In the Matter Of:

MERCK SHARP & DOHME LLC vs

HALOZYME

KELLY GREZ

March 26, 2026



Halozyme EX2027
Merck v. Halozyme
IPR2026-00312

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCK SHARP & DOHME LLC
Petitioner

v.

HALOZYME, INC.
Patent owner

PGR2025-00003 (11,952,600 B2) PGR2025-00004 (12,018,298 B2)
PGR2025-00006 (12,152,262 B2) PGR2025-00009 (12,123,035 B2)
PGR2025-00017 (12,110,520 B2) PGR2025-00033 (12,049,652 B2)
PGR2025-00039 (12,104,185 B2) PGR2025-00046 (12,091,692 B2)
PGR2025-00024 (12,060,590 B2) PGR2025-00030 (12,054,758 B2)
PGR2025-00052 (12,264,345 B2) PGR2025-00042 (12,037,618 B2)
PGR2025-00050 (12,077,791 B2) PGR2025-00053 (12,195,773 B2)

** CONFIDENTIAL **

VIDEO RECORDED EXAMINATION of KELLY GREZ

TAKEN ON THURSDAY, MARCH 26, 2026

CERTIFIED STENOGRAPHER:
JESSIE WAACK, RDR, CRR, CCRR, NYRCR, NYACR,
CCR-NJ (No. 30XI008238700) CSR-TX (No. 11958)
CCR-WA (No. 21007264), CSR-CA (No. 14420),
REALTIME SYSTEMS ADMINISTRATOR
JOB NO.: 1017983

VIDEO RECORDED EXAMINATION of KELLY GREZ, taken before JESSICA R. WAACK,Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Registered Diplomate Reporter, California Certified Realtime Reporter, New Jersey Certified Court Reporter (License No. 30XI008238700); Texas Certified Shorthand Reporter (License No. 11958); Washington State Certified Court Reporter (License No. 21007264); California Certified Shorthand Reporter (License No. 14420); New York Association Certified Reporter, New York Realtime Court Reporter and Notary Public of Washington, D.C. and the States of New York, Pennsylvania, Delaware and Virginia, at Holiday Inn Express Hotel & Suites - Newark South, 750 West Edgar Road, Linden, New Jersey, on Thursday, March 26, 2026, commencing at 9:07 a.m. and concluding at 7:09 p.m.

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

DECHERT LLP
BY: KATHERINE A. HELM, PH.D., ESQ.
BY: BLAINE M. HACKMAN, PH.D., ESQ.
Three Bryant Park
New York, New York 10036-6797
PHONE: 212-698-3559
EMAIL: Khelm@dechert.com

-and-

DECHERT LLP
BY: SHYAM SHANKER, ESQ.
300 South Tryon Street, Suite 800
Charlotte, North Carolina 28202
PHONE: 704-339-3160
EMAIL: Shyam.shanker@dechert.com

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

SIDLEY AUSTIN LLP

BY: JEFFREY P. KUSHAN, ESQ.

1501 K Street, N.W.

Washington, D.C. 20005

PHONE: 202-736-8914

EMAIL: Jkushan@sidley.com

ON BEHALF OF THE PATENT OWNER:

STERNE KESSLER GOLDSTEIN & FOX

BY: R. WILSON "TREY" POWERS III, ESQ.

BY: ELDORA ELLISON, ESQ.

BY: LOUIS PANZICA JR., ESQ.

1101 K Street NW, 10th Floor

Washington, D.C. 20005

PHONE: 202-772-8876

EMAIL: Tpowers@sternekessler.com

EMAIL: Eellison@sternekessler.com

EMAIL: Lpanzica@sternekessler.com

A P P E A R A N C E S

ON BEHALF OF THE PATENT OWNER:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
BY: LAUREN MARTIN, ESQ.
111 Huntington Ave, Suite 520
Boston, Massachusetts 02199
PHONE: 617-712-7105
EMAIL: Laurenmartin@quinnemanuel.com

-and-

QUINN EMANUEL URQUHART & SULLIVAN, LLP
BY: ZACH SUMMERS, ESQ. (Remote)
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
PHONE: 213-443-3248
EMAIL: Zachsummers@quinnemanuel.com

-and-

QUINN EMANUEL URQUHART & SULLIVAN, LLP.
BY: ELLIOT CHOI, ESQ.
295 5th Avenue
New York, New York 10016
PHONE: 212-849-7546
EMAIL: Elliotchoi@quinnemanuel.com

A L S O P R E S E N T

MARK STEWART, in-house counsel

DANNY ORTEGA, videographer

A L S O P R E S E N T

(remotely)

AUBREY HADDACH, Halozyme

JOSHUA MACK, Halozyme

** STENOGRAPHER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

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INFORMATION REQUESTED

None

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** All original exhibits were attached to the original transcript **

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PROCEEDINGS

March 26, 2026, 9:07 a.m.

LINDEN, NEW JERSEY

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THE VIDEOGRAPHER: We are now on the record.

My name is Danny Ortega, I am the legal videographer for Lexitas Reporting.

Today's date is March 26, 2026, and the time is 9:07 a.m.

This video deposition is being held at 750 West Edgar Road, Linden, New Jersey, in the matter of Merck Sharp & Dohme LLC vs. Halozyme Inc.

The deponent today is Kelly Grez. All counsel will be noted on the stenographic record.

The court reporter today is Jessie Waack and will now swear in the witness.

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KELLY GREZ, sworn

on oath and/or affirmed, called as a witness herein, was examined and testified as follows:

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EXAMINATION

BY ATTORNEY POWERS:

Q. Good morning, Ms. Grez.

A. Good morning.

Q. Could you please state your full name for the record.

A. Kelly Grez.

Q. Have you been deposed before?

A. Yes.

Q. How many times?

A. Once.

Q. When was that?

A. A few years ago.

Q. What was the matter related to?

A. I was a third-party witness.

Q. Was that on behalf of Merck or a Merck entity?

A. On behalf of a Merck entity.

Q. Which Merck entity?

A. I don't recall.
Q. About how long ago was that deposition?
A. About how long ago? It was during the pandemic. So I don't remember the exact --
Q. Five or six years ago?
A. Yes.
Q. Was that a patent case you were deposed in?
A. No.
Q. What kind of a case was it?
A. It was a dispute that one of our collaborators had with one of their contracting parties.
Q. Was that pertaining to a particular drug?
ATTORNEY HELM: I'll just caution you if you can answer without revealing confidential information from that case.
THE WITNESS: I don't know if it was confidential, the proceeding.
BY ATTORNEY POWERS:
Q. Do you remember the name of the

drug that was at issue in that proceeding?

A. No.

Q. Was it a cancer drug?

A. It would have been a cancer drug based on the collaboration.

Q. Was it Keytruda?

A. No.

Q. Now, you're an attorney, right?

A. I am an attorney.

Q. And are you admitted to practice in any state?

A. I am admitted to practice in New York state, and I am admitted as an in-house counsel in New Jersey.

Q. Have you ever taken a deposition?

A. Never.

Q. Okay. So you're probably familiar with how it goes generally since you've been deposed before, but as you can see, we have a court reporter here transcribing our conversation. I'm going to need verbal answers from you. I think the court reporter spoke about that with you before.

So it's important that we don't

speak over each other, because it's all being transcribed. If I ask a question and you don't understand, just ask me to clarify, and I'll do my best to do so.

Is that okay?

A. That's okay.

Q. Okay. And if I ask a question and you answer it, I'm gonna assume that you understood my question; is that fair?

A. I'm not sure what's fair.

Q. Do you agree that if you answer my question, that I'll assume that you understood it?

A. I will do my best to answer your questions.

Q. That's all I ask.

And if your counsel objects, then you still have to answer my question unless you're instructed not to, okay?

A. That's what the court reporter said.

Q. Okay. So we'll take breaks periodically. If you need a break, just let me know. My only request is that you answer any pending question before we take

that break, okay?

A. Understood.

Q. All right. And you understand that you're under oath today, right?

A. I understand that I'm under oath today.

Q. And you understand that at least portions of this transcript are likely to become public, right?

A. I don't have any idea about what's going to be public.

Q. Okay. Portions of this transcript are likely to become public, so it's important that we get complete and truthful testimony from you today, okay?

A. I will be complete and truthful.

Q. Wonderful.

Is there any reason why you can't testify truthfully today?

A. No.

Q. Do you have any materials with you today?

A. No.

Q. Okay. You signed your declaration on March 12, 2026, right?

A. Do you have a copy that I can confirm? I don't remember the exact date.

Q. Sure do. I'm going to hand you what's been previously marked 1224.

(Whereupon, Previously Marked Exhibit 1224 is identified for the record.)

BY ATTORNEY POWERS:

Q. Exhibit 1224 in this case.

And if you go to the last page of that document, Page 12, do you see your signature there?

A. I do.

Q. And do you see a date there, March 12, 2026?

A. I do.

Q. So you signed your declaration on March 12, 2026, right?

A. I did.

Q. And you understood that it would be submitted in PGR proceedings in support of petitioner's opposition to patent owner's motion to terminate, right?

A. I understood that it would be submitted in these proceedings.

Q. These PGR proceedings listed on the front of your declaration?

A. Yes.

Q. And you declared that everything in your declaration was true and correct under the penalty of perjury, right?

A. I did.

Q. Is there anything that you would like to change in your declaration?

A. No.

Q. Did you meet with anyone in preparation for your deposition today?

A. I did.

Q. When were those meetings?

A. I had meetings yesterday and one week ago.

Q. Were those meetings in person?

A. Meetings yesterday were in person.

Q. Who attended those meetings?

A. The folks here on -- to my right, Mark, Jeff, Shyam, Blaine and Kassie.

Q. Did anyone else attend those meetings?

A. There were a couple other lawyers

from Dechert and Sidley and one in-house lawyer besides Mark, Eric Majchrzak.

Q. Okay. Anyone else attend those meetings, the meeting yesterday?

A. No.

Q. Were all those people meeting with you in person?

A. No.

Q. So some were attending by video; is that correct?

A. Some were attending by video.

Q. Who attended by video?

A. There were two outside counsel on video; one from -- one was Sue and one was Leif.

Q. Did anyone from Merck & Co. attend those meetings, the meeting yesterday?

A. So I'm corporate secretary of Merck & Co., Inc., but I was -- so I was there.

Q. You were there.

A. But I'm employed by Merck Sharp & Dohme LLC where I'm a VP legal.

Q. Did anyone else from Merck & Co.

attend those meetings yesterday -- the meeting yesterday?

A. So you're asking about Merck & Co., Inc.?

Q. Yes.

A. Just myself --

Q. Okay.

A. -- as one of my dual roles that I hold.

Q. And you mentioned a previous meeting before the one yesterday, right?

A. (Nods head.)

Q. Was that meeting in person, were there in-person attendees, or was that remote?

A. That was remote.

Q. And about how long ago was that meeting?

A. It was last week sometime, I believe.

Q. And who attended that meeting?

A. Most of the same people. I don't remember if there were fewer, but no one that -- you know, I didn't mention.

Q. Okay. So no one different

attended the previous meeting?

A. That's what I remember.

Q. Okay. And for that first meeting about a week ago, about how long was that meeting?

A. Probably about two hours.

Q. And the meeting yesterday that you had with counsel, about how long was that meeting?

A. Probably about seven hours.

Q. And how many counsel were present with you at the meeting yesterday in total?

A. Nine. Yeah, I think nine.

Q. Did you review documents at the meeting yesterday?

A. I did.

Q. Which documents did you review?

A. I reviewed a number of different documents.

Q. Did you review any documents that aren't cited in your declaration?

A. I cite quite a few documents in my declaration. I'm not sure.

Q. Do any specific documents that you reviewed yesterday jump out in your

mind?

A. No.

Q. So you might have reviewed documents that you didn't cite in your declaration yesterday; is that true?

A. As I said, I cited a lot of -- quite a few documents in my declaration, so I'm not sure.

Q. Do you remember any specific documents that you reviewed yesterday?

A. I remember reviewing a tax form that I cited in my declaration.

Q. Do you remember any other documents that you reviewed yesterday?

A. Not off the top of my head.

Q. Did you speak to anyone besides counsel that was attending those meetings about your deposition today?

A. No.

Q. Are you being compensated in any way for your testimony today?

A. No.

Q. Are you being compensated for your time here today?

A. No.

Q. Were you compensated for the time you spent on your declaration?

A. No.

Q. Beyond your normal pay, correct?

A. Right. I receive a salary as an employee of Merck Sharp & Dohme LLC.

Q. Did you speak to anyone about your declaration besides outside counsel?

A. I did not.

Q. You didn't speak to Mr. Stewart?

A. Oh, I apologize. I did not hear that outside part. I did speak to Mr. Stewart. I also spoke to Eric Majchrzak.

Q. Did you speak to anybody else besides Mr. Majchrzak and Mr. Stewart and outside counsel in preparing your declaration?

A. I did not.

Q. You didn't speak to Jennifer Zachary?

A. I did not.

Q. In preparing your declaration?

A. Correct.

Q. When was the last time you spoke

to Ms. Zachary?

A. I spoke to Ms. Zachary earlier this week.

Q. Did you speak to her about your deposition?

A. I did not.

Q. Did you speak to Ms. Zachary about your declaration?

A. I did not.

Q. Did you speak to Ms. Zachary between March 3 and March 12 of this year?

A. I don't know.

Q. Do you know if Ms. Zachary reviewed your declaration?

ATTORNEY HELM: I'll just caution the witness, if you can answer that without revealing any privileged information, you may.

BY ATTORNEY POWERS:

Q. It's a yes-or-no question.

A. It would be atypical for Ms. Zachary to review a declaration.

Q. So sitting here right now, you can't say one way or the other whether or not Ms. Zachary reviewed your declaration;

is that true?

ATTORNEY HELM: Same caution.

THE WITNESS: What I'm saying is based on my knowledge as part of the legal department of Merck Sharp & Dohme LLC, it would be unusual for Ms. Zachary to review a declaration.

BY ATTORNEY POWERS:

Q. That doesn't quite answer my question.

Do you know if Ms. Zachary reviewed your declaration or not?

A. I don't know. But as I stated, based on my knowledge, as an employee of Merck Sharp & Dohme LLC working in the legal department, it would be unusual.

Q. But you don't know one way or the other, correct?

A. I believe I answered that.

Q. I'm just trying to get a clear answer.

You don't know one way or the other if Ms. Zachary reviewed your declaration; is that true?

A. I believe I answered that.

Q. I just don't think you did, and I'm just asking simply for a yes or no.

ATTORNEY HELM: Objection to form. The record is what it is.

BY ATTORNEY POWERS:

Q. Do you know if Ms. Zachary reviewed your declaration?

A. I believe I said I don't know, and that it would be unusual for her to have done so.

Q. So you don't know if she reviewed your declaration, right?

A. I just answered your question.

Q. I'm just trying to understand your answer. There's a little ambiguity around it.

And I just want to know if you know if Ms. Zachary reviewed your declaration.

ATTORNEY HELM: Objection. Asked and answered.

THE WITNESS: I answered your question. I'm not sure what else.

