax also sometimes would take
18 press releases and file them with the SEC on something
19 that's called "Form 8-K," right?

20 A. Yes, we would.

21 Q. And when you do that, I think you -- either
22 you or Mr. Cohen explained this -- that means it goes up
23 on the SEC website, and it's available for the whole
24 world to see, right?

25 A. That's right.

26 MR. WEBER: Okay. Exhibit 406, please, Erik.
27 (Court's Exhibit No. 406, SEC Form 8-K for
28 MabVax Therapeutics Holdings, Inc., first

1 identified.)

2 BY MR. WEBER:

3 Q. And so you, MabVax, did the same thing -- did
4 that here with the press release we just saw, you
5 attached it to an 8-K and filed it with the SEC for the
6 whole world to see, correct?

7 A. Yeah. I think we -- we tried to do that as a
8 matter of course.

9 Q. Okay. And this --

10 MR. WEBER: Is it -- is it up?

11 BY MR. WEBER:

12 Q. Are you familiar with this document, sir? And
13 we can scroll down if we need to.

14 A. Let's scroll down.

15 MR. WEBER: Scroll down, please, Erik.

16 BY MR. WEBER:

17 Q. This is a report that are Mabvax filed with
18 the SEC describing the investment by Dr. Frost, right?

19 A. I believe so, yes.

20 MR. WEBER: Okay. Your Honor, I'd ask --

21 THE COURT: The only thing is it's very small
22 print, and so if we could blow it up in sections so we
23 could -- if he's reviewing.

24 MR. WEBER: Absolutely. I think he already
25 said that he recognized it.

26 THE COURT: And he did, but I also want to let
27 him know and everyone know that if they need to be able
28 to read it, that they should have it blown up.

1 MR. WEBER: Absolutely.

2 I move to admit this, Your Honor.

3 MS. RUBENSTEIN: No objection.

4 THE COURT: Received.

5 (Court's Exhibit No. 406 received into
6 evidence.)

7 MR. WEBER: Okay. Let's go -- actually, let's
8 go to the next page, Erik, please. Just the top
9 paragraph.

10 BY MR. WEBER:

11 Q. So, again, here this is good news that MabVax
12 is filing with the SEC letting the world know that it
13 had received a investment from OPKO -- led by OPKO and
14 Dr. Frost, correct?

15 A. Correct.

16 Q. Okay. Let's get back to those two articles
17 that we were talking about. Were you familiar with the
18 website called Seeking Alpha back in 2015?

19 A. Not particularly, no.

20 Q. Did you have any understanding of what Seeking
21 Alpha was?

22 A. A blog.

23 Q. A blog. And what do you mean by "a blog"?

24 A. I think that writers would write articles and
25 submit it to this blog and they would publish
26 electronically.

27 Q. Okay. So it's sort of a, for lack of better
28 term, a crowd-sourced bulletin board for financial

1 information, in a way?

2 A. I suppose in a way. I -- I'm not -- like I
3 said, I wasn't really familiar with it.

4 Q. Okay. Do you -- do you have any idea -- and
5 you probably don't, but I'm going to ask the question:
6 Do you know how many people read Seeking Alpha back in
7 2015?

8 A. No, I did not.

9 Q. Okay. And were you a subscriber?

10 A. No, I was not.

11 Q. Okay. I'm going to pull back up Exhibit 412,
12 which I believe was introduced yesterday. And this is
13 the article that you testified yesterday was posted by
14 Mr. O'Rourke on the Seeking Alpha site, correct?

15 A. Yes.

16 Q. Okay. And you contend that this article
17 contains a number of false statements, right?

18 A. At least a couple, yes.

19 Q. At least a couple.

20 Do you recall that prior to the trial -- do
21 you know what an interrogatory -- you know what an
22 interrogatory is, right?

23 A. Generally, yes, I ended up having to deal with
24 quite a few of them.

25 Q. Sure. Could you tell the jury what an
26 interrogatory is, what your understanding is.

27 A. It's essentially a set of questions that come
28 in and we're obligated to respond and provide answers.

1 Q. Okay. So you recall that -- that my firm
2 served a written interrogatory -- a set of written
3 interrogatories upon MabVax during the course of this
4 trial, right?

5 A. Yes.

6 Q. Okay. And in one of these interrogatories we
7 asked you, MabVax, to identify all of the false
8 statements that are contained in this article.

9 Do you remember that?

10 A. I do remember that.

11 Q. Okay.

12 MR. WEBER: I'm going to ask Erik to please
13 pull up Exhibit 4049.

14 (Court's Exhibit No. 4049, MabVax Responses to
15 Honig Special Interrogatories, Set One, first
16 identified.)

17 BY MR. WEBER:

18 Q. And sir, on the screen in front of you I've
19 put a document.

20 Do you recognize these to be MabVax's
21 responses to the written questions, the written
22 interrogatories that we posed to you?

23 A. I just see the cover page. I don't see
24 anything else, so I can't tell.

25 Q. Okay.

26 MR. WEBER: Erik, could you scroll down,
27 please, and in particular I'll ask you to scroll down to
28 page 20 of 4049.