BY ATTORNEY POWERS:

Q. Okay. Do you know if anybody

within Merck Sharp & Dohme LLC besides counsel, Mr. Majchrzak and Mr. Stewart reviewed your declaration?

A. I don't know.

Q. Have you ever spoken with Jennifer Zachary about these PGR proceedings?

A. I have not.

Q. Have you ever spoken with Jennifer Zachary about Halozyme?

ATTORNEY HELM: And I'll caution you, if you can answer that without revealing privileged information, you may.

THE WITNESS: I have not.

BY ATTORNEY POWERS:

Q. Was Jennifer Zachary asked to submit a declaration in this case?

A. I have no idea.

Q. Who asked you to submit this declaration?

A. Mark Stewart.

Q. Was anybody else involved in those discussions when you were asked to submit this declaration?

ATTORNEY HELM: And I'll give you the same privilege caution.

THE WITNESS: So the same, you know, outside counsel and the same internal counsel.

BY ATTORNEY POWERS:

Q. How was it decided that you should submit this declaration?

ATTORNEY HELM: I'm going to --

THE WITNESS: Yeah, I --

ATTORNEY HELM: Instruct you not to answer unless you're able to answer that without revealing attorney-client privileged or other privileged information.

THE WITNESS: Yeah, I can't answer that.

BY ATTORNEY POWERS:

Q. On the basis of privilege?

A. Yeah.

Q. You're going to follow your counsel's advice to not answer the question based on privilege; is that correct?

ATTORNEY HELM: I'll --

THE WITNESS: I can't --

ATTORNEY HELM: I'll clarify. If you're able to answer that question without revealing privileged information, and you know that answer, you may answer.

BY ATTORNEY POWERS:

Q. Can you answer?

A. I'm sorry. Say again.

Q. Can you answer how it was decided that you should submit this declaration?

A. Based on my role from -- from a factual basis based on the dual role that I have as an employee of Merck Sharp & Dohme LLC in the legal department and I'm also corporate secretary of Merck & Co., Inc. That's my understanding as to why I was asked.

Q. Do you know who decided that you should submit this declaration?

A. I don't know for sure. But Mark asked me, and given his role, that would be something he would decide.

Q. You have a fiduciary duty to MSD LLC and Merck & Co., Inc., correct?

A. I am a secretary of Merck Sharp &

Dohme LLC and corporate secretary of Merck & Co., Inc., so I have fiduciary responsibilities.

Q. For both entities?

A. For each entity, correct.

Q. And you're adhering to your fiduciary duty in providing testimony on their behalf, correct?

A. Can you explain what you mean?

Q. Well, you have a fiduciary duty to both entities, right?

A. Right. What I'd like to understand from you is how you mean that in this context of this proceeding.

Q. Well, you have a concurrent fiduciary duty to both entities, right?

A. I do owe fiduciary duties to Merck Sharp & Dohme LLC and Merck & Co., Inc.

Q. And so the testimony that you're giving in your declaration and today is through the lens of your fiduciary duty to both entities, correct?

A. That's the piece I'm not understanding.

Q. What don't you understand?
A. Fiduciary -- what about the proceedings involve fiduciary duties?
Q. Well, you have an ongoing fiduciary duty to both entities, right?
A. Right. So fiduciary duties to act in the best interests of each corporation --
Q. Yes.
A. -- is that what you mean?
Q. Yes.
A. Yes.
Q. And so the answer to my question is yes?
ATTORNEY HELM: Objection to form.
THE WITNESS: I honestly don't understand what you mean in connection with this proceeding.
BY ATTORNEY POWERS:
Q. Do you know why Jennifer Zachary didn't submit a declaration instead of you?
ATTORNEY HELM: Objection. Foundation.
THE WITNESS: I don't know. But

I know my role, and my role as corporate secretary of Merck & Co., and my role as AVP legal at Merck Sharp & Dohme LLC.

BY ATTORNEY POWERS:

Q. Do you own Merck & Co. stock?

A. [redacted]

Q. When I -- just to be clear, when I say Merck & Co., today -- I don't want it to be -- trip you up, but I will mean Merck & Co., Inc. Sometimes I'll just say Merck & Co.

So just can we be clear about that, Merck & Co. means Merck & Co., Inc.?

A. I mean, I take this seriously, and I want to be serious in my responses to you, so I would like to use the correct names.

Q. All right. Let's do that then. I'll try to use Merck & Co., and if you don't know what Merck entity I'm referring to, please let me know.

[redacted]

A. [redacted]

Q. Can you [redacted]

A. [redacted].

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. Can't even give me a ballpark?

ATTORNEY HELM: Objection --

THE WITNESS: I can't.

ATTORNEY HELM: -- form.

BY ATTORNEY POWERS:

Q. Okay. Do you have a financial interest in the outcome of these proceedings?

A. I do not.

Q. Does submitting your declaration impact any performance reviews?

A. It does not.

Q. Does your fiduciary duty to Merck & Co., Inc. and Merck Sharp Dohme LLC ever cease?

A. I don't know what that means.

Q. You have an ongoing fiduciary duty all the time to both entities, right?

A. If I were not employed in my

capacity at Merck Sharp & Dohme LLC, my responsibilities would cease.

Q. But you are employed, right?

A. By Merck Sharp & Dohme LLC.

Q. And you also have a fiduciary duty to Merck & Co., Inc., right?

A. I do.

Q. And those fiduciary duties are ongoing, correct?

A. Yes.

ATTORNEY HELM: Before we forget, we would like to make sure the transcript is designated confidential.

ATTORNEY POWERS: We would object to a blanket designation. I think we should figure out what we're going to be designated and work out a procedure to do that. But we object to any just blanket confidentiality designation.

ATTORNEY HELM: Okay. We propose to designate it confidential for now until we agree to the --

ATTORNEY POWERS: Temporarily.

ATTORNEY HELM: -- appropriate redactions.

ATTORNEY POWERS: Temporarily.
And we can work out a proposal for redactions.
BY ATTORNEY POWERS:
Q. Now, in Paragraph 5 of your declaration, you talk about review of corporate records, governance documents and other materials referenced.
Do you see that in Paragraph 5?
A. I see that.
Q. Did you review any materials not cited in your declaration in preparing your declaration?
A. I don't recall.
Q. Did you review any corporate records in preparing your declaration that weren't cited in your declaration?
A. Not that I recall.
Q. Did you review any government -- governance documents in preparing your declaration that aren't cited in your declaration?
A. Not in connection with preparing the declaration.
Q. So it's just general familiarity

with the governance documents, if they're not cited?

A. I am generally familiar with them, yes.

Q. And that's governance documents of both MSD LLC and Merck & Co., Inc., right?

A. I am familiar with the governance documents of both entities.

Q. Okay. Did you rely on conversations with anyone in providing your declaration testimony?

ATTORNEY HELM: And I'll caution you, if you can answer that without revealing privileged communications, you may.

THE WITNESS: I'm not sure what you mean.

BY ATTORNEY POWERS:

Q. Did you speak with anyone in gathering facts in preparation for providing your declaration testimony?

A. I spoke with the folks that I've mentioned before, in-house counsel.

Q. Did you rely on any of those

conversations with in-house counsel in providing your declaration testimony?

A. I relied on the things that I noted in my declaration. So based on my personal knowledge and my practical familiarity as well as my review of corporate records, governance documents and other materials referenced herein.

Q. Yes. And you don't mention conversations, so my question is: Did you rely on any facts you learned from conversations in providing the testimony you gave in your declaration?

A. I relied on what I shared in my declaration.

Q. So is your testimony here today that you did not rely on conversations with anyone in providing your declaration testimony?

A. My testimony is that I relied on the items that I set forth in my declaration.

Q. So you didn't rely on conversations to provide your declaration testimony, right?

ATTORNEY HELM: And I'll caution you, to the extent you can answer that without revealing privileged communications, you may.

THE WITNESS: In making my declaration, I relied on the items I set forth in my declaration as stated in Paragraph 5.

BY ATTORNEY POWERS:

Q. And conversations aren't mentioned, right?

A. Conversations are not written there.

Q. Did you rely on anything else not mentioned in Paragraph 5 in providing your declaration testimony?

ATTORNEY HELM: Objection to form.

THE WITNESS: As I stated, I relied on what I wrote in my declaration.

BY ATTORNEY POWERS:

Q. So nothing beyond what's enumerated there in Paragraph 5, right?

ATTORNEY HELM: Objection to

form.

THE WITNESS: As I said, I relied on what I wrote in my declaration.

BY ATTORNEY POWERS:

Q. Okay. And you didn't rely on anything that's not mentioned in your declaration in preparing your declaration, right?

A. As I said, I relied on what I wrote in my declaration.

Q. Okay. So you didn't rely on anything else besides what's written in your declaration?

A. As I've said, I relied on what I wrote in my declaration.

Q. Is there anything else that you relied on? It's a yes or no.

A. I relied on what I wrote in my declaration.

Q. Okay. Can you identify anything else you relied on besides what's written there in Paragraph 5?

A. I relied on what I wrote in my declaration.

Q. Okay. If there's anything else

you relied on other than what's written in your declaration, please tell me now.

A. Is that a question?

Q. It's a request.

ATTORNEY HELM: And if you can answer that without revealing privileged communications, you may.

THE WITNESS: I don't know what else to say. I relied on my -- what I wrote in the declaration.

BY ATTORNEY POWERS:

Q. If there's anything else that you relied on other than what's written in your declaration, please identify it.

Ms. Grez, are you reading your whole declaration?

A. I am. I am just making sure based on your question.

Q. I'll withdraw the question.

Ms. Grez, did you rely on any privileged information in preparing your declaration?

ATTORNEY HELM: I'll instruct the witness not to answer.

///

BY ATTORNEY POWERS:

Q. Are you going to follow counsel's instruction?

A. Yes.

ATTORNEY POWERS: Counsel, whose privilege are you asserting?

ATTORNEY HELM: I'm asserting -- to the extent you are asking -- you are seeking privileged information that was attorney-client privilege between the witness as an attorney and her client at Merck Sharp & Dohme LLC. She -- you're not entitled to that information.

BY ATTORNEY POWERS:

Q. Ms. Grez, from time to time in your capacity as a corporate officer for Merck & Co., Inc., you sign documents that Merck & Co., Inc. submits to the SEC, correct?

A. Correct. That's correct.

Q. Do you review those SEC filings before you sign them?

A. [redacted]

Q. Do you sometimes not review the

documents that you sign that are then submitted to the SEC?

A. [redacted]

Q. What kinds of filings do you [redacted] to the SEC?

A. Do you have a specific filing you're asking about?

Q. No. I'm asking you what kinds of documents you [redacted]

A. [redacted]

Q. Can you give me an example of a kind of document that you don't review before signing it and sending it to the SEC?

ATTORNEY HELM: Objection to form.

THE WITNESS: I can't.

BY ATTORNEY POWERS:

Q. So when you say it depends on the filing, what kinds of filings do you review before you sign them and send them to the SEC?

A. So I don't send them to the SEC.

Q. Who sends them to the SEC?
A. Well, they're filed with the SEC.
Q. Okay. Fair enough.
And so there are documents that you sign that are filed with the SEC, right?
A. Correct.
Q. And you review some kinds of documents that are filed with the SEC, but not others; is that what you're saying?
ATTORNEY HELM: Objection to form.
THE WITNESS: I'm asking if you have specific filings you're talking about.
BY ATTORNEY POWERS:
Q. I'm asking you if you can give me an example of a kind of a document you do review before signing it and filing it with the SEC.
A. Section 16 filings.
Q. You review those before signing them and filing them with the SEC.
Any others?
A. I gave you an example.

Q. Can you give me other examples?
A. Not off the top of my head.
Q. So it's not your normal course to review documents that you sign that are then filed with the SEC?
ATTORNEY HELM: Objection to form.
THE WITNESS: I did not say -- yeah, I did not say that.
BY ATTORNEY POWERS:
Q. Why would you not review a document that you sign and then is filed with the SEC?
A. What document are you talking about?
Q. Any document.
A. It would be helpful to have specifics.
Q. I'm asking you for specifics.
A. And I'm trying to understand what filings you're talking about.
Q. I'm trying to understand why you would allow your signature to be affixed to a document that is filed with the SEC without having reviewed it.

ATTORNEY HELM: Objection to form. Lack of foundation.

THE WITNESS: I'm not sure what you mean.

BY ATTORNEY POWERS:

Q. I think you said that sometimes [redacted]

ATTORNEY HELM: Objection. Lack of foundation.

THE WITNESS: [redacted]

BY ATTORNEY POWERS:

[redacted]

A. [redacted]

[redacted]

Q. And what lawyers are you trusting in that -- in their capacity?

A. I can't speak in generalities. I'm trying to give you an example.

Q. Is it outside counsel?

A. It depends.

Q. Is it in-house counsel at Merck?

A. What entity do you mean?

Q. I mean what lawyers are you relying on in their capacity to be accurate before you allow your signature to be affixed to a filing?

A. I can't speak to generalities.

Q. Can you give me an example?

A. I gave you an example.

Q. A specific example?

A. I cannot.

Q. The bottom line is that before you allow your signature to be affixed, you attempt to make sure that filings are accurate, right?

A. I don't understand why you keep

saying "affixed."

Q. Sure. Would a different word help you?

Before you allow your signature -- before you sign a document, you attempt to make sure that it is accurate, correct?

A. Correct.

Q. Are Merck & Co., Inc.'s SEC filings accurate?

A. As a public company, Merck & Co., Inc. is obligated to submit not materially misleading -- misleading documents.

Q. So Merck & Co., Inc.'s SEC documents are not unreliable, correct?

A. I believe that Merck & Co., Inc.'s documents are reliable.

Q. And you wouldn't call Merck & Co., Inc.'s SEC documents muddy, right?

ATTORNEY HELM: Objection to form.

THE WITNESS: What do you mean by "muddy"?

BY ATTORNEY POWERS:

Q. They're not misleading, correct?

A. That is correct.

Q. And they're supposed to be clear to investors and the investing public, correct?

A. I believe I discuss in my declaration SEC filings and disclosures.

Q. Do you need to be -- do you need to look at your declaration to answer my question?

A. I take this very seriously.

Q. Okay. Merck & Co., Inc.'s SEC filings are supposed to be clear to investors and the investing public, correct?

A. As I state in my declaration, Merck & Co., Inc. has an obligation to present its disclosures in a way that is clear and accessible to investors and the investing public.

Q. And Merck & Co., Inc.'s SEC filings are reliable, correct?

A. Merck & Co., Inc. makes its filings, and it's obligated to ensure that the material is clear and accessible to investors --

Q. And, therefore --
A. -- because they are relied upon by investors.
Q. And if the filings with the SEC were misleading or unreliable, you wouldn't sign them, right?
A. Merck & Co., Inc. is obligated for its disclosures to be presented in a clear and accessible way. For investors, that's one of the requirements of being a public company.
Q. Right. And if they weren't clear and accessible to investors, then you wouldn't sign the document, right?
A. Well, I'm not our securities lawyer, but when I'm signing a document, I do understand my obligations.
Q. And that the document should be clear and accessible to the investing public, right?
A. Yes. That is one of the requirements.
Q. From time to time in Jennifer Zachary's capacity as an officer for Merck & Co., Inc., she signs documents that

Merck & Co., Inc. submits to the SEC, right?

A. She does.

Q. Does Jennifer Zachary review SEC filings before signing them?

A. I can't speak to what other people's process is.

Q. You don't know if Jennifer Zachary reviews the documents before signing them, before they're filed with the SEC; is that correct?

A. Knowing her, in my capacity, I'm sure she does. I don't see what she's reviewing.

Q. Does Jennifer Zachary attempt to make sure the documents are accurate before filing them with the SEC?

A. I'm sure she does.

Q. Jennifer Zachary would not sign the SEC filings if they were inaccurate, correct?

A. I cannot imagine her doing that.

Q. You say that Merck & Co., Inc. and Merck Sharp Dohme LLC are separate and distinct legal entities in your

declaration, right?

A. I do.

Q. Do Merck & Co., Inc. and MSD LLC have a common interest agreement that covers these PGRs?

A. Not to my knowledge.

Q. Does Merck & Co., Inc. and -- do Merck & Co., Inc. and MSD LLC have a common interest agreement that covers any litigation against Halozyme?

A. I have no idea.

Q. Do Merck & Co., Inc. and MSD LLC have a common interest agreement that covers litigation related to Keytruda?

A. I have no idea.

Q. Do Merck & Co., Inc. and MSD LLC have a common interest agreement that covers litigation related to Keytruda Qlex?

A. I have no idea.

Q. Does MSD LLC have an operating agreement?

A. Merck Sharp & Dohme LLC has an LLC agreement.

Q. Is an LLC agreement like an operating agreement?

A. Yeah, different states call them different things.

Q. In New Jersey, it's called an LLC agreement?

A. That's what we call it, yes.

Q. Okay. MSD's -- MSD LLC's LLC agreement sets out the company governance for MSD LLC, correct?

A. Correct.

Q. And it sets out how the company is controlled, correct?

A. It sets forth that Merck Sharp & Dohme LLC is managed by a board of managers.

Q. It also sets out how the company is controlled, correct?

A. It sets forth how it is governed.

Q. And MSD LLC's LLC agreement sets forth how profits are allocated, correct?

A. It does. It sets forth the sole owner.

Q. And the sole owner is Merck & Co., Inc., correct?

A. That's correct.

Q. And MSD LLC's LLC agreement sets

out how distributions are taken, correct?

ATTORNEY HELM: Objection. Lack of foundation.

THE WITNESS: It would have a provision on distributions, though, since it's -- yeah, I don't recall whether it's called a distribution or something else.

BY ATTORNEY POWERS:

Q. And MSD LLC's operating agreement sets out voting and decision-making rules for the company, correct?

A. As I stated, it sets forth that Merck Sharp & Dohme LLC is managed by a board of managers, and that its operations are -- day-to-day operations are managed by officers.

Q. You said day-to-day operations, but there are other operations enumerated in MSD LLC's LLC agreement, correct?

A. No, I don't know what you mean.

Q. Well, does MSD LLC's LLC agreement set forth MSD's obligation regarding its relationship to its parent company?

A. It sets forth how MSD LLC is governed. Unlike other LLCs in New Jersey and other states, a -- an LLC can be managed by a member or it can be managed in some other way.

Merck Sharp & Dohme LLC is structured so that there's a separate board of managers consisting of three individuals who are charged with managing the LLC.

Q. And MSD LLC's LLC agreement sets out how changes can be made to the operating agreement or the LLC agreement, right?

A. Yes.

Q. And MSD LLC's LLC agreement sets out how managers are appointed and removed, right?

A. Correct.

Q. Does Merck & Co., Inc. have the right to appoint managers of MSD LLC?

A. Merck & Co., Inc. as the sole owner, just like public company shareholders who vote for our board of directors for Merck & Co., Inc., has the right to appoint the board of managers.

Q. Who at Merck & Co., Inc. has the right to appoint managers of MSD LLC?

A. What do you mean?

[redacted]

Q. [redacted]

[redacted]

A. [redacted]

Q. [redacted]

ATTORNEY HELM: Objection. Lack of foundation.

THE WITNESS: O[redacted]

BY ATTORNEY POWERS:

Q. [redacted]

Q. A[redacted]

Q. That's not my question.

[redacted]

Q. That's not my question.

[redacted]

Q. Still not my question. Yes or

no: [redacted]

ATTORNEY HELM: Objection. Form.

THE WITNESS: From a basic corporate governance perspective, Merck & Co., Inc. is the sole owner of MSD LLC. [redacted]

Merck Sharp & Dohme LLC is the main U.S. operating entity for the human health business, and [redacted]

But Merck & Co., Inc. is the sole owner just like it owns subsidiaries throughout the world who operate the business.

BY ATTORNEY POWERS:

Q. You're not answering my question.

[redacted]

Q. That still doesn't answer my question.

Yes or no: Does he have the authority to do that?

ATTORNEY HELM: Objection. Asked and answered.

THE WITNESS: To speculate and from a governance perspective?

BY ATTORNEY POWERS:

Q. I'm not asking you to speculate. You say that you're familiar with the documents that are the organizing documents of MSD LLC. You testified to that under oath earlier today.

[redacted]

Q. Do you know if he has the authority to do that?

A. He's chair and CEO of Merck & Co., Inc.

Q. [redacted]

ATTORNEY HELM: Objection to form.

THE WITNESS: [redacted]

BY ATTORNEY POWERS:

Q. And other officers of Merck & Co., Inc. [redacted]

Q. [redacted]

Q. That doesn't answer my question.

My question is: [redacted]

Q. According to the governance documents that you say you're familiar with, [redacted]

[redacted]

Q. Ms. Grez, please. Yes or no.

ATTORNEY HELM: Objection to form.

BY ATTORNEY POWERS:

Q. [redacted]

Q. Still not answering my question.

Do you know whether or not in her role at Merck & Co., Inc. Jennifer Zachary has the authority to appoint managers at MSD LLC?

ATTORNEY HELM: Counselor, she's asked -- answered this question --

ATTORNEY POWERS: She hasn't answered the question.

ATTORNEY HELM: -- several times. You may not be happy with the answer, but she's put on the record what her answer is.

ATTORNEY POWERS: Please stop coaching the witness. Your objection is improper.

BY ATTORNEY POWERS:

Q. Will you please answer the question, Ms. Grez?

A. [redacted]

Q. Yeah, that's not my question.

[redacted]

Q. [redacted]

ATTORNEY HELM: Objection to form.

[redacted]

Q. [redacted]

Q. Still not answering my question.

[redacted]

Q. [redacted]

Q. [redacted]

[redacted]

ATTORNEY HELM: Objection to form.

THE WITNESS: What do you mean by "signature authority"?

BY ATTORNEY POWERS:

Q. I think you're the one that brought that up.

It's signing on behalf of Merck & Co., Inc., right? That's what you mentioned before?

A. Yes.

[redacted]

Q. Right. And so just to drill down a little bit.

[redacted]

ATTORNEY HELM: Objection to -- objection to form.

[redacted]

BY ATTORNEY POWERS:

Q. No. I'm asking about the same o[redacted]

ATTORNEY HELM: Objection. Lack of foundation.

THE WITNESS: [redacted]

[redacted]

BY ATTORNEY POWERS:

Q. [redacted]

[redacted]

Q. [redacted]

[redacted]

[redacted]

[redacted]

Q. Well, let's focus on the appointment or removal of managers at MSD LLC.

[redacted]

Q. Okay.

ATTORNEY HELM: We've been going about an hour. Do you want to try and --

(Simultaneous unreportable crosstalk occurs among parties.)

ATTORNEY POWERS: Let's have a couple more questions. Then we'll take a break.

BY ATTORNEY POWERS:

Q. [redacted]

Q. [redacted]

Q. Based on the corporate governance documents that you say you're familiar with, other officers at Merck & Co. can sign, though. We've established that.

So I would like to know who those officers at Merck & Co. are.

A. I'm a little confused, because if we established it, why do you keep asking me the same question?

Q. I'm not asking you the same question.

I would like to know the list of the Merck & Co. officers that can sign --

A. And I'm saying --

Q. -- that document?

A. -- [redacted]

Q. Yes. [redacted]

Q. Okay. So who else can sign?

A. [redacted]

Q. [redacted] I'm asking based on her authority in the governance documents, who else can sign?

ATTORNEY HELM: Objection. Lack of foundation.

THE WITNESS: [redacted]

BY ATTORNEY POWERS:

Q. And I'm asking who else has the authority [redacted]?

A. [redacted]

Q. Anyone else?

A. [redacted]

Q. Those are the [redacted] that could [redacted]

A. [redacted]

Q. Okay.

ATTORNEY POWERS: Let's take a break.

THE VIDEOGRAPHER: The time right now is 10:12 a.m.

We are off the record.

(Whereupon, a recess was taken at 10:12 a.m.)

THE VIDEOGRAPHER: The time is 10:34 a.m.

We're back on the record.

BY ATTORNEY POWERS:

Q. Welcome back, Ms. Grez.

Did you speak to your counsel during the break about the substance of your testimony here?

A. I did not.

Q. You hold positions of -- scratch that.

You hold the positions of assistant vice president legal and secretary at Merck Sharp & Dohme LLC and corporate secretary at Merck & Co., Inc., right?

A. I am employed by Merck Sharp &

Dohme LLC and hold my position as assistant vice president legal. And I have -- I am corporate secretary of Merck & Co., Inc.

Q. Are you also the assistant vice president of legal at Merck & Co.?

A. I am not.

Q. Have you ever been assistant vice president legal at Merck & Co.?

A. I have had two roles at Merck & Co., Inc. One was deputy corporate secretary, and one was corporate secretary.

Q. You have never been assistant vice president of legal at Merck & Co., Inc., correct?

A. My only two roles at Merck & Co., Inc. are -- one was deputy corporate secretary and now corporate secretary.

Q. Who do you report to -- well, strike that.

Sitting here today, are you acting on behalf of Merck Sharp & Dohme LLC or Merck & Co., Inc. or both?

A. So I made the declaration on behalf of Merck Sharp & Dohme LLC. I have concurrent roles, one as AVP legal at Merck

Sharp & Dohme LLC and one as corporate secretary of Merck & Co., Inc.

Q. So here today, you are appearing in both roles; is that correct?

A. As I stated in my declaration, by virtue of holding concurrent roles at both companies, I am personally familiar with the responsibilities and functions of officers who serve in capacities at both companies.

Q. That's not quite my question.

Appearing here today, are you appearing on behalf of Merck Sharp & Dohme LLC or Merck & Co., Inc. or both?

A. Merck Sharp & Dohme LLC.

Q. Solely on behalf of Merck Sharp & Dohme LLC, correct?

A. Correct.

[redacted]

Q. You have a role at Merck & Co., Inc., correct?

A. My role is as corporate secretary, as I mentioned.

Q. Do you have someone who oversees your work as corporate secretary?

A. My employment relationship is with Merck Sharp & Dohme LLC.

Q. Okay. That's not my question.

[redacted]

A. T[redacted]

[redacted]

Q. No one oversees your work as corporate secretary for Merck & Co., Inc.?

A. At my role in Merck & Co., Inc. as corporate secretary, [redacted]

[redacted]

Q. So in your corporate secretary of Merck & Co., Inc. role, [redacted]

A. I think I'm getting a little tripped up [redacted]

Q. In your role as corporate secretary of MCI, Merck & Co., Inc., [redacted]

A. [redacted]

Q. You said [redacted]

So I want to understand what you meant when you said [redacted]

Can you please explain?

A. With my work [redacted].

Q. And does [redacted] in your role as corporate secretary on behalf of Merck & Co., Inc.?

A. I'm not sure what you mean.

Q. What's unclear about my question?

Does anyone [redacted]

[redacted]

A. [redacted]

Q. Do you receive performance reviews --

ATTORNEY HELM: Sorry. Did you let her finish? Were you finished?

BY ATTORNEY POWERS:

Q. Were you finished? I'm sorry. I didn't mean --

A. Yes, yeah.

Q. -- didn't mean to interrupt you.

Do you receive performance reviews in your role as corporate secretary for Merck & Co., Inc.?

A. So [redacted]

Q. I've understood -- I've understood that to be your testimony. That's not my question, okay?

In your role as an officer for Merck & Co., Inc., do you receive performance reviews?

A. [redacted]

Q. Do you receive performance reviews in your role for MSD LLC?

A. [redacted]

Q. Does your [redacted]

A. I hold both roles concurrently.

Q. Right. And so when you're [redacted]

[redacted]

Q. And who [redacted]

[redacted]

Q. What's Jon Filderman's title?

A. Vice president corporate legal.

Q. At which entity?

A. At Merck Sharp & Dohme LLC.

Merck & Co. [redacted]

Q. You agree that Merck & Co., Inc. does have officers, right?

A. I do.

Q. And you agree that Merck & Co., Inc. has a board of directors, right?

A. Merck & Co., Inc. has a board of directors, that is correct.

Q. Does Jon Filderman have a role at Merck & Co., Inc.?

A. He does not.

Q. Jon Filderman is not an officer of Merck & Co., Inc.?

A. He is not.

Q. Is Jon Filderman on the board of directors at Merck & Co., Inc.?

A. He is not.

[redacted]

A. [redacted]

[redacted]

A. [redacted]

Q. [redacted]

[redacted]

Q. [redacted]

Q. Now, in your declaration, you state that you are acquainted with how the roles and responsibilities differ between Merck & Co. and MSD LLC, right? That's Paragraph 5.

A. Yes, I do state that.

Q. What are your roles and responsibilities as an officer for Merck & Co., Inc.?

A. As an officer of Merck & Co., Inc., I work with our board of directors on governance matters.

Q. Any --

A. Advising them.

Q. When you say government -- "governance matters," what do you mean?

A. Matters that as a public company board of directors ensuring that they're providing their oversight.

Q. The oversight role of the board of directors at Merck & Co., Inc.? Is that who you're referring to?

A. Yeah, Merck & Co., Inc. is our

public company. They have a majority independent board of directors consistent with Merck & Co., Inc.'s obligations as a publicly traded company listed on the New York Stock Exchange.

Q. When you say "majority independent board of directors," what does that mean?

A. That means 12 of the 13 members of the Merck & Co., Inc. board of directors are independent as defined by the categorical standards under the New York Stock Exchange rules.

Q. That means they have no relationship with any Merck entity?

A. The categorical standards have a varied number of meanings.

Q. But essentially it means they can't be too closely related to any Merck entity; is that correct?

A. It means that they're independent.

Q. You're also the secretary of the governance committee on the board -- for the board of Merck & Co., Inc., right?

A. I am the secretary of the governance committee.

Q. And what's your role as the secretary of the governance -- is it a subcommittee?

A. It's a -- one of the boards for standing committees.

Q. Okay. What's your role as secretary of the governance committee of the board of Merck & Co., Inc.?

A. To ensure that the governance committee is reviewing what it needs to review as part of its obligations as the governance committee.

Q. What does the governance committee need to review as part of its obligations of the governance committee?

A. Review and consider potential director succession planning, board composition. Does the Merck & Co., Inc. board of directors have the right composition and the right skills. There's a whole host of things delineated in the governance committee chatter.

Q. What other committees are there

of the board of Merck & Co., Inc.?