1 BY MR. WEBER:

2 Q. Do you recognize this, sir?

3 A. You'll have to blow it up a little bit so I
4 can see it.

5 Q. Sure.

6 A. Yes, okay, I do remember this.

7 Q. Okay.

8 MR. WEBER: Your Honor, may we -- I ask to
9 admit Exhibit 4049 in evidence.

10 THE COURT: Just so everybody is aware, the --
11 the way I would normally do that is cover page,
12 interrogatory, interrogatory response, verification, not
13 the other interrogatories. Just so you know, but -- I
14 just wanted everybody to understand.

15 MS. RUBENSTEIN: Yeah, Your Honor, we -- we
16 would ask that the rest of the -- the contents of the
17 document not be admitted.

18 MR. WEBER: Your Honor, there are two
19 interrogatories I'm going to use in the examination,
20 this being one.

21 THE COURT: That's fine. But as to this,
22 which is 14, and its response, admitted.

23 (Court's Exhibit No. 4049 (No. 14) received
24 into evidence.)

25 MR. WEBER: Okay. Thank you.

26 Can you put that up on the screen. And can
27 you blow that up a little bit. Oh, you already redacted
28 it. Thank you, Erik.

1 BY MR. WEBER:

2 Q. Okay. So you can see at the top this is
3 the -- this is the interrogatory that I asked MabVax,
4 which is:

5 "IDENTIFY each statement in the article
6 entitled, 'Opko Spots Another Overlooked Opportunity in
7 MabVax Therapeutics,' published on" April 8th, 2015.
8 Identify each statement "which you contend was false
9 when the article was published."

10 You read that, right?

11 A. I did.

12 Q. And below that is your response, MabVax's
13 response, and it says:

14 "MabVax responds that the following statements
15 are false, misleading, overstated, and/or speculative."

16 And then you list those statements, correct?

17 A. We did.

18 Q. You -- you -- well, you said we -- you did --
19 "we did." Who's "we"?

20 A. Well, I had help from counsel here on -- on
21 all of these responses to interrogatories.

22 Q. Okay. But you helped with these, correct?

23 A. I did.

24 Q. Okay.

25 MR. WEBER: And if you turn to page 29, Erik.

26 BY MR. WEBER:

27 Q. This is the last page of the document.

28 You verified, you personally verified that the

1 responses were true and correct, didn't you?

2 A. I did.

3 Q. Okay. And so you reviewed the responses to
4 make sure that they were correct and then you signed
5 this under penalty of perjury that the documents were
6 true and correct, right?

7 A. I did.

8 Q. Okay. If we go back to that prior page, the
9 response to 14, you're verifying under penalty of
10 perjury that these four statements contained in
11 Mr. O'Rourke's article were false, right?

12 A. False, or I think unduly -- what -- there was
13 a -- a description at the top.

14 Q. well, there's a phrase, "false, misleading,
15 overstated, and/or speculative"?

16 A. Yes, one of those.

17 Q. Can I -- can I just say in some way they were
18 lies?

19 A. I don't think so.

20 Q. Oh, so -- so a lie is something other than
21 false, misleading, overstated or speculative?

22 A. I think that a lie is something that is truly
23 false --

24 Q. Okay.

25 A. -- and something that is speculative is an
26 opinion.

27 Q. I understand. Okay. So I'll just repeat this
28 each time.

1 Let's go through each of these -- well,
2 actually let's --

3 MR. WEBER: Can we do this side by side with
4 the article, Erik.

5 BY MR. WEBER:

6 Q. Okay. So on the left is the interrogatory
7 response. On the right is Mr. O'Rourke's article
8 published on April 8th, correct?

9 Can you see that?

10 A. I do see that.

11 Q. Okay.

12 MR. WEBER: So turn to page 2, is it, Erik,
13 or 3. Page -- can you go up to the top of that page.
14 Okay. Right. So could you highlight those portions,
15 Erik, that you and I spoke about before. So there's
16 one -- ah. That went a little too fast.

17 BY MR. WEBER:

18 Q. On the top here, Erik blew out the excerpt
19 from the article. On the bottom is where you said in
20 the interrogatory response that statement is false,
21 correct?

22 A. I did.

23 Q. You -- you -- you follow what we did here?

24 A. I did.

25 Q. Okay.

26 MR. WEBER: And then the second statement,
27 Erik.

28 ///

1 BY MR. WEBER:

2 Q. Okay. So you can see he highlighted a portion
3 of the article. You say that portion of the article is
4 false, misleading, overstated or what was the word --

5 A. Speculative.

6 Q. Speculative. Thank you.

7 Correct?

8 A. Are you asking me to respond to the
9 individual --

10 Q. Yeah.

11 A. -- or just general in terms of these are
12 speculative or what -- what are you asking?

13 Q. Okay. The statement -- Mr. O'Rourke made a
14 statement in his article that said:

15 "This is a billion dollar...market opportunity
16 with a critical unmet medical need, as there are very
17 poor four [sic] year survival rates for metastatic
18 pancreatic and colon cancer."

19 He said that in his article, correct?

20 A. He did.

21 Q. And you said under penalty of perjury that
22 that statement was false, misleading, speculative, or
23 overstated, right?

24 A. Yes, we did.

25 Q. Yes, you did. We didn't verify. You
26 verified, right?

27 A. I had help from counsel.

28 Q. Okay. So -- and it's this case for all four

1 statements in the article that you stated in the
2 interrogatory, right?

3 A. I've only seen two.

4 Q. well, let's do the other two then.

5 Okay. So the article says: "The
6 neuroblastoma vaccine will enter Phase II trials by the
7 end of 2015."

8 And you said in the interrogatory response
9 that that statement was false, misleading, overstated,
10 or speculative, correct?

11 A. Yes.

12 Q. Okay. Fourth bullet. And this is on the next
13 page.

14 Mr. O'Rourke says in his article:

15 "Phase I data expected out later this year for
16 two antibody programs addressing critical unmet medical
17 needs in the billion dollar markets of metastatic
18 pancreatic and colon cancer."

19 And you said in the interrogatory response
20 that that statement was false, misleading, overstated,
21 and/or speculative, right?

22 A. Yes, I did.

23 Q. So now we've gone through all four statements
24 that are contained in the interrogatory response.

25 MR. WEBER: If you could go back to the
26 interrogatory response, please, Erik.

27 BY MR. WEBER:

28 Q. And you contend that those four statements

1 were made in the article for the purpose of pumping up
2 MabVax's stock price; isn't that right?

3 A. Well, you're asking me to -- to assume that I
4 know what the purpose of the article was. Mr. O'Rourke
5 wrote the article and we were responding to your
6 questions regarding what was false.

7 Q. Right. And you allege in this lawsuit that
8 this article was published to pump up the price of the
9 stock, correct?

10 A. Yes.

11 Q. Yes. And these are the false statements in
12 the article, correct, these four, as indicated in the
13 interrogatory response?

14 MS. RUBENSTEIN: Objection. Misstates
15 testimony.

16 THE COURT: Overruled.

17 BY MR. WEBER:

18 Q. Do you want the question repeated, sir?

19 A. I didn't know there was a question.

20 Q. Yes, there was.

21 MR. WEBER: Could you please repeat the
22 question, Kristin -- Christina.

23 THE COURT: Yes, please.

24 (Record read as requested.)

25 MS. RUBENSTEIN: Objection, Your Honor.

26 THE COURT: Same.

27 MS. RUBENSTEIN: Yes. It's not what he said.

28 THE COURT: Overruled.

1 THE WITNESS: These are four, not the only.

2 BY MR. WEBER:

3 Q. Not the only?

4 MR. WEBER: Can you go back up to the
5 question, please, Erik.

6 BY MR. WEBER:

7 Q. It says: "IDENTIFY each statement."
8 You saw that when you responded, right?

9 A. I did.

10 Q. Okay. You understand what "each" means,
11 correct?

12 A. Yes.

13 Q. Okay. When you gave these four responses, you
14 didn't say, "Ah, I'll just give four, but I'll save a
15 couple for -- for trial to surprise Mr. Weber," did you?

16 A. No, I --

17 MS. RUBENSTEIN: Objection. Argumentative.

18 THE COURT: Sustained.

19 MS. RUBENSTEIN: Move to strike.

20 THE COURT: Granted.

21 BY MR. WEBER:

22 Q. Okay. I think you said -- leave this for a
23 second -- I think you said yesterday that you attended
24 monthly conferences where you met with people you were
25 trying to raise money, right?

26 A. Yes.

27 Q. Okay. One of those conferences that you
28 attended several times in the past was put on by a

1 company called Roth Capital, correct?

2 A. Correct.

3 Q. And every year in March, Roth Capital puts on
4 a conference for investors in Dana Point, California,
5 right?

6 A. I believe so.

7 Q. Okay. And at each of these conferences, or at
8 least the ones that you've attended, dozens of different
9 companies like MabVax come and present their stories to
10 rooms full of investors who attend the conference,
11 right?

12 A. That's right.

13 Q. Okay. And you personally attended the Roth
14 Conference in March 2015, did you not?

15 A. I -- I believe I did, but I am not sure,
16 but --

17 Q. Is there something that might refresh your
18 recollection?

19 A. I'm sure you have something.

20 Q. I sure do.

21 MR. WEBER: Can you put up Exhibit 4288,
22 please, Erik.

23 (Court's Exhibit No. 4288, PR Newswire Press
24 Release: MabVax Therapeutics to Present at the
25 27th Annual Roth Conference, first
26 identified.)

27 BY MR. WEBER:

28 Q. Can you see that, sir?

1 A. I do.

2 Q. Okay. Is this another MabVax press release?

3 A. Yes.

4 Q. Okay. Dated March 3, 2015?

5 A. Yep.

6 MR. WEBER: Your Honor, I ask this exhibit be
7 admitted, Exhibit 4288.

8 MS. RUBENSTEIN: No objection.

9 THE COURT: Received.

10 (Court's Exhibit No. 4288 received into
11 evidence.)