A. The board of directors of Merck & Co., Inc. has three other standing committees. One is the audit committee. One is the compensation and management development committee. And the other is the research committee.

Q. What are your roles and responsibility -- responsibilities as an officer for MSD LLC?

A. Reviewing subsidiary governance matters. Merck Sharp & Dohme LLC has a number of subsidiaries. Reviewing contracts from certain parts of the business. Those are key ones.

Q. And earlier you mentioned four committees of the board of MS -- sorry -- the board of Merck & Co., Inc.

Are you familiar with documents controlling those committees of the board of Merck & Co., Inc.?

A. What do you mean by "documents controlling"?

Q. The documents setting out the responsibilities and duties of those

committees of the board.

A. Each of the committees does have a charter.

Q. Are you familiar with the charters for those committees?

A. I'm -- I'm familiar with the charters.

Q. Now, your roles on behalf of Merck Sharp Dohme LLC and Merck & Co., Inc. occur at the same time, correct?

A. I hold them concurrently, as I state in my declaration.

Q. When you function in one role, are you serving the interests of both entities?

A. When I function in my Merck & Co., Inc. role, I'm serving Merck & Co., Inc. When I function in my Merck Sharp & Dohme LLC role, I'm serving Merck Sharp & Dohme LLC.

Q. When you act in your role for MSD LLC, are you serving the interests of both Merck Sharp Dohme LLC and Merck & Co., Inc.?

A. I'm serving the interests of

Merck Sharp & Dohme LLC when I'm acting in that capacity.

Q. In the course of a single day, do you act in different roles?

A. Yeah, it can happen.

Q. So in the course of a single day, you might switch roles between Merck Sharp Dohme LLC and Merck & Co., Inc. several times?

A. By virtue of holding concurrent roles, yes, that can happen.

Q. Would the interests of Merck Sharp Dohme LLC and Merck & Co., Inc. ever not be aligned?

ATTORNEY HELM: Objection to form.

THE WITNESS: So I think it's important to take a step back. The structure is that Merck Sharp & Dohme LLC is the operating entity in the U.S., and its sole owner is Merck & Co., Inc. So they're not independent parties.

BY ATTORNEY POWERS:

Q. Have you ever been required to

act in your role for, let's say, MSD LLC in a way that was adverse to the interests of Merck & Co., Inc.?

A. Not that I recall.

Q. In the case of a direct conflict of interest between MSD LLC or Merck & Co., Inc., how would you decide which interest you would serve?

ATTORNEY HELM: Objection to form.

THE WITNESS: I've not seen that happen before.

BY ATTORNEY POWERS:

Q. You can't think of any time where the interests of Merck Sharp Dohme LLC and Merck & Co., Inc. haven't been aligned?

A. Not in my role.

Q. Do you know of any instance in any role where the interests of Merck Sharp Dohme LLC and Merck & Co., Inc. were not aligned?

A. I don't want to speculate.

Q. You're not aware of any instance of that?

A. I don't know.

Q. Do you have separate business cards for your roles at MSD LLC and Merck & Co., Inc.?

A. I don't have business cards.

Q. When you switch roles between MSD LLC and Merck & Co., Inc., do you go to a different office?

A. I do not.

Q. You use the same office for your roles at MSD LLC and Merck & Co., Inc.?

A. I do my concurrent roles out of the same office.

Q. Do you use the same desk in that office when you switch roles between MSD LLC and Merck & Co., Inc.?

A. I do.

Q. When you switch roles between MSD LLC and Merck & Co., Inc., do you use a different computer?

A. I do not.

Q. You use the same computer for your roles at Merck & Co., Inc. and MSD LLC?

A. I do.

Q. When you switch roles between MSD

LLC and Merck & Co., Inc., do you use a different email address?

A. I have one email address.

Q. So you use the same email address for both roles at MSD LLC and Merck & Co., Inc., right?

A. I have the one email address.

Q. Do you use the same mailing address for your roles at Merck & Co., Inc. and MSD LLC?

A. I do.

Q. When you switch roles between MSD LLC and Merck & Co., Inc., do you use a different telephone number?

A. I do not.

Q. You have a different telephone number between MSD LLC and Merck & Co., Inc.?

A. I'm sorry. I thought you just asked me that.

Q. Well --

A. I do not have a different telephone number.

Q. I see. Thank you.

A. I apologize if I misspoke.

Q. I think I misspoke. Thank you for clarifying.

So you use the same telephone number in your roles at MSD LLC and Merck & Co., Inc., correct?

A. I do use the same telephone number.

Q. Okay. When you switch roles between MSD LLC and Merck & Co., Inc., do you notify your work colleagues in some way?

A. It's obvious when I'm working in one capacity versus the other.

Q. Is there a specific time of day that you change roles?

A. No. I hold the roles concurrently.

Q. If you were walking down the hall and gave an instruction to someone you saw, how would that person know which entity you were serving when you gave them the instruction?

A. I wouldn't give someone an instruction in the hallway.

Q. If someone went to your office

and you gave an instruction, how would that person know which entity you were serving when you gave them the instruction?

A. It would depend on the facts and circumstances of the instruction.

Q. But you don't tell the person that you're working on behalf of MSD LLC or Merck & Co., right?

A. It's obvious from whatever is being worked on.

Q. How is it obvious?

A. It depends on the facts and circumstances, what would make it obvious.

Q. Are you able to access Merck & Co., Inc. documents while in your role at MSD LLC?

A. Yes. It's a parent-subsidiary relationship.

Q. Can you access -- strike that.

Who is Kenneth Frazier?

A. Our former chair and CEO.

Q. Of Merck & Co., Inc., right?

A. Yes. He held that position.

Q. Mr. Frazier was not an officer at MSD LLC, correct?

A. That's my understanding.

Q. Do Merck & Co., Inc. and MSD LLC have the same computer database for storing documents?

A. I can't speak to what databases our vast company has. But all of the databases in the, you know, in the U.S. for doing U.S. work is -- [redacted]

Q. But you don't know if they have different databases or not, correct?

A. I don't know what databases are -- exist across the global enterprise.

Q. Now, Jennifer Zachary you say is an employee of Merck Sharp & Dohme LLC, right? I think that's on Paragraph 18 of your declaration?

A. Yes, I do state that.

Q. So Jennifer Zachary was hired by MSD LLC, correct?

A. That's correct.

Q. And Jennifer Zachary is also executive vice president and general counsel to Merck & Co., Inc., correct?

A. She holds concurrent roles.

Q. So she's an officer of Merck & Co., Inc., right?

A. Jennifer Zachary is an officer of Merck & Co., Inc.

Q. You also say in Paragraph 18 that Jennifer Zachary is not an employee of Merck & Co., Inc., right?

A. Just like me, she is employed by Merck Sharp & Dohme LLC and holds concurrent roles.

Q. And you say that her employment letter was for a position with Merck Sharp Dohme Corp., a wholly owned subsidiary of Merck & Co., Inc., right?

A. Merck Sharp & Dohme Corp. was the entity before Merck Sharp & Dohme LLC.

Q. Ms. Grez, I'm going to hand you what's been previously marked 2451.

ATTORNEY POWERS: Counsel.

(Whereupon, Previously Marked Exhibit 2451 is identified for the record.)

BY ATTORNEY POWERS:

Q. Do you recognize this document?

A. I do.

Q. This is Jennifer Zachary's office -- offer letter, right?

A. With Merck Sharp & Dohme Corp., yes.

Q. Right. And you cited this document in your declaration in Paragraph 20, correct?

A. Correct.

Q. And if you look at the last page of the document, you can see that it's signed by Kenneth C. Frazier, correct?

A. Sorry. Last page of the Exhibit 2451?

Q. Yes. Last page of 2451. That offer letter to Jennifer Zachary was signed by Kenneth C. Frazier, right?

A. I see that.

Q. And Kenneth C. Frazier is listed in this document. Right under his name, it says "Chairman and chief executive officer," right?

A. It does say that.

Q. And Kenneth C. Frazier was chairman and chief executive officer of Merck & Co., Inc., right?

A. Yes, that's the role he held.

Q. And if you go to Page 1 of 2451, that's Ms. Zachary's offer letter. In the middle of that page, it states, "In the position, you will report to me," right?

A. Yeah, Ken Frazier's also employed by Merck Sharp & Dohme LLC, [redacted]

Q. Now, earlier you testified that Mr. Frazier didn't have any role at MSD LLC?

A. I believe I testified that he had the role of chairman and CEO at Merck & Co., Inc.

Q. You did. But you also told me that he had no role at MSD LLC.

ATTORNEY HELM: Objection to form.

BY ATTORNEY POWERS:

Q. Are you changing that testimony?

A. I'm not changing the testimony. I'm saying that he was employed by Merck Sharp & Dohme LLC like everyone -- or, excuse me, I should definitely -- like Jennifer Zachary and myself.

Q. Well, this paragraph continues. And it says, "In the position, you will report to me, will be a member of my executive team and will be an officer of Merck (as defined in Section 16 of the Securities Exchange Act of 1934)." [As read]

Do you see that?

A. I do. I read that discussing -- as discussing her role, her concurrent role as an officer of Merck & Co., Inc.

In the first paragraph, it discusses her being offered the position with Merck Sharp & Dohme Corp. So it shows the concurrent roles.

Q. It also mentions in the first paragraph that Merck Sharp & Dohme Corp. is a "wholly-owned subsidiary of Merck & Co., Inc. ('Merck' or the 'Company')." Right?

A. That's what the first sentence says, part of it.

Q. And you agree that this letter says that Ms. Zachary will report directly to Kenneth Frazier, the CEO and chairman of Merck & Co., Inc., right?

A. He's employed by Merck Sharp & Dohme LLC.

Q. Yes. And he signed this letter "Chairman and chief executive officer," right?

A. He did.

Q. And he wasn't chairman and chief executive officer of Merck Sharp Dohme LLC, was he?

A. I don't know.

Q. But you know that he was chairman and chief executive officer for Merck & Co., Inc., right?

A. With public filings, yes.

Q. In her current role, Ms. Zachary reports directly to the CEO of Merck & Co., Inc., right?

A. Jennifer Zachary reports to Rob Davis.

Q. And Rob Davis is the CEO of Merck & Co., Inc., right?

A. That's correct.

Q. Does -- and Ms. Zachary doesn't report directly to anybody else, correct?

A. Like Ms. Zachary, Rob Davis is

employed by Merck Sharp & Dohme LLC. That's the operating entity to actually conduct business.

Q. Ms. Zachary reports directly to the CEO of Merck & Co., Inc., though, right?

A. Yes.

Q. And Ms. Zachary is general counsel for both MSD LLC and Merck & Co., Inc., correct?

A. I believe I addressed this in my declaration.

Yes. In 19, I discuss her two roles.

Q. Right. And that's what I want to ask about. What is Ms. Zachary's role as general counsel for Merck & Co., Inc.?

A. One of her responsibilities is to advise the board on their fiduciary duties.

Q. So --

A. The board of directors of Merck & Co., Inc.

Q. In her role as general counsel for Merck & Co., Inc., she advises the board, correct?

A. In her role as general counsel of Merck & Co., Inc., she advises the board of directors of Merck & Co., Inc. when she has that role.

Q. And she also sets global legal strategy, correct?

A. So when she's working on setting strategy and performing her responsibilities as GC of Merck Sharp & Dohme LLC, that's when she sets the strategy.

Q. She also sets global legal strategy for Merck & Co., Inc., though, correct?

ATTORNEY HELM: Objection to form.

THE WITNESS: So the legal operations that she directs are on behalf of Merck Sharp & Dohme LLC.

BY ATTORNEY POWERS:

Q. [redacted]

Q. Does Merck & Co., Inc. -- does

Merck & Co., Inc. have any legal strategies?

A. I'm not sure I understand the question.

Q. Does the board of Merck & Co., Inc. receive advice from Ms. Zachary on legal strategy?

A. It could. It is a publicly traded entity that holds many subsidiaries throughout the world. And the operations are conducted through those subsidiaries.

Q. Who supports Ms. Zachary in her role in advising the board of Merck & Co., Inc. with respect to the board's legal strategies for Merck & Co., Inc.?

ATTORNEY HELM: Objection. Foundation.

THE WITNESS: I'm not sure what you mean, "support."

BY ATTORNEY POWERS:

Q. Does Ms. Zachary have folks that work for her that support her in her role in advising the board of Merck & Co., Inc. with respect to legal strategy?

A. Ms. Zachary has direct reports at

Merck Sharp & Dohme LLC who report to her.

Q. How many direct reports does Ms. Zachary have?

A. I don't know off the top of my head.

Q. Those direct reports that report to Ms. Zachary and work for Merck Sharp Dohme LLC provide support for Ms. Zachary in her role in advising the board of Merck & Co., Inc., right?

A. As I said before, Jennifer Zachary's work on strategy and legal operations is through Merck Sharp & Dohme LLC.

Q. When Ms. Zachary advises the board of Merck & Co., Inc., she relies on a t[redacted]

A. [redacted]

Q. And --

A. -- [redacted].

Q. And those [redacted] in her role as

general counsel for Merck & Co., Inc., right?

A. So as I mentioned before, Merck & Co., Inc. [redacted] The [redacted]

Q. Ms. Zachary, in her role in advising the board of Merck & Co., Inc., [redacted]

Q. Do you know if it's the case?

A. [redacted] The business is conducted through subsidiaries. Merck Sharp & Dohme LLC is the subsidiary in the U.S. for the human health business.

Q. Jennifer Zachary does not report to anyone at MSD LLC, right?

A. Rob --

ATTORNEY HELM: Objection. Foundation.

THE WITNESS: Rob Davis is employed by Merck Sharp & Dohme LLC.

BY ATTORNEY POWERS:

Q. Jennifer Zachary reports directly to Rob Davis as CEO of Merck & Co., Inc., correct?

A. He's both an employee of Merck Sharp & Dohme LLC and chairman and CEO of our publicly traded entity.

Q. If Mr. Davis gave Ms. Zachary an instruction, you'd expect her to follow it, correct?

ATTORNEY HELM: Objection. Form.

THE WITNESS: I'd have to understand what the instruction is. As you likely know, lawyers have responsibilities to the company that they're serving.

BY ATTORNEY POWERS:

Q. If Mr. Davis gave Ms. Zachary an ethical and legal instruction, you would expect Ms. Zachary to follow the instruction, correct?

A. What's the instruction about?

Q. Any instruction that was ethical and legal, and he asked her to do it, you would expect her to do it, right?

A. It's hard to speculate with the breadth of that question. There could be any number of instructions. If you have some specific situation...

Q. Can you think of an instance where Ms. Zachary would not follow an ethical and legal instruction given by the CEO of Merck & Co., Robert Davis?

A. Again, you know, potential instructions that are out there, right? At the end of the day, Ms. Zachary is charged with legal operations for Merck Sharp & Dohme LLC, and she's overseeing that responsibility.

[redacted]

Q. If Mr. Davis gave Ms. Zachary an instruction within the confines of her employment, you would expect her to follow the instructions, correct?

A. So her employment at MSD LLC, she's responsible for legal operations and strategy. So it's hard to see that she'd be instructed with respect to legal strategy.