12 BY MR. WEBER:

13 Q. Okay. Does this refresh your recollection as
14 to whether you, Mr. Hansen, attended the Roth Conference
15 in March 2015?

16 A. It certainly does.

17 Q. Okay. And you did attend?

18 A. I did.

19 Q. And you presented at that conference, right?

20 A. I believe I did.

21 Q. Okay.

22 MR. WEBER: Pull up Exhibit 3090, Erik.

23 BY MR. WEBER:

24 Q. Sir, do you see that? And if we need to blow
25 it up, we will.

26 Is this an email that you sent to John Stetson
27 in March 2015, a couple of weeks after the Roth
28 Conference?

1 A. It appears so.

2 Q. Okay. And attached to the email, there is

3 a --

4 MR. WEBER: If you go to the next page,

5 Erik --

6 BY MR. WEBER:

7 Q. There's a presentation, right?

8 Do you recognize that presentation?

9 A. I believe so.

10 MR. WEBER: Okay. Your Honor, I ask to admit
11 Exhibit 3090.

12 MS. RUBENSTEIN: No objection.

13 THE COURT: Received.

14 (Court's Exhibit No. 3090 received into
15 evidence.)

16 MR. WEBER: Okay. And let's turn to page 2,
17 Erik.

18 BY MR. WEBER:

19 Q. Okay. So this is a presentation that you,
20 David Hansen, made to investors at the Roth Conference
21 in March 2015, right?

22 A. Yes, it appears to be that way.

23 Q. And you helped draft this presentation,
24 correct?

25 A. I participated in it, yes.

26 Q. And you showed it to a room full of investors
27 at the Roth Conference in March 2015, yes?

28 A. I believe so.

1 Q. And whoever -- whichever investors came into
2 the conference room and saw your presentation, they saw
3 what was on this PowerPoint, right?

4 A. Yes.

5 Q. Okay.

6 MR. WEBER: Turn to page 3090.4. And actually
7 just scroll down, Erik, so that everybody can see what
8 we're talking about.

9 BY MR. WEBER:

10 Q. Okay. So this is actually a slide that I
11 showed in the opening statement.

12 Do you remember that?

13 A. You're asking me if I remember it?

14 Q. Yes.

15 A. I believe so. I can't be certain.

16 Q. Okay. And I pointed out that these were the
17 four items in MabVax's clinical pipeline that it was
18 working on around this time, March 2015, right?

19 A. Okay. I believe so.

20 Q. Okay.

21 MR. WEBER: Could you turn to page 30.19.

22 BY MR. WEBER:

23 Q. This is a slide you helped create, right?

24 A. Yes, I did.

25 Q. Okay. And it talks about, on here, a:

26 "\$1 Billion Annual Market Opportunity For New
27 Metastatic Pancreatic and Colon
28 Cancer"...whoops...pancreatic treatments, which is a

1 "Critical Unmet Medical Need"... "Extremely poor 5-Year
2 survival rate for metastatic pancreatic and colon
3 cancer."

4 Do you see that?

5 A. Yep.

6 Q. You presented that at the Roth Conference,
7 right?

8 A. I did.

9 Q. Those words look familiar to me.

10 MR. WEBER: Erik, can you bring up the
11 interrogatory response. The interrogatory response.
12 Exhibit -- okay. There we go.

13 BY MR. WEBER:

14 Q. "This is a billion dollar annual market
15 opportunity with a critical unmet medical need, as there
16 are very poor 5-year survival rates for metastatic
17 pancreatic and colon cancer."

18 One billion dollar annual market opportunity,
19 critical unmet medical need, metastatic pancreatic and
20 colon cancer, poor 5-year survival rates.

21 So you said the top thing to a room full of
22 investors at the Roth Conference in March 2015, correct?

23 A. Correct.

24 Q. And when you said that to the Roth conference
25 people, that was true, right?

26 A. It was our assessment of the marketplace, yes.

27 Q. Was it true or was it false?

28 A. Are you asking me if it's a true billion

1 dollar opportunity or if I said that it was a billion
2 dollar opportunity? I'm not sure which one you want.

3 Q. You said it, didn't you?

4 A. I did.

5 Q. And when you said it to a room full of
6 investors at the Roth Conference, did you think it was
7 true?

8 A. It was our best estimate of the market
9 opportunity.

10 Q. When you said it to the people at the Roth
11 Conference, did you think it was true?

12 A. It was our best estimate of the market
13 opportunity.

14 Q. But then when Mr. O'Rourke copied those words
15 into his article a month later, you alleged it's false;
16 isn't that right?

17 MS. RUBENSTEIN: Objection. Misstates
18 testimony.

19 THE COURT: Overruled.

20 THE WITNESS: In this particular case, I
21 believe that you're right.

22 BY MR. WEBER:

23 Q. Okay.

24 MR. WEBER: Erik, could you turn to
25 page 3090.23.

26 BY MR. WEBER:

27 Q. This was from your presentation, again, to a
28 room full of investors at the Roth Conference, correct?

1 A. Yes.

2 Q. Okay. And correct me if I'm wrong, but in
3 this chart, you are, in graphical form, explaining the
4 state of MabVax's various treatments, right?

5 A. Yes, it's a pipeline chart.

6 Q. A pipeline chart, okay.

7 Let's look at -- start at the bottom here.
8 Second from the bottom, this is talking about the
9 neuroblastoma vaccine, correct?

10 A. Correct.

11 Q. And this arrow represents that it would be
12 going into Phase 2?

13 Is that what the arrow is meant to represent?

14 A. That was the -- the -- the plan.

15 Q. Okay. And you say here it's going to enter
16 Phase 2 in 2H15.

17 Is 2H15 second half of 2015?

18 A. It is.

19 Q. Okay. Neuroblastoma vaccine to enter Phase 2
20 in second half of 2015.

21 MR. WEBER: Could you go back to the
22 interrogatory, Erik?

23 BY MR. WEBER:

24 Q. So when you said it, it was true, right?

25 A. It was the plan.

26 Q. That was the plan.

27 But when Mr. O'Rourke says that four weeks
28 later --

1 MR. WEBER: Erik?

2 TRIAL TECHNICIAN: Sorry.

3 MR. WEBER: It's okay.

4 Erik.

5 BY MR. WEBER:

6 Q. "Neuroblastoma vaccine will enter Phase 2
7 trials by the end of 2015."

8 "Neuroblastoma vaccine enters Phase 2 trial in
9 second half of 2015."

10 So when you say it to a room at the Roth
11 Conference, it's true.

12 Now you allege that when Mr. O'Rourke says the
13 same thing in an article a month later, it's false; is
14 that right?

15 MS. RUBENSTEIN: Objection. Misstates his
16 testimony.

17 THE COURT: Overruled.

18 THE WITNESS: What Mr. O'Rourke put down in
19 that article is reflected in the pipeline chart.

20 BY MR. WEBER:

21 Q. You alleged that what Mr. O'Rourke said -- you
22 alleged under oath sworn under penalty of perjury, that
23 what he wrote was false, misleading, overstated and/or
24 speculative, right?

25 A. Yes.

26 Q. But when you said the same thing four weeks
27 earlier, it wasn't false, misleading, overstated and/or
28 speculative, was it?

1 A. It was what the plan was at the time. And
2 that's what we wrote.

3 Q. Okay. Did it change between the time that you
4 said it to the Roth Conference in March 2015 and when
5 Mr. O'Rourke copied what you said into his article a
6 month later?

7 A. No, it did not change.

8 Q. Okay. Let's go back to this chart. The top
9 line on there is talking about -- that's the 5B1
10 antibody, right?

11 A. It is.

12 Q. Okay. And, again, the way to interpret this
13 chart is 5 -- correct me if I'm wrong -- what you're
14 trying to communicate to the investors, room full of
15 investors at the PIPE conference -- Roth Conference --
16 is the 5B1 Therapeutic antibody was going to go into
17 Phase 1 and you would have early data by the end of the
18 year, right?

19 A. That's not what the cover page or the first
20 page that you showed me said.

21 Q. I'm asking what this page says.

22 A. This page says that some early data would be
23 available by the end of the year.

24 Q. And that's 2015, correct?

25 A. Right.

26 Q. Okay.

27 A. And on the first page it says --

28 Q. I didn't ask you that question. You'll have

1 the opportunity to be redirected.

2 MR. WEBER: Can we go back to the -- can we go
3 back to the -- yeah.

4 BY MR. WEBER:

5 Q. So you said to a room full of investors at the
6 Roth Conference in March 2015, early data on the 5B1
7 therapeutic by the end of the year.

8 And you said it was false when Mr. O'Rourke
9 said Phase 1 data expected out later this year for the
10 antibody program, right?

11 Right?

12 A. I don't think that that's correct. I -- what
13 I see is from the beginning of this presentation, we
14 clearly say that the IND will be filed by the end of
15 2015. And so that's -- that's what we were intending to
16 impart to the investing group.

17 Q. Well, we'll see what the jury thinks about
18 that.

19 Sir, doesn't it appear that Mr. O'Rourke
20 simply copied statements from your presentation at the
21 Roth Conference into his article?

22 MS. RUBENSTEIN: Objection. Speculation.

23 THE COURT: Overruled.

24 THE WITNESS: It appears that he copied some
25 of those statements, yes.

26 BY MR. WEBER:

27 Q. It appears that he copied some of his
28 statements.

1 MR. WEBER: In fact, if we could go back to
2 the article, Erik, page 5 of the article. Let's put
3 that up here on one side and go back to page 22 of your
4 Roth Conference presentation.

5 BY MR. WEBER:

6 Q. So the left is Mr. O'Rourke's article, right,
7 which you said is false? And the -- and the right is
8 from page 23 of your Roth Conference presentation,
9 correct?