Q. But Mr. Davis could give her such an instruction if he wanted to, right?

A. I don't know what that instruction would be.

Q. He could give her an instruction within the confines of her employment, and you would expect her to follow it, right?

A. It would depend, as I said.

Q. What if it was the authority to terminate a litigation?

If Mr. Davis told Ms. Zachary to terminate a litigation, she would have to follow that instruction, correct?

A. So to get back to the structure, Ms. Zachary works for Merck Sharp & Dohme LLC. Rob Davis is also employed by Merck Sharp & Dohme LLC. Jennifer's responsible for legal operations. She directs and oversees.

We're a vast company. You know,

she's not --

Q. But they could, if they wanted to, right?

A. But it's hard to speak in "if they wanted to." And as companies, you operate through the employees.

Q. Do you disagree that Jennifer Zachary has the authority to terminate a litigation?

A. So in her role as head of -- let's see. I want to get it correct.

Her role at Merck Sharp & Dohme LLC is to oversee the legal strategy. Conceptually, if she didn't agree, she could. But we're a really large company.

Q. If the board of MCI, the board of Merck & Co., Inc.

A. [redacted]

Q. Does the board of directors at Merck & Co., Inc. have the authority to terminate a litigation?

A. So the obligations of Merck & Co., Inc., that board of directors is to oversee the global enterprise of Merck & Co., Inc. They're charged with oversight.

The operations of Merck & Co., Inc. are [redacted]

And recall Merck & Co., Inc. [redacted] It's all conducted through the subsidiaries.

Q. You agree that the board of Merck & Co., Inc. has oversight authority --

A. I agree that Merck & Co., Inc --

Q. -- correct?

A. -- its board of directors has oversight authority with respect to the affairs of the global enterprise that is Merck & Co., Inc. And the global enterprise and that business, is conducted through subsidiaries around the world.

Q. And so if the board of directors with its oversight authority instructed a subsidiary to terminate a litigation, Jennifer Zachary would tell that subsidiary to terminate the litigation, right?

ATTORNEY HELM: Objection. Form.

THE WITNESS: [redacted]

BY ATTORNEY POWERS:

Q. [redacted]

A. [redacted]

Q. [redacted]

Q. Not asking about -- that's not answering my question.

[redacted]

Q. The board of Merck & Co., Inc. has the authority to tell MSD LLC to

terminate a litigation, though, correct?

A. The authority of Merck & Co., Inc. is to oversee the business and affairs of the global enterprise that is Merck & Co., Inc.

Q. Does --

A. [redacted]

Q. Does the board have oversight role in legal affairs?

A. The board of -- the board of directors of Merck & Co., Inc. has oversight for the businesses as a whole, which is made up of many subsidiaries, as I believe I cite to in my declaration.

Q. Right. And the board of directors has [redacted]

Q. But the board of Merck & Co.,

Inc. has oversight authority over the subsidiaries, right?

A. The board of Merck & Co., Inc. has authority over Merck & Co., Inc. and its global enterprise.

Q. And as part of that authority, the [redacted]

ATTORNEY HELM: Objection.

THE WITNESS: [redacted]

BY ATTORNEY POWERS:

Q. [redacted]

Q. So are you saying that Merck & Co., Inc.'s board -- board's authority [redacted]

[redacted]

Q. Okay. So the board does have authority over the legal affairs of subsidiaries, correct?

A. That is not what I'm saying.

Q. The board provides oversight over subsidiaries.

We agree on that, right?

A. We do not. We agree that Merck & Co., Inc.'s board of directors is responsible for Merck & Co., Inc. as a publicly traded company. That global enterprise is operated through subsidiaries. This is a very common structure.

Q. Does Merck & Co., Inc.'s board's authority include authority over the subsidiaries' legal affairs?

A. Merck & Co., Inc.'s authority is with respect to Merck & Co., Inc.

Q. And does that include authority over the subsidiaries' legal affairs?

A. As I said before, the board's authority is with respect to Merck & Co.,

Inc.

Q. Yeah. And I'm trying to get an answer to my question.

Does Merck & Co., Inc.'s board's authority include authority over the subsidiaries' legal affairs?

A. So I feel like I've answered this question many times.

Q. You haven't.

A. It's Merck & Co., Inc. The board of directors of Merck & Co., Inc. is responsible for overseeing Merck & Co., Inc.

Q. Right. And that authority includes oversight of subsidiaries, correct?

A. Merck & Co., Inc. is not overseeing the subsidiaries. They're overseeing the consolidated business.

[redacted]

Q. Do you dispute that Merck & Co., Inc.'s board has authority over the subsidiaries' legal affairs?

ATTORNEY HELM: Trey, you've asked that exact question several

times --

ATTORNEY POWERS: No, I haven't, Counsel.

ATTORNEY HELM: -- and she answered it.

ATTORNEY POWERS: I haven't. And your speaking objections are not appreciated.

ATTORNEY HELM: It's on the transcript.

ATTORNEY POWERS: I'm asking a slightly different question.

BY ATTORNEY POWERS:

Q. Do you dispute that Merck & Co., Inc.'s board -- board's authority includes authority over the subsidiaries' legal affairs?

A. As I said, the board of directors of Merck & Co., Inc. is responsible for overseeing Merck & Co., Inc. [redacted]

Q. You're still not answering my question. I'm asking about the authority of Merck & Co., Inc.'s board.

Does that authority of Merck &

Co., Inc.'s board include authority over its subsidiaries' legal affairs?

A. I believe I've answered this over and over again. Merck & Co., Inc., its board of directors is responsible for overseeing Merck & Co., Inc. [redacted]

[redacted]

Q. Right. And so the question is: Merck & Co., Inc. in its -- scratch that.

The board of Merck & Co., Inc. has authority over the legal affairs of its subsidiaries, right?

A. No. That is not correct. Merck & Co., Inc. has authority as overseeing Merck & Co., Inc. Its role as fiduciaries -- right? -- each director of Merck & Co., Inc. has fiduciary duties to the public shareholders. That is the role it plays.

[redacted]

Q. Merck & Co., Inc. -- subsidiaries

cannot disregard instructions from Merck & Co., Inc.'s board on legal matters, correct?

A. Subsidiaries are separate and distinct entities.

Q. You're not answering my question.

Can a subsidiary disregard instructions from Merck & Co., Inc.'s board of directors on legal matters?

A. [redacted]

Q. That's not the question.

Can a subsidiary disregard instructions from Merck & Co., Inc.'s board on legal matters?

ATTORNEY HELM: Objection. Asked and answered.

THE WITNESS: [redacted]

BY ATTORNEY POWERS:

Q. The board has the authority to direct subsidiaries on legal matters,

correct?

ATTORNEY HELM: Objection. Asked and answered.

THE WITNESS: No. The board of directors of Merck & Co., Inc. has authority for overseeing Merck & Co., Inc.

ATTORNEY POWERS: Okay. Can we take a break?

ATTORNEY HELM: Sure.

THE VIDEOGRAPHER: The time right now is 11:30 a.m.

We are off the record.

(Whereupon, a recess was taken at 11:30 a.m.)

THE VIDEOGRAPHER: The time right now is 12:02 p.m.

We're back on the record.

BY ATTORNEY POWERS:

Q. Welcome back, Ms. Grez.

A. Thanks.

Q. I'm going to hand you what's been previously marked 2463.

///

///

(Whereupon, Previously Marked Exhibit 2463 is identified for the record.)

BY ATTORNEY POWERS:

Q. Exhibit 2463.

ATTORNEY POWERS: Counsel, here you go.

ATTORNEY HELM: Thank you.

BY ATTORNEY POWERS:

Q. Now, do you recognize this document?

A. Is this something I cited to in my declaration?

Q. I don't think so.

A. This looks like our proxy, Merck & Co., Inc.'s proxy filed last year.

Q. That's right. 2025 proxy statement, Schedule 14A by Merck & Co., Inc., right?

A. That's what this looks like.

Q. Now, we talked a moment ago, a few hours ago, actually, by -- about the board of directors of MCI being independent directors?

A. We talked about Merck and -- or I

shared Merck & Co., Inc. has 13 directors on its board, 12 of whom are independent.

Q. Everybody but the CEO is independent, correct?

A. 12 directors except for Rob Davis.

Q. Who is the CEO, right?

A. Yes. Of Merck & Co., Inc.

Q. And "independent" means that they don't work for MCI, right?

A. As I mentioned, independence has specific meaning in the categorical standards of the New York Stock Exchange.

Q. And they're not employees of MCI, correct?

A. That's correct.

Q. And they're not employees of MSD, correct?

A. They're not employees of Merck Sharp & Dohme LLC.

Q. And you agree that Merck & Co., Inc.'s board is led by its CEO, Robert Davis, and also an independent director Thomas Glocer, right?

A. So Merck & Co., Inc.'s leader --

the board of directors' leadership structure consists of two roles: One is the chairman of the board who is Rob Davis; the other is an independent lead director, and his name is Tom Glocer.

Q. Glocer?

A. Correct.

Q. Thank you.

Now, Merck & Co., Inc.'s board has the legal responsibility for overseeing the affairs of Merck & Co., Inc. and for the overall performance of Merck & Co., Inc., correct?

A. As the enterprise, yes.

Q. The primary mission of Merck & Co., Inc.'s board is to represent and protect the interests of the shareholders, correct?

A. Of Merck & Co., Inc.

Q. Now, in order to fulfill its obligations, the Merck & Co. board selects and oversees Merck & Co., Inc.'s senior management team, which is charged with conducting Merck & Co., Inc.'s daily business, correct?

A. So recall that Merck & Co., Inc. conducts i[redacted]

Q. Do you disagree with the statement that the board selects and oversees the senior management team, which is charged with conducting the company's daily business?

A. So Merck & Co., Inc. is a global enterprise. Its daily business is conducted through subsidiaries.

Q. Right. And that subsidiary -- subsidiaries are overseen by the board of MCI, correct?

A. That's not correct.

Q. Let's go to the proxy statement in front of you at Page 11. Sorry. It's Page 14, actually, at the bottom -- if you look at the bottom of the document, you'll see 14 of 116.

And at the top of that page, I would like to direct you to the language from Merck & Co., Inc.'s proxy statement that says, "The board has the legal responsibility for overseeing the affairs

of the company and for the overall performance of the company.

"The board's primary mission is to represent and protect the interest of our shareholders. To that end, the board selects and oversees the senior management team which is charged with conducting the company's daily business."

Did I read that correctly?

A. As I shared in my declaration with respect to Merck & Co., Inc.'s SEC disclosures, when Merck & Co., Inc. files its SEC disclosures, it's on behalf of the consolidated enterprise.

And as I believe we discussed earlier today, Merck & Co., Inc. has an obligation to present its disclosures in a way that is clear and accessible to investors and the investing public.

Q. You agree that this statement is talking about the board of MCI, Merck & Co., Inc., correct?

A. I agree that it's the board of directors of Merck & Co., Inc.

Q. Right. And it says, "The board

selects and oversees the senior management team, which is charged with conducting the company's daily business," right?

A. "Company" refers to the global enterprise.

Q. And so the company's daily business is the business of Merck & Co., Inc. and its subsidiaries, right?

A. As I mentioned, Merck & Co., Inc. [redacted]

Q. Yes. And the board selects and oversees the senior management team, which is charged with conducting the company's daily business?

A. Which, again, refers to the global enterprise that is Merck & Co., Inc. Merck & Co., Inc. [redacted] that public investors are investing in.

Q. And the board has a legal responsibility for overseeing the affairs of the company, right?

A. The global enterprise that is

Merck & Co., Inc.

Q. And that global enterprise flows down through the subsidiaries, right?

A. The business of the global enterprise is conducted through subsidiaries.

Q. Right. And the board has the legal responsibility for overseeing the affairs of the global company, yes?

A. It has the responsibility to the [redacted] that the shareholders of Merck & Co., Inc. that holds entities that operate throughout the globe.

Q. And that involves oversight over those entities that operate throughout the globe, correct?

A. Oversight of the overall business from a global perspective.

Q. And that is -- it certainly involves oversight of the subsidiaries, correct?

A. It involves oversight of the business that's conducted by subsidiaries.

Q. So do you agree that Merck & Co., Inc. oversees its subsidiaries?

A. As I believe I shared before, Merck & Co., Inc. is responsible for overseeing the affairs of the global enterprise.

Q. When you say "global enterprise," what does that comprise?

A. The business that's conducted through subsidiaries throughout the world.

Q. And because Merck & Co., Inc. [redacted] the board of Merck & Co., Inc. reviews and advises management on the operation of the subsidiaries, correct?

A. The board of directors of Merck & Co., Inc. oversees the business that is the global enterprise of Merck & Co., Inc.

Q. And the board reviews and advises management on the operations of the subsidiaries, correct?

A. It's overseeing the global business for Merck & Co., Inc. which is conducted through subsidiaries.

Q. You agree that Merck & Co., Inc. is a medical and scientific company whose primary business is to discover, develop

and deliver to patients medicines, correct?

A. Merck & Co., Inc.'s purpose is to use the power of leading-edge science to save and improve lives around the world.

Q. And it's true that Merck & Co., Inc.'s board is fully engaged and involved in the strategic planning process, correct?

A. For Merck & Co., Inc.'s global business.

Q. Including through its subsidiaries, right?

A. So the businesses as a whole, Merck & Co., Inc.'s global enterprise is conducted through subsidiaries.

Q. Merck & Co., Inc. has a strategic planning process, correct?

A. Yes.

Q. And Merck & Co., Inc.'s directors "have an obligation to keep informed about Merck & Co., Inc.'s business and strategies so they can provide guidance to management in formulating and developing plans and exercise their decision-making authority on matters of importance" to MCI, correct?

A. At the global enterprise of

Merck & Co., Inc., correct.

Q. So Merck & Co. has business and strategies, correct?

A. Merck & Co., Inc. is a publicly traded entity. It has public shareholders. The business is conducted through subsidiaries but ultimately owned across the globe by Merck & Co., Inc., the company in which our public shareholders hold shares.

Q. And Merck & Co., Inc.'s directors provide guidance on formulating plans for business and strategies, correct?

A. For the global enterprise of Merck & Co., Inc.

Q. Right. And you say that Merck & Co., Inc. [redacted]

A. [redacted]

Q. So the guidance in formulating of plans for business and strategies is through Merck & Co., Inc.'s subsidiaries, right?

A. It's for Merck & Co., Inc. as a

whole. Again, that's the entity in which public shareholders invest, and the fiduciary duties that the board of directors have are to those shareholders.

Merck & Co., Inc. [redacted] So Merck & Co., Inc.'s board of directors is responsible for overseeing the affairs of the whole global enterprise.

Q. Right. And that oversight means oversight of the subsidiaries, correct?

A. It means oversight of Merck & Co., Inc.'s global enterprise that is operated through subsidiaries.

Q. And that includes the oversight of the subsidiaries?

A. As I said before, the oversight is with respect to Merck & Co., Inc.

Q. But Merck & Co., Inc. [redacted]

A. Its business is conducted through subsidiaries around the world.

Q. So in order to formulate plans for business and strategies, Merck & Co.,

Inc.'s board must be interacting with its subsidiaries, correct?