10 A. Yes.

11 Q. Looks like the same thing, doesn't it?

12 A. It is.

13 Q. It is the same thing. In fact, we could even
14 see from your Roth Conference presentation, it's
15 page 22, Mr. O'Rourke even copied that into his article,
16 right?

17 He copied your slide into his article, didn't
18 he?

19 A. He did.

20 Q. So he literally used in his article exactly
21 the same slide and the same phrases that you presented
22 to the Roth Conference a month earlier, yes?

23 A. Did we cover the first of the statements?

24 Q. The billion dollar market opportunity?

25 A. No. I think there was another first
26 statement. I'd like to see it.

27 Q. From the interrogatory response?

28 A. Yeah.

1 MR. WEBER: Put up the interrogatory response.

2 BY MR. WEBER:

3 Q. Anticipated early Phase 1 data coming out by
4 the end of 2015, right? That's what you said was false?

5 A. Yes.

6 Q. well, let's go back to the article. And the
7 chart.

8 Early data end of year, right?

9 A. That's not what we said in the first part of
10 the presentation.

11 Q. But that's what you're saying right there,
12 isn't it?

13 A. well, it was part of a presentation where
14 there was a good deal of oral explanation.

15 Q. Sir, when you told the false statements --
16 the -- the statements that you claim are false,
17 misleading, overstated, speculative, when you told those
18 to the people at the Roth Conference, did you intend to
19 pump up the stock price?

20 A. No.

21 Q. When you told those statements to a room full
22 of investors and potential investors at the Roth
23 Conference, did that pump up the stock price?

24 A. No. I think the total number of people in
25 that room were less than a dozen.

26 Q. Okay. Do you know how many people read
27 O'Rourke's article?

28 A. No, I don't.

1 Q. You have no idea.

2 Sir, now that you realize that Mr. O'Rourke
3 simply copied your own words into his article, do you
4 wish to change any of your testimony that those
5 statements were false?

6 A. I think I should change some of it, yes.

7 Q. Okay. Which ones?

8 A. I don't agree with the idea that we promised
9 early data out of our antibody program by the end of the
10 year. I think that there's other slides that don't say
11 that.

12 Q. Okay. Which statements do you want to change?

13 A. Well, the ones that you've just pointed out
14 that are exact copies of what I had in my presentation.

15 Q. Okay. What about the statement about there
16 being a billion dollar market opportunity? Which you --
17 which you said to the Roth Conference, but then when he
18 said it in his article, you said that was false or
19 misleading or speculative.

20 A. That stands to be corrected.

21 Q. Okay. That stands to be corrected.

22 MR. WEBER: Go back to the interrogatory
23 response, sir.

24 BY MR. WEBER:

25 Q. So when you swore under penalty of perjury
26 that the statement there's a "billion dollar market
27 opportunity" was false, you're actually wrong about that
28 is what you're saying?

1 A. It appears that that's the case, yes.

2 Q. Okay. And when you said the neuroblastoma
3 vacc- -- when you said that, the statement: "The
4 neuroblastoma vaccine will enter Phase II trials by the
5 end of 2015," when you said that was false, it was
6 actually true because it's the same thing that you said
7 to the Roth Conference people, right?

8 A. It is what was written in the Roth Conference
9 presentation.

10 Q. Okay. So it was not false, correct?

11 A. Not false relative to what I wrote or -- in
12 the Roth Conference presentation.

13 Q. Okay. So there's a couple things that you
14 said -- all right. So -- so -- so when you swore under
15 penalty of perjury that this statement was false, you
16 were mistaken?

17 Is that what you're saying?

18 A. Well, we -- I'm trying to remember when we
19 filled out the interrogatory responses, and I think that
20 it was 2022.

21 Q. Yep.

22 A. Okay. So I think we -- I was looking
23 backwards in time knowing a lot more than I knew then,
24 so I think that I probably miss- -- missed that.

25 Q. Missed that. And -- and what about 20 minutes
26 ago when you testified that the phrase "billion dollar
27 annual market opportunity" was false or misleading when
28 Mr. O'Rourke published it.

1 Did you miss that 20 minutes ago?

2 A. Did I say that 20 minutes ago? I don't
3 remember that I did that.

4 Q. Now, yesterday you didn't -- when -- when
5 Ms. Rubenstein asked you what was false about the
6 O'Rourke article, right --

7 A. Yes.

8 Q. -- you didn't mention any of these four
9 things, did you?

10 A. No.

11 Q. No. You forgot about these?

12 A. Well, what we did was we focused on the things
13 that we thought were relevant at the time.

14 Q. You mean yesterday --

15 A. Yeah.

16 Q. -- or you mean here?

17 A. Well, post filling out the interrogatory.

18 Q. Post filling -- okay. The -- you didn't
19 mention those in the interrogatory that asked you to
20 identify each false statement, correct?