A. No. They're looking at the global enterprise as a whole. I believe I cover in the S -- in part of my declaration regarding that the consolidation -- the consolidated presentation is for Merck & Co., Inc. and its subsidiaries as a consolidated global enterprise.

We need to be clear and accessible to the investors and the investing public.

Q. If you go to the document in front of you, Exhibit 2463, Page 16.

ATTORNEY POWERS: Just a moment.

BY ATTORNEY POWERS:

Q. So it's actually Page 19. If you go to that page, please. About halfway down the page, there's a header that says, "Board's Role in Strategic Planning."

Do you see that?

A. I do.

Q. And the text under that from the proxy statement from Merck & Co., Inc. says, "The board acting as a whole and

through its four standing committees is fully engaged and involved in the company's strategic planning process."

Did I read that correctly?

A. Yes.

Q. And the text from the proxy statement continues, "All of our directors have an obligation to keep informed about the company's business and strategies so they can provide guidance to management in formulating and developing plans and exercise their decision-making authority on matters of importance to the company."

Did I read that correctly?

A. You did.

Q. Do you dispute that the board has decision-making authority on matters of importance to the company?

A. The board of directors is charged with overseeing the affairs of Merck & Co., Inc. Part of its role is strategic oversight.

Q. So this is a true statement here in the proxy?

A. It is true.

Q. All right. And the text --
A. And recall, as we've discussed before, "company" is the global enterprise of Merck & Co., Inc., which is operated through subsidiaries.
Q. Right. And the language continues, "The board's oversight and guidance are inextricably linked to the development and review of the company's strategic plan."
Did I read that correctly?
A. Yes.
Q. And the text continues. "By exercising sound and independent business judgment on the strategic issues that are important to the company's business, the board facilitates the company's long-term success," right?
A. You read that correctly.
Q. Merck & Co., Inc.'s board provides guidance to MCI's senior leadership, correct?
A. It does to Merck & Co.'s executive officers.
Q. And Merck & Co., Inc.'s board

monitors implementation of its guidance by the subsidiaries, correct?

A. That's not correct. Merck & Co., Inc., as the board -- the board of directors of Merck & Co., Inc. is charged with overseeing the business as a whole, the global enterprise.

Q. Please turn to Page 7 of the exhibit in front of you. There's a paragraph on that page that says, "Board Oversight." It has a little header.

Do you see that?

A. I do.

Q. About halfway through the paragraph, it says, "At meetings, the board engages the company's senior leaders in robust discussions about corporate strategy, risks and opportunities, providing guidance and monitoring implementation in areas such as research and development, capital allocation, operating results, human capital management and global manufacturing." Correct?

A. That's what that says.

Q. I'm going to hand you a document

that we will mark Exhibit 1.

(Whereupon, Exhibit 1 is marked for identification.)

BY ATTORNEY POWERS:

Q. This is a new document.

Do you recognize this document, Ms. Grez?

A. It looks like the charter for the research committee of the board.

Q. The board of Merck & Co., Inc.?

A. Co., Inc., yes.

Q. And what is the research committee of Merck & Co., Inc.'s board?

A. It's one of the four standing committees of the board of directors of Merck & Co., Inc.

Q. And Merck & Co., Inc.'s research committee is comprised solely of independent directors to serve at the pleasure of the board of directors of Merck & Co., Inc., right?

A. That's what the first line says.

Q. Merck & Co., Inc.'s board of directors research committee considers and makes recommendations on matters related to

the company's strategy and operations for the research and development of pharmaceutical products and vaccines.

Correct?

A. Sorry. Where are you reading that?

Q. Well, do you agree with that statement?

A. I'm sorry. You'll have to repeat it.

Q. I will. Merck & Co., Inc.'s board of directors research committee considers and makes recommendations on matters related to the company's strategic and operations for the research and development of pharmaceutical products and vaccines.

A. [redacted] and the committee's looking at that from the global enterprise perspective.

Q. And the board of directors' research committee makes recommendations on matters related to the company's strategies and operations, correct?

A. From the global enterprise perspective of Merck & Co., Inc., the research committee of the board of directors of Merck & Co., Inc. is looking at the global enterprise as a whole in keeping with its fiduciary duties to the public company shareholders of Merck & Co., Inc.

Q. And that necessarily involves the flow of information from the board of Merck & Co., Inc. to subsidiaries, right?

A. So the flow would be [redacted]

Q. Yeah. So there's a communication up [redacted] but in order to make recommendations on matters related to the company's strategic -- strategies and operations, [redacted]?

A. The global -- the Merck & Co., Inc. board of directors, as I've mentioned before, is responsible for the global business. And so it's looking at the business from a global perspective. That

business is operated through subsidiaries. So it's people at the meetings.

Q. Right. It's people at the meetings who are exchanging information, right?

A. That's what happens at meetings.

Q. Right. And that information necessarily means information from the board going down to the subsidiaries, correct?

A. So the information that the board is receiving is so it can perform its global oversight for Merck & Co., Inc. as a whole.

Q. And that necessarily means oversight of the subsidiaries?

A. No.

Q. How does the board perform that oversight?

A. [redacted]e [redacted]

Q. And how does the board give guidance and oversight to those employees?

A. [redacted]

[redacted]

Q. And thinking about the public shareholders of Merck & Co., Inc., the board provides guidance and oversight to its subsidiaries, right?

A. The board of directors of Merck & Co., Inc. is providing oversight with respect to the global enterprise.

Q. Does the board of Merck & Co., Inc. -- strike that.

[redacted]

A. [redacted]

Q. And so that means it doesn't have any research and development of pharmaceutical products, right?

A. So recall, as we've discussed before, that this [redacted]

Q. Uh-huh.

A. [redacted]

Q. Right. And the board communicates with its subsidiaries in providing oversight, right?

A. As I mentioned before, the board is charged with overseeing the global enterprise.

Q. I'm really just looking for a yes-or-no answer, and you're not giving me a clean answer or a helpful answer to my question in any way. You're not answering my question.

So I'm going to try to ask it again, and I'd like you to answer it with a yes or a no. It's a very simple question.

The board communicates with its subsidiaries in providing oversight, right?

A. The board is charged with overseeing the global enterprise that is Merck & Co., Inc. [redacted]

The business is conducted through subsidiaries. And as I mentioned in my declaration, I believe there is many, many subsidiaries that Merck & Co., Inc. has. The board of directors is charged with overseeing the business from a global perspective.

Q. Acting in accordance with its charge, does the board communicate with subsidiaries? Yes or no.

A. What do you mean by "charge"?

Q. With the research committee charter we just looked at, for example.

A. So the only thing that you pointed me to on the research committee charter was the first line, I believe. I think you were reading from some other location.

Q. Well, let's look at the purpose, goals and responsibilities of the research committee. "The purpose of the committee is to assist the board in its oversight of matters pertaining to a company's strategies and operations for the research and development of pharmaceutical products

and vaccines by," and then it lists some things, right?

A. I see that.

Q. And then it goes on and it says, among those things, "Identifying areas and activities that are critical to the success of the company's drug and vaccine discovery, development and licensing efforts."

Did I read that correctly?

A. Sounds like it, yeah.

Q. Yeah. And that's a purpose of the research committee, right?

A. It's identified as one purpose of the research committee of the board of directors of Merck & Co., Inc. and its responsibilities for the global enterprise that is Merck & Co., Inc.

Q. But Merck & Co., Inc. doesn't itself engage in drug and vaccine discovery, right?

A. Through its subsidiaries.

Q. Right. And so when the board identifies areas and activities that are critical to the success of the company's

drug and vaccine discovery, Merck & Co., Inc.'s board is acting through its subsidiaries, right?

A. Merck & Co., Inc.'s board is not acting through subsidiaries. It's acting as the board of directors of Merck & Co., Inc. in performing its oversight duties.

Q. And it's -- you disagree that the board of Merck & Co., Inc. is communicating with its subsidiaries about activities that are critical to the success of the company; is that right?

A. In what capacity?

Q. In this capacity.

A. But, like --

Q. As part of the research committee charter that we're looking at.

A. So under the research committee charter, the research committee of the board of directors of Merck & Co., Inc. is responsible for overseeing the global enterprise from Merck & Co., Inc. with respect to the items that are identified there.

Q. And how does the board perform

the oversight that you just spoke of?

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

[redacted]?

A. [redacted]

[redacted]

Q. Does the board of Merck & Co., Inc. have meetings with employees of MSD LLC?

A. I know that individuals who have attended research committee [redacted]

Q. And does the board provide guidance and instruction [redacted]?

A. The [redacted]

Q. And how the actions of MSD LLC fit in with the global enterprise, correct?

A. No. So the -- Merck Sharp &

Dohme LLC has the various -- has various business operations, as do other subsidiaries around the world. The discussion is around the function and what they're doing from a research and development perspective.

The board, their obligation is to look at Merck & Co., Inc.'s global enterprise and provide oversight.

Q. Oversight pertaining to strategies and operations for research and development of pharmaceutical products and vaccines, correct?

A. For the global enterprise that is Merck & Co., Inc.

Q. As effectuated through the subsidiaries of Merck & Co., Inc., right?

A. As I've discussed, Merck & Co., Inc. [redacted]

Q. Also listed here under the research committee charter purpose, I think I only read the first bullet there.

The next bullet is "Evaluating

the effectiveness of the company's drug and vaccine discovery, development and licensing strategies and operations," correct?

A. So recall that this is the company as a whole, the global enterprise that is Merck & Co., Inc.

Q. But I read that correctly, right?

A. The words are -- yeah.

Q. And the next bullet is, under Purpose, "Keeping the board apprised of this evaluation process and findings."

Did I read that correctly?

A. Yes.

Q. The next one is "Making appropriate recommendations to the president of Merck Research Laboratories, the CEO and to the board on modifications of strategies and operations."

Did I read that correctly?

A. It's for the Merck & Co., Inc. global enterprise as a whole, and, yes, you read that correctly.

Q. And the operations referenced there must be the operations of

subsidiaries, right? [redacted]

[redacted]

A. As I mentioned, Merck & Co., Inc.

[redacted]

[redacted]

[redacted] And the board of directors of Merck & Co., Inc. is responsible for the global enterprise and owes its fiduciary duties to the shareholders of Merck & Co., Inc.

Q. [redacted]

[redacted]

[redacted]

A. [redacted]

Q. [redacted]

[redacted]

[redacted]

Q. Do you attend board meetings?

A. I do.

Q. Do you attend all board meetings?

A. I attend most board meetings.

Q. [redacted]

[redacted]

[redacted]

A. [redacted]

Q. Is it true that you're not aware of all briefings to the board since the litigation between Halozyme and MSD started?

A. I don't know when that started.

Q. Have you attended all board meetings in the past two years?

A. I've attended a portion of all of the board -- the meetings of the board of directors of Merck & Co., Inc. in the past two years.

Q. There are portions of the meeting that you don't attend; is that correct?

A. That's correct.

Q. What portions of meetings do you not attend?

A. As is typical and good governance for a publicly traded company, the board of directors of Merck & Co., Inc. meets in executive session as a full board and also as -- the independent members of the board of directors of Merck & Co., Inc.

Q. [redacted]

[redacted]

A. [redacted]

Q. Do you attend attorney-client privileged sections or legally privileged sections of board meetings?

A. I have before.

Q. Do you regularly attend such sessions?

A. I don't know what "regularly" means.

Q. Is it your normal practice?

A. There's no normal practice.

Q. Do you attend all attorney-client privileged sections of board meetings?

A. I don't know if I've attended all.

Q. Do you normally step out of board meetings when there's privileged matters being discussed?

A. [redacted]

[redacted]

Q. Are legal matters involving litigations discussed at board meetings?

A. [redacted]

Q. [redacted]

[redacted]

A. [redacted]

Q. [redacted]

[redacted]

[redacted]

[redacted]

Q. What percentage of board meetings have you attended over the past two years?

A. I'm sorry, I thought I answered that I had attended all of the board meetings for Merck & Co., Inc. for at least a period of time for the meeting. Are you asking a different question?

Q. I'm sorry. I -- perhaps. But no minds.

ATTORNEY POWERS: Let's take a break here if lunch is ready.

THE VIDEOGRAPHER: The time right now is 12:42 p.m.

We are off the record.

(Whereupon, a break for lunch was taken from 12:42 p.m. to 1:36 p.m.)

THE VIDEOGRAPHER: The time is 1:36 p.m.

We are back on the record.

BY ATTORNEY POWERS:

Q. Welcome back, Ms. Grez.

A. Thank you.

Q. Did you speak about the substance of your testimony with counsel during the break?

A. I did not.

Q. Keytruda is by far the best-selling product of Merck & Co., Inc.'s drugs, right?

A. Keytruda IV?

Q. Yes.

A. That's correct. Merck & Co., Inc., the global enterprise.

Q. And the revenue generated by Keytruda is important to Merck & Co.'s share price, correct?

A. I believe Keytruda IV is one of the highest revenue-generating products.

Q. It generates about 50 percent of Merck & Co., Inc.'s sales, correct?

A. I'm not sure about the percentage.

Q. Is it roughly 50 percent? Does

that sound right?

A. I'm not sure.

Q. Merck & Co.'s executive team recognizes that Keytruda's sales are important to Merck & Co.'s investors, right?

A. I can't speak to what individuals think.

Q. Do you believe that Merck & Co.'s executive team recognizes that Keytruda sales are important to Merck & Co.'s investors?

A. I think Keytruda IV is an important medicine for patients.

Q. And it's important to Merck & Co.'s investors, right?

A. It's an important product for the global business.

Q. Is it fair to say that Keytruda's sales are a key profit driver for Merck & Co., Inc.?

A. Keytruda IV has had -- I think I mentioned, you know, one of the most significant products for patients as well as revenue from a global enterprise

perspective for Merck & Co., Inc.

Q. Do you understand that Merck & Co., Inc. is facing a loss of exclusivity related to its Keytruda product?

A. So I believe there have been public statements regarding the loss of exclusivity for Keytruda IV.

Q. And this is something, that loss of exclusivity, it's something that Merck & Co.'s investors are concerned about, right?

A. For the loss of exclusivity of Keytruda IV.

Q. Yeah.

A. Yes. It's an important product to the global enterprise.

Q. It's something that Merck & Co.'s executive team is concerned about, right?

A. So it's something --

Q. A loss --

A. -- that's being focused on at the global level as an enterprise, Merck & Co., Inc.

Q. Right. And it's something that the executive team at Merck & Co. is concerned about, right, the loss of

exclusivity of Keytruda?

A. What do you mean "concerned"?

Q. They're focused on it as an issue for the company, right?

A. The management is focused on the long-term sustainability of the business for Merck & Co., Inc., which is a global enterprise operated through its subsidiaries.

Q. Yeah. And the executive team of Merck & Co. cares about the loss of exclusivity of Keytruda?

A. So I just want to be precise in what we're talking about.

So there are officers who serve in a role at Merck & Co., Inc. They are employed by Merck Sharp & Dohme LLC. From a global perspective, Keytruda IV is important to the overall global enterprise. And so they're focused from an overall Merck & Co., Inc. perspective on long-term sustainability of the public company.

Q. And Merck & Co., Inc.'s CEO has spoken repeatedly in calls with analysts and investors about Merck & Co.'s strategy

for dealing with the loss of exclusivity for Keytruda, right?

A. So as I discuss in my declaration, when speaking with investors, it's important to remember that Merck & Co., Inc. is the global enterprise. [redacted]

Q. I'm going to hand you what we will mark Exhibit 2.

(Whereupon, Exhibit 2 is marked for identification.)

BY ATTORNEY POWERS:

Q. Do you recognize this document?

A. It says that it's an edited transcript from the Q4 2025 Merck & Co., Inc. earnings call.

Q. That's right.

And the CEO of Merck & Co. -- let's see.

If you go to Page 10 and 11 of that document.

A. Are there page numbers? I'm sorry.

Q. Let me direct you to it. Just a second, please. So 10 pages in, if you don't mind counting those.

A. Counting, like, the cover page?

Q. Yes.

A. Okay.

Q. You'll come to a section that says, "Questions and Answers."

A. I'm sorry. Counting both sides?

Q. Yes.

A. And counting the cover page?

Q. Yes.

A. Okay.

Q. And at the bottom of that 10th page, you see Robert Davis is talking on the transcript?

A. Sorry. On the page that says "Questions and Answers"?

Q. One page past that.

A. Okay.

ATTORNEY HELM: I'll just put on the record as a matter of authentication, there's no -- there's no page numbers, there's no web address, and this appears to be by --

some third-party transcript.

ATTORNEY POWERS: Okay.

BY ATTORNEY POWERS:

Q. If we go to the first page, Ms. Grez.

A. Back to the first page?

Q. Back to the first page. Do you see at the top there it says, "LSEG StreetEvents"?

A. I see that.

Q. And then it says, "Edited Transcript."

Do you see that?

A. I do.

Q. And then it says "MRN." -- sorry. "MRK.N."

Do you see that?

A. I do.

Q. Do you know what MRK.N is?

A. I don't know what .N is.

Q. Do you know what MRK is?

A. It's the ticker symbol for Merck & Co., Inc. on the New York Stock Exchange.

Q. Right. And then after that, it

says, "Q4 2025 Merck & Co., Inc. Earnings Call," right?

A. It does say that.

Q. And then it says, "Event Date/Time. February 3, 2026, 2:00 p.m. GMT," right?

A. That's what it says.

Q. And then at the bottom right-hand corner, it says, "LSEG Data and Analytics," right?

A. It does say that.

Q. Do you have any reason to dispute that this is an accurate transcript from the earnings call?

A. I don't know who does our transcripts.

Q. Do you have any reason to dispute that it's accurate?

A. I have no idea.

Q. Did you attend the earnings call?

A. Did I attend the earnings call?

Q. This earnings call.

A. I listened.

Q. Okay. So you would know if this was an accurate representation of what was

said?

ATTORNEY HELM: Objection to form.

THE WITNESS: I definitely don't remember everything that gets said.

BY ATTORNEY POWERS:

Q. Fair enough.

All right. Let's go to Page 10 or 11 where Robert Davis is talking after the question-and-answer session begins.

And a question from an analyst, Alexandria Hammond, asks about Keytruda's LOE that's about to occur in 2028, right?

A. It says -- so the first line says, "So consensus currently anticipates Keytruda's U.S. LOE to occur in 2028."

Is that what you're asking?

Q. Yes.

ATTORNEY HELM: Just, for the record, I believe that's Page 7 of this unmarked -- apologies. Page 9.

Is that where you are?

BY ATTORNEY POWERS:

Q. Actually, if we go to the following page, I apologize for there not

being page numbers on this. We printed it as we received it.

Robert Davis continues from the part we were just looking at after the question by Alexandria Hammond. And Robert Davis says, "As we think about the Qlex adoption, we continue to think where we're going to see 30 percent to 40 percent adoption as you get out to 2028.

"And we will drive that as high as we can. And as you know, we have priced this to drive for the adoption from Keytruda IV to Qlex. So that will continue. The strategy is underway. And frankly, whether it's 2028 or '29 does not change the strategy we're following."

Do you see that?

A. I see that.

ATTORNEY HELM: We'll just keep the authentication objection on the record for the entirety of this exhibit.

ATTORNEY POWERS: I'll represent this came from the Merck website.

ATTORNEY HELM: Just for the

record, there's no indication of that on any of these pages.

ATTORNEY POWERS: I'm going to hand you another transcript. We'll label it Exhibit 3.

(Whereupon, Exhibit 3 is marked for identification.)

BY ATTORNEY POWERS:

Q. Do you recognize this document?

A. I can read what it says.

Q. Okay. At the top of the document -- let's go through it. It says, "LSEG StreetEvents. Edited Transcript," right?

A. It does.

Q. And then it says, "MRK.N."

We talked about before, right?

A. It says that here.

Q. And then it says, "Merck & Co., Inc. at TD Cowen Healthcare Conference," right?

A. It says that.

Q. And then it says, "Event Date/Time, March 3, 2026, 6:50 p.m. GMT," right?

A. It says that.

Q. And then on that same first page, it says, "Overview. Company Summary," right?

A. It says that.

Q. And then if we look at the next page, we see, "Corporate Participants. Caroline Litchfield, Merck & Co., Inc., chief financial officer, executive vice president."

And then we see "Dean Li, Merck & Co., Inc., executive vice president and president research laboratories," right?

A. That's written here.

Q. This is another transcript from a conference -- conference call, right?

A. That's what it says on the first page.

Q. TD Cowen and Healthcare Conference is a respected conference that investors listen to, right?

A. TD Cowen is a conference.

Q. Do you agree that it's respected that investors listen to it?

A. There are investors there. I

don't know to what extent.

Q. And you agree that Dean Li is the executive vice president and president of research laboratories at Merck & Co., right?

A. That is his officer role at Merck & Co., Inc.

Q. And Caroline Litchfield is the chief financial officer and executive vice president of Merck & Co., Inc., right?

A. That is her officer role at Merck & Co., Inc.

Q. I'm sorry I'm going to ask you to count some pages again, go to Page 9.

A. Counting the same way as before starting --

Q. Yes --

A. Okay.

Q. -- I think so.

ATTORNEY HELM: We'll put a lack of authentication objection in for the same reasons as the last document.

BY ATTORNEY POWERS:

Q. Yeah, it's the ninth page counting cover.

And we see a statement from Caroline Litchfield on that page, right?

A. It looks like there's a statement.

Q. And she says, "Yeah. So we're really excited about Qlex, our subcutaneous formulation of pembrolizumab and the benefits it can provide patients. As Dean just demonstrated in just a very short duration shot, you have been given your treatment for cancer.

"So what we have with this is a sales level of around 35 million in the fourth quarter of 2025."

Did I read that correctly?

A. That's what's written here.

Q. And she continues a few paragraphs down. "So we expect still and have confidence in the 30 percent to 40 percent penetration of our overall Keytruda business with adoption here for that patient group.

"And we will continue to provide insights to our investors as we see this unfold over the coming months and

quarters."

Did I read that correctly?

ATTORNEY POWERS: I'm going to hand you what we will mark 4.

(Whereupon, Exhibit 4 is marked for identification.)

BY ATTORNEY POWERS:

Q. Do you recognize this document?

A. I see that it says it's an edited transcript.

Q. And it says on the first page, "LSEG StreetEvents," right?

A. It does.

Q. It says, "Edited Transcript" --

A. Correct.

Q. -- it does?

And MRK.N as before?

A. It says, "MRK.N," yes.

Q. This time it says, "Merck & Co., Inc. at J.P. Morgan Healthcare Conference," right?

A. It does say that.

Q. Are you familiar with J.P. Morgan Healthcare Conference?

A. That there's an annual

J.P. Morgan Healthcare Conference, yes.

Q. Do you know where that takes place?

A. I believe in San Francisco.

Q. And then it says, "Event Date and Time, January 13, 2026." And then it says, "12:30 a.m. GMT," right?

A. It does say that.

Q. Then just under that, it says, "Overview Company Summary," right?

A. It does say that.

Q. And then on the bottom right corner, it says, "LSEG Data and Analytics," right?

A. It does.

Q. Do you know what LSEG Data and Analytics is?

A. I don't.

Q. Now if we go to Page 10 -- I'm sorry -- the first page with text, it's actually Page 2 of this document, we see corporate participants at the top of that page, right?

A. I see that.

Q. There are two corporate

participants for Merck & Co., one is Robert Davis, chairman of the board, president and CEO, right?

A. Correct.

Q. The other participant is Dean Li from Merck & Co., executive vice president, president of Merck Research Laboratories, right?

A. Correct.

Q. And this time Robert Davis starts off, and he says just a couple lines down, he says, "Before I get started, just real quickly, I would like to remind you that we do have forward-looking statements being made. I point you to our language on our website if you would like more information about that."

Do you see that?

A. I do.

Q. And he says, "If you look at where we are at Merck, I'm pleased to say where we're really starting to see our transformation underway. We've been executing on our strategy. I can tell you we're in a position now where I think we

are well-positioned for success."

Do you see that?

A. I do.

Q. Now if we go to Page 10 of this document. I'm going to need you to count again. I apologize.

There's a question from a J.P. Morgan analyst called Christopher Schott. Tell me when you're there.

A. I'm not sure if I'm on the right page. I think he's the only one asking questions.

Q. Fair enough. Christopher Schott asks a question on the page that I'm on that says, "You're only just thinking in terms of what a tail could look like on Keytruda when we can consider that 30 percent or 40 percent opportunity?"

Do you see that text?

A. I see that.

Q. And Mr. Davis responds, and he says, "Our intention is to price, to ensure we can maintain share and maximize that tail as long as possible. So we're looking much more at the value under the curve as

opposed to trying to do something where you take a short window of time to optimize value and then have it fall off a cliff, if you will."

Do you see that?

A. I see that.

Q. And Mr. Davis there was talking about the Keytruda Qlex opportunity, right?

A. I'm not sure what he was talking about.

ATTORNEY HELM: Objection to form. Objection to authentication of the document.

BY ATTORNEY POWERS:

Q. If you look at --

ATTORNEY POWERS: One-word objection, please.

ATTORNEY HELM: And hold on. And this is going outside the scope of the board's order from March 24 that specifically says, patent owner may introduce documents outside the record during the deposition to aid its cross-examination given that both sides have already had ample opportunity to

introduce evidence on the IPR dispute, neither side is authorized to enter new exhibits into the record other than those specifically authorized by the March 23, 2026, order.

This is the third exhibit that you've introduced that is new into the record, and this is the first of those three new exhibits that you've had any questions on cross-examination for the witness.

So it's an improper attempt to get in new exhibits on the record that you are specifically only asking the witness to see if that is correct what you have read into the record.

ATTORNEY POWERS: Thank you. I'm not finished with my cross, and we are specifically allowed to introduce new exhibits as part of this deposition. So we disagree with you, Counsel.

ATTORNEY HELM: It's limited to aid in cross-examination.

ATTORNEY POWERS: That's what I'm doing.

ATTORNEY HELM: You had no cross on the last two exhibits.

ATTORNEY POWERS: I'm working on it. Thank you.

BY ATTORNEY POWERS:

Q. So you can see that Mr. Davis says, "Yeah" -- this is the first paragraph -- "Yeah, if you look at where we are, our goal is in 18 to 24 months to have 30 percent to 40 percent adopted. That would put us out about the period of time, depending on what happens with the LOE, to be in a situation that we have that at the time we lose exclusivity."

Do you see that?

A. I see that.

Q. And Mr. Davis was talking about Keytruda Qlex, correct?

A. So I'm not familiar with this document. I can go and read it to make sure I understand what's being said.

Q. You don't know one way or the other whether or not he's talking about Keytruda Qlex there?

A. I don't know what he's talking

about.

Q. He was talking -- he was asked a question about Keytruda, right?

A. So if you want me to answer, I'll need to look at the context for the questions in order to try to answer your questions.

Q. You can't say right now whether or not this is about Keytruda Qlex; is that correct?

A. I would need to look at the context.

Q. Okay. Okay. I'm going to hand you another document.

(Whereupon, Exhibit 5 is marked for identification.)

ATTORNEY HELM: I'd just like to clarify my earlier objection about this being outside the scope of the board's order. I think I said March 24, and I meant to say the March 12 order.

ATTORNEY POWERS: Okay. Thank you.

BY ATTORNEY POWERS:

Q. Do you have the document in front

of you?

A. I do.

Q. Okay. And this document -- have you seen this document before?

A. Not that I recall.

Q. This document has "Refinitiv StreetEvents" at the top, right? It says that?

A. I see that written.

Q. And it says, "Edited Transcript." Then it says, "MRK.N" as before, right?

A. I see MRK.N.

Q. Then it says Merck & Co., Inc. at J.P. Morgan Healthcare Conference, right?

A. I see that written.

Q. And then it says, "Event Date/Time January 14, 2025. 12:30 a.m. GMT," right?

A. It says that.

Q. Then if you go to the first page of that document with text on it?

ATTORNEY HELM: I want to maintain the authentication objection for this document as well.

///

BY ATTORNEY POWERS:

Q. You see at that top of the page, it says, "Corporate Participants," right?

A. I see that.

Q. And you -- and here you have Robert Davis, Merck & Co., Inc., chairman of the board, president and chief executive officer, right?

A. I see that.

Q. And then you have Dean Li, Merck & Co., Inc., executive vice president, president Merck Research Laboratories, right?

A. I see that written.

Q. And are you familiar -- scratch that.

And then leading off the presentation, we have Robert Davis talking on the transcript, right?

A. Sorry. What was the question?

Q. You have Mr. Davis starting off talking on the first page there of that document?

A. It looks like Chris Schott started the conversation.

Q. True, actually. And then he passes it to Mr. Davis, right?

A. Yes.

Q. And Mr. Davis says, "As you reflect on where Merck is and where we've been, hopefully you see what we see. And I can tell you I feel very good about where the team is in executing on our strategic priorities.

"And if I think about that, most importantly, it's the progress we are making advancing the pipeline and augmenting the pipeline. And importantly, we continue to focus on scientific innovation with the patient really at the center as the core of what we deliver of long-term sustainable value both for our shareholders and for all of our stakeholders."

Did I read that correctly?

ATTORNEY HELM: Objection to form.

THE WITNESS: Seemed correct to me.

///

BY ATTORNEY POWERS:

Q. What do you think Mr. Davis meant when he said "where the team is executing on our strategic priorities"?

A. I'm not sure what you mean.

Q. He said, "I feel very good about where the team is executing on our strategic priorities."

What do you think he meant by that?

A. So when Rob is speaking to the investing public -- and I believe I had talked about this in connection with SEC filings -- the same holds true in connection with investor conferences or earnings calls.

He's speaking on behalf of the global enterprise, that's Merck & Co., Inc. And that's made up of employees who work for subsidiaries conducting the business.

Q. And so Mr. Davis is excited about -- or feels good about where the team is executing on our strategic -- let me try that all again.

Mr. Davis feels good about where

the team is in executing on strategic priorities through its subsidiaries, correct?

A. It's talking -- he's talking about the global business, right? He's speaking to investors. Merck's global business is made up of business that's conducted through global subsidiaries around the world.

Q. And he's talking about strategies that are carried out around the world too, right?

A. He's talking about the business happening around the world.

Q. Right. Through the subsidiaries of Merck & Co., Inc., correct?

A. [redacted]

Q. Do you agree that Merck & Co.'s long-term sustainable value is important for Merck & Co. shareholders?

A. The long-term sustainable business of Merck & Co., Inc. as a global enterprise is important to the shareholders

that are investing in that public company.

Q. Let's go to Page 9. And this one actually has page numbers on the bottom right corner if you look.

A. Oh, yeah. Page 9 --

Q. Do you see -- yes, ma'am.

Now, you see that Mr. Davis is talking again there and he says -- the first time he speaks on that page, "So maybe to say it as plainly as possible, we expect to be able to see adoption of about 30 percent to 40 percent of all Keytruda into subcutaneous pembrolizumab.

"So you should assume 30, 40 is what will be the -- what we have as the opportunity that we are going to realize in subcutaneous pembrolizumab as we go forward, which is meaningful."

Did I read that correctly?

A. I'm not sure if you read it entirely. There's sort of -- but, yeah, the gist.

Q. The part that I read, I read correctly?

A. Do you want to read it again?

Q. Sure. I will.

"So maybe to say it as plainly as possible, we expect to be able to see adoption of about 30 percent to 40 percent of all Keytruda into subcutaneous pembrolizumab. So you should assume 30 percent, 40 percent is what will be the -- what we have as the opportunity that we are going to realize in subcutaneous pembrolizumab as we go forward, which is meaningful."

Did I read that correctly?

A. You did.

Q. Okay. And Mr. Davis is talking about subcutaneous pembrolizumab, right? That's the opportunity?

A. It appears that he is.

Q. And subcutaneous pembrolizumab is what Merck & Co., Inc. and its subsidiaries sell as Keytruda Qlex, right?

A. I think we need to be crystal clear here. Merck & Co., Inc. isn't selling; its subsidiaries are.

Q. So Merck -- so Mr. Davis, the CEO and chairman of the board of Merck & Co.,

Inc. is talking about the sales of Keytruda Qlex through the subsidiaries of Merck & Co., Inc., right?

A. Right. So I think, again, just to refer back to my declaration, Merck & Co., Inc. is the publicly traded parent company. And so it provides consolidated information on behalf of itself and its subsidiaries.

So when Rob Davis is speaking to investors, he's speaking as a consolidated report on behalf of Merck & Co., Inc. and its subsidiaries.

Q. A little further down on the page, Mr. Davis is responding to another question by Chris -- Chris Schott.

And he says -- Mr. Schott says, "One of the questions I get from investors is how do we think about -- let's say you get 30 percent or 40 percent converted over. What does that product look like in a post-biosimilar world for the IV product?"

Do you see that statement, that question?

A. I see it.

Q. And then Mr. Davis responds, and he says, "So our strategy has been very much to focus on how can we get maximum conversion or I should say adoption. Because it's not only -- conversion implies, it's bringing patients over. It's actually we're bringing new patients on that we'll be bringing on. So it's adoption to that 30 percent to 40 percent."

Do you see that statement?

A. I see it.

Q. So Mr. Davis is talking about strategy there as the CEO of Merck & Co., Inc., right?

A. He's speaking on behalf of the publicly traded parent company, which is Merck & Co., Inc. and its subsidiaries.

Q. And further down on that page, Mr. Davis says, "So as we -- obviously, we were launching now with Keytruda still patent-protected. But then as you think about the IRA and as you think about post-LOE, we'll make sure that the price is competitive, because our goal is to

maintain share.

"And we think that we can still do that at value -- at a value that's going to be meaningful to protect the revenue that we think we need to try to have post the LOE."

Do you see that statement?

A. I do.

Q. And that LOE is the loss of exclusivity of Keytruda that Mr. Davis is talking about, right?

A. Based on looking at this alone, it does look like it's the Keytruda IV LOE.

Q. And Mr. Davis is talking about the Keytruda Qlex opportunity here, correct?

ATTORNEY HELM: Objection to form.

THE WITNESS: I just need to look back at what came before. It's hard to -- I need context to review.

BY ATTORNEY POWERS:

Q. Sure. In the previous statement from Mr. Davis, he was talking about subcutaneous pembrolizumab, right?

A. I'm sorry. I'd like to be able to read it --

Q. Sure.

A. -- so I can answer your questions.

Q. Go ahead.

(Pause for reading/reviewing.)

THE WITNESS: Okay. So sorry, what were you asking about?

BY ATTORNEY POWERS:

Q. In the statement from Mr. Davis there, he's talking about subcutaneous pembrolizumab, in other words --

A. Which statement?

Q. In the last one that we just read on the bottom of Page 9 where he's talking about "we'll make sure that the price is competitive because our goal is to maintain share."

He's talking about the price of subcutaneous pembrolizumab, right?

A. I think so, but I can't say for sure.

Q. And Mr. Davis is talking about making sure "that the price is competitive

because our goal is to maintain share," that's because the revenue of Keytruda and Keytruda Qlex is important to Merck & Co.'s shareholders and its share price, right?

A. I'm not sure why he's saying that. I can't speak to his intent.

Q. Do you think it has to do with the share price of Merck & Co. and the investors' concern about loss of exclusivity?

A. I think he's being responsive to Chris Schott.

Q. And Mr. Schott was asking about Keytruda Qlex, right?

A. It does look like that.

Q. Okay. We can move on. I'm going to hand you what's been previously marked as 2466.

(Whereupon, Previously Marked Exhibit 2466 is identified for the record.)

THE WITNESS: Is this something that I cite to in my declaration?

BY ATTORNEY POWERS:

Q. Just one minute.

Yes, you do.

A. Would you mind flagging where? Or I can look through.

Q. You cite it in Paragraph 29 of your declaration.

And I just have a few questions about this document. It's a Merck & Co. SEC filing, right?

A. It's a Form 8-K filed by Merck & Co., Inc. with the SEC.

Q. Yeah. And if you look at the last page of the document, you might recognize the signature.

A. I see that's my signature.

Q. You signed this document on February 3, 2026, right?

A. Correct.

Q. Now, on Page 3, there's a section labeled "Item 9.01. Financial Statement and Exhibits."

Do you see that?

A. I do.

Q. And there are two exhibits attached to this SEC filing, right?

A. So I can't say for sure, but

given the underlining, it looks like, yes, there --

Q. Okay. And they've been previously marked in this case 2467 and 2468.

(Whereupon, Previously Marked Exhibit 2467 is identified for the record.)

(Whereupon, Previously Marked Exhibit 2468 is identified for the record.)

ATTORNEY POWERS: I'm going to hand those to you now. 2467.

THE WITNESS: Do I cite to these in my declaration?

BY ATTORNEY POWERS:

Q. Yes, you do.

A. Okay.

Q. And here is 2468.

(Whereupon, Previously Marked Exhibit 2468 is identified for the record.)

BY ATTORNEY POWERS:

Q. If we look at -- start out with 2467 --

A. Sorry, I just want to see where I cited to them.

Q. Paragraph 30 of your declaration.

A. Okay.

Q. So if we look at the title of 2467, it says, "Merck & Co., Inc., Rahway, New Jersey, USA Announces Fourth-Quarter and Full-Year 2025 Financial Results; Highlights Progress Advancing Broad, Diverse Pipeline," right?

A. I see that.

Q. And Merck & Co., Inc. stated that its full year worldwide sales were 6 -- $65 billion, right?

A. This is on a consolidated basis with its subsidiaries.

Q. And Merck & Co., Inc. stated that its Keytruda Qlex sales were 31.7 billion for 2025, right?

A. No. That's not what this states.

Q. Give me just a minute.

I must have misread. Keytruda Qlex sales were 31.7 billion?

A. And then if you read further on.

Q. Keytruda Qlex sales of

40 million?

A. It does say that.

Q. Okay. So Keytruda --

A. And, again, just to confirm, this is on a consolidated basis, Merck & Co., Inc. and its subsidiaries.

Q. Right. But Keytruda and Qlex -- Keytruda and Keytruda Qlex together accounted for 31.7 billion in sales for 2025, right?

A. So that says -- that's what that says here. And then it goes on to say that of those, Qlex was 40 million.

Q. Right.

A. Yeah.

Q. Okay. So it's fair to say that Keytruda and Keytruda Qlex sales accounted for nearly half of Merck & Co., Inc.'s total sales for 2025, right?

A. So I don't know what you mean by "fair to say."

Q. Is it true?

A. So it's true that the figure you cited included Keytruda Qlex sales of 40 million, so I would read that of the

65 billion, 40 million were Keytruda Qlex.

Q. Yes. But Keytruda and Keytruda Qlex together accounted for 31.7 billion in sales, right?

A. This earnings release says Keytruda/Keytruda Qlex sales were 31.7 billion.

Q. Right. And if you go to Page 5, you'll see a breakdown. That might be helpful.

You see Keytruda, Keytruda Qlex, 31.68, right, billion?

(Stenographer requests clarification and colloquy will not be captured on the written record.)

ATTORNEY POWERS: Billion.

THE WITNESS: Sorry. What was the question?

BY ATTORNEY POWERS:

Q. On Page 5, you see a chart, right?

A. I do see a chart.

Q. And it says, "Full-Year Sales Performance," right? At the top above that

chart.

A. It says, "Full-Year Sales Performance."

Q. And then it says, "The following table reflects sales of the company's top products and significant performance drivers," right?

A. Yes. And, again, "company" as the consolidated enterprise of Merck & Co., Inc., [redacted]

Q. In the very top of that list, as far as products go, is Keytruda/Keytruda Qlex at 31.68 billion, right?

A. It does say that, Keytruda/Keytruda Qlex.

Q. And the total pharmaceutical sales for Merck & Co. are listed just above that at 58.142 billion, right?

A. Yes.

Q. So in December -- so as of the year ended December 31, 2025, Keytruda and Keytruda Qlex accounted for more than half of Merck & Co.'s pharmaceutical sales, correct?

A. I mean, I'm not gonna do the math, but that seems right.

Q. Is it fair to say that Keytruda is truly a blockbuster for Merck & Co., Inc.?

A. So Keytruda IV has been a blockbuster for the global enterprise that is Merck & Co., Inc.

Q. And is it your understanding that Keytruda Qlex has only recently launched?

A. I don't know when Keytruda Qlex launched.

Q. Do you have any idea when it launched?

A. I'm not sure.

Q. Does it sound right that it was at the end of last year?

A. That sounds right.

Q. Do you agree that Keytruda is Merck & Co.'s most important product?

ATTORNEY HELM: Objection to form.

THE WITNESS: So for Merck & Co., Inc., [redacted] that's reporting on behalf of its consolidated

subsidiaries, Keytruda IV has been an important product for the global enterprise.

BY ATTORNEY POWERS:

Q. It's the largest revenue-generating product for the global enterprise, correct?

A. That's my understanding.

Q. That's what these numbers say, right?

A. Well, so here it's saying Keytruda/Keytruda Qlex. And then on the front page, it subtracts out Keytruda Qlex as 40 million. So, yeah, I think that makes sense for the Keytruda IV.

Q. Okay. If you look at Paragraph 34 of your declaration.

You say that Merck & Co., Inc.'s 10-Q filing with the SEC for the quarter ended September 30, 2025, states the company filed revocation actions against a bunch of patents.

Do you see that?

A. I do.

Q. And you say that these revocation

actions were brought by subsidiaries of Merck & Co., Inc., right?

A. I do.

Q. And you say that in the UK, the revocation was brought by Merck Sharp & Dohme (UK) Limited, right?

A. I do.

Q. And in France, the revocation action was brought by MSD France, right?

A. Yes.

Q. In Germany, the revocation action was brought by MSD Sharp & Dohme GmbH, right?

A. That's what it says.

Q. Well, that's what you wrote, right?

A. Indeed.

Q. And in the Netherlands, the revocation action was brought by Merck Sharp & Dohme B.V., right?

A. Right.

Q. How did you learn that?

A. In talking to in-house counsel.

Q. Who?

A. Mark and Eric.

Q. Mr. Stewart?
A. Mr. Stewart.
Q. And that's because Mark Stewart is the vice president of global intellectual property litigation; is that right?
A. Mark Stewart is the vice president at Merck Sharp & Dohme LLC.
Q. Of global intellectual property litigation?
A. Let me just confirm.
That's correct.
Q. Why is his title global?
A. I'm not sure.
Q. You don't have any idea why Mr. Stewart's title is vice president global intellectual property litigation?
A. I'm assuming because there can be global IP litigation.
Q. Yeah. And Mr. Stewart informed you of these litigations in the UK, France, Germany, the Netherlands, right?
A. Yes.
Q. And these are all litigations, revocation actions, and so on that involve

Halozyme Inc., right?

A. So I have to look at the captions. I don't know anything about the...

Yes. It says -- yeah, Halozyme.

Q. Yeah, so all these revocation actions and different proceedings that you're talking about in Paragraph 34 are all various Merck entities against Halozyme, right?

A. Yes.

Q. Okay. Does Mr. Stewart coordinate with foreign subsidiaries on global IP litigation?

A. I'm not sure how he performs his function, but IP is primarily run out of Merck Sharp & Dohme LLC. [redacted]

Q. You don't have any understanding of how Mr. Stewart learned of what he told you regarding these revocation proceedings you wrote about in your declaration?

A. As I said, my understanding, he has global responsibilities.

Q. So what are those global

responsibilities, to your understanding?

A. With respect to intellectual property litigation.

Q. Global responsibilities involving coordination with subsidiaries?

A. That would -- that makes sense how that would work, but I don't actually know how -- how that works.

Q. You're not sure?

A. I just said I don't actually know.

Q. Okay. Do you know if Mark Stewa

[redacted]

Q. And Ms. Zachary has a dual role. We established that this morning, right?

A. I believe I established that in my declaration.

Q. Yeah. Was Mark Stewart involved in the UK revocation action brought by Mark -- let me try that again.

Was Mark Stewart involved in the UK revocation action brought by Merck Sharp & Dohme UK?

A. I don't know, but I think it's important to point out the reason I cited to these in my declaration is to provide an example of the short form that is used in our SEC reports to refer to the consolidated business of Merck & Co., Inc. and its subsidiaries.

It's for that purpose that I cite it. And that's what I'm here to speak about.

Q. Okay. Well, I get to ask you questions about what you cited, so I'm going to do that.

A. Wonderful.

Q. Do you know if Mark Stewart was involved in the revocation action in France brought by MSD France?

A. As I said before, I know what I wrote in my declaration for purposes of showing that other subsidiaries had filed different proceedings that are referred to in a particular SEC filing as being filed by the company.

Q. And they were really filed by subs is your point; is that correct?

A. My point in here was to say, yes, the 10-Q used the broad company to refer to Merck & Co., Inc. and its consolidated subsidiaries in reference to specific actions.

But those specific actions were brought by subsidiaries of Merck & Co., Inc.

Q. Was Mr. Stewart involved in the revocation action in Germany brought by MSD

Sharp & Dohme GmbH?

A. As I said before, what I know is that subsidiaries of Merck & Co., Inc. filed those actions.

Q. Are there any intercompany agreements between the subsidiaries of Merck & Co., Inc. with regard