21 A. I don't believe -- not in this interrogatory,
22 no, we did not.

23 Q. No, you did not, okay. So something that you
24 didn't disclose in discovery shows up in trial; is that
25 what happened here?

26 A. I think we made a mention of the fact that the
27 article was published by an anonymous source --

28 Q. Sir, again, this interrogatory asked you to

1 identify each false statement, and you didn't mention
2 the false statements that you -- allegedly false
3 statements that you raised yesterday; there was
4 something about Juno; there was something about O'Rourke
5 having a business relationship, right?

6 A. Correct.

7 Q. Okay. Let's talk real quick about O'Rourke's
8 business relationship.

9 Now, Mr. O'Rourke -- you said -- and I have
10 the transcript here -- that Mr. O'Rourke, he identified
11 at the bottom of the article that he was a MabVax
12 shareholder, correct?

13 A. He did.

14 Q. Okay. So he did disclose that he was a MabVax
15 shareholder, but he said, "I don't have a business
16 relationship with MabVax," correct?

17 A. Correct.

18 Q. All right. Now, Mr. O'Rourke, was he ever a
19 vendor of MabVax?

20 A. Not a vendor, no.

21 Q. Okay. Did MabVax ever pay him for a service
22 or good?

23 A. No.

24 Q. Did Mr. O'Rourke ever pay MabVax for a service
25 or a good?

26 A. No.

27 Q. Okay. You said he has a business relationship
28 because he took you to some bankers in New York?

1 A. Yes.

2 Q. That's what he -- okay. So you're saying -- I
3 want to understand your testimony, that his article was
4 false and misleading and pumped up the price of the
5 stock to an extent that damaged MabVax because he didn't
6 say that one day in New York he walked you to some
7 bankers?

8 Is that your testimony?

9 A. That's not what I said.

10 Q. well, the only reason you gave for the
11 business relationship was that he took you to some
12 bankers; isn't that right?

13 A. He was assigned to shop -- chaperone me around
14 New York to visit bankers and investors that were
15 affiliated with -- or at least had some acquaintance
16 with Mr. Honig.

17 Q. Okay. And because he didn't say that in his
18 article, that rendered the article false and misleading
19 according to you?

20 A. If you're going to participate in essentially
21 being a finder for finding additional capital and
22 you're -- I -- I think that that's a relationship, a
23 business relationship.

24 Q. what bankers did he take you to see? Do you
25 remember any of them?

26 A. I think Northland Securities and -- that --
27 that one comes to mind, but there were about four
28 others.

1 Q. Did any of them give MabVax money?

2 A. No, they did not.

3 Q. Okay. The other thing you said yesterday and
4 I'll -- I'll try and get this in in the next five
5 minutes, you said that this article was false because it
6 had some statement about Juno, right?

7 MR. WEBER: Could we bring up the article
8 section on that, Erik. I think it's page 3. Right.

9 BY MR. WEBER:

10 Q. So you said this -- well, let me ask you a
11 question before I get to that.

12 An option is just a type of contractual right,
13 correct?

14 A. It is.

15 Q. Okay. And so you said that this statement was
16 false because it didn't --

17 MR. WEBER: Well, actually, I think you've got
18 to go down, Erik. Go down a little bit.

19 BY MR. WEBER:

20 Q. Because it didn't mention that Juno had an
21 option, right?

22 A. That was -- what we said was that because it
23 was an option, it was a minor contractual right, that it
24 was overstated.

25 Q. Now, Mr. Hansen, you see the first sentence of
26 this -- this section of the -- of the article?

27 A. Which -- which paragraph are you referring to?

28 Q. "Also intriguing thing is that MabVax already

1 has a relationship with Juno Therapeutics."

2 Do you see that sentence?

3 A. I do.

4 Q. Do you notice that part of that sentence is
5 blue?

6 A. I do.

7 Q. Do you recall that there was a hyperlink from
8 those words "relationship with Juno Therapeutics to"
9 something?

10 A. No, I -- since I didn't write this article,
11 I -- I don't know that.

12 Q. Do -- you don't recall what this was
13 hyperlinked to?

14 A. No, I -- I didn't --

15 Q. Is there something that might refresh your
16 recollection of what this article was hyperlinked to,
17 for instance, clicking on the hyperlink?

18 A. I don't know. You -- I'm sure you're going to
19 show me.

20 MR. WEBER: Erik, can you pull up a Google
21 search function.

22 This is for purpose of refreshing recollection
23 only, Your Honor.

24 And type in "Opko Spots Another Overlooked
25 Opportunity in MabVax Therapeutics," which, of course,
26 is the title of this article.

27 BY MR. WEBER:

28 Q. Right?

1 A. It is.

2 Q. And do you see that brought up the article on
3 the Seeking Alpha website?

4 A. It did.

5 Q. It's still there.

6 MR. WEBER: And nobody in the Court should try
7 this at home.

8 Let's go down to the section about Juno, and
9 Erik, could you click on that hyperlink and see what
10 comes up.

11 BY MR. WEBER:

12 Q. Do you recognize this document that's
13 hyperlinked to the article?

14 MS. RUBENSTEIN: Objection. Foundation.
15 Speculation. Lawyer testimony.

16 BY MR. WEBER:

17 Q. Do you recognize the article?

18 THE COURT: Sustained.

19 BY MR. WEBER:

20 Q. Do you recognize what you're looking at right
21 now?

22 A. It appears to be a -- a news article about
23 MabVax.

24 Q. A press release about MabVax, correct,
25 entitled "MabVax Therapeutics Enters Agreements with
26 Memorial Sloan Kettering Cancer Center and Juno
27 Therapeutics For Development of Anti-Cancer Vaccines
28 [sic.]"

1 That's what it says?

2 A. It does.

3 Q. Could you pull up Exhibit 25 -- 256, Erik.
4 (Court's Exhibit No. 256, PRNewswire: MabVax
5 Therapeutics Enters Agreements with Memorial
6 Sloan Kettering Cancer Center and Juno
7 Therapeutics for Development of Anti-Cancer
8 Therapeutics (3 pages), first identified.)

9 BY MR. WEBER:

10 Q. And this exhibit that plaintiff put on the
11 exhibit list, 256, is this something that you recognize?

12 A. Is it the same news release?

13 Q. Well, it's also entitled "MabVax Therapeutics
14 Enters Agreements with Memorial Sloan Kettering Cancer
15 Center and Juno Therapeutics For Development of
16 Anti-Cancer Therapies [sic]," isn't it?

17 A. It does say that.

18 MR. WEBER: Okay. Your Honor, I move that
19 this be admitted into evidence.

20 MS. RUBENSTEIN: No objection.

21 THE COURT: Received.

22 (Court's Exhibit No. 256 received into
23 evidence.)

24 BY MR. WEBER:

25 Q. Okay. So this is an article -- excuse me,
26 this is a press that MabVax published, right?

27 A. It appears so, yes.

28 Q. And you helped draft it, right?

1 A. I'm sure I did.

2 Q. And you're quoted in it --

3 MR. WEBER: If we go down a little bit, Erik.

4 Three minutes, Your Honor.

5 BY MR. WEBER:

6 Q. You're quoted, right?

7 A. Yes.

8 Q. You're quoted.

9 A. And could I see the paragraph right above
10 that?

11 Q. Absolutely.

12 TRIAL TECHNICIAN: (Inaudible.)

13 MR. WEBER: Above.

14 BY MR. WEBER:

15 Q. Okay. Was it misleading, Mr. Hansen, for
16 Mr. O'Rourke to link his article about MabVax's
17 relationship to Juno to MabVax's press release about its
18 relationship with Juno?

19 MS. RUBENSTEIN: Objection. Foundation.

20 THE COURT: Overruled.

21 THE WITNESS: No, not -- not inappropriate.

22 BY MR. WEBER:

23 Q. Okay. And so let's see what you said about
24 the relationship with Juno at the bottom of page 1. It
25 says Juno has the right to negotiate a license
26 agreement -- well, you can see it right there.

27 That was an accurate statement, correct?

28 A. Yes.

1 MR. WEBER: Erik, can you go side by side with
2 what Mr. O'Rourke wrote about this relationship in his
3 article. Second-to-last paragraph. Yeah, yeah, right
4 here, Erik (indicating.) Right here (indicating.)
5 Highlight that.

6 BY MR. WEBER:

7 Q. So when MabVax said those words in its press
8 release you say it's true, but when Mr. O'Rourke puts it
9 in his article, yesterday you testified that was false,
10 right?

11 A. Can I see the -- the paragraph in full? I
12 think there's other --

13 Q. I'm asking about --

14 A. -- things to come.

15 Q. -- the highlighted statement, sir.

16 A. The highlighted statement on its -- standing
17 on its own is very similar to the -- to the one that I
18 had before, yeah.

19 Q. Okay.

20 MR. WEBER: I think this would be a good time
21 to take a break, Your Honor.

22 THE COURT: All right. Ladies and gentlemen,
23 we'll take our evening recess. Remember the admonition.

24 Also remember what I said before, don't do any
25 research with regard to going on Google and doing
26 searches, just let the lawyers do their work. Be
27 patient.

28 All right. And have a great evening. See you

1 at 9:00 o'clock tomorrow morning.

2 (The jury exits the courtroom.)

3 (Proceedings adjourned at 4:33 p.m.)

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1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF SAN DIEGO)
4

5 I, Christina Lothar, CSR No. 8624, Official
6 Reporter Pro Tempore for the Superior Court of the State
7 of California, in and for the County of San Diego, do
8 hereby certify:

9 That as such reporter, I reported in machine
10 shorthand the proceedings held in the foregoing case;

11 That my notes were transcribed into
12 typewriting under my direction and the proceedings held
13 on April 3, 2024 contained within pages 1 through 144,
14 are a true and correct transcription.

15 Dated this 4th day of April, 2024.
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21 Christina Lothar, CSR No. 8624
22 Official Reporter Pro Tempore
23 San Diego Superior Court

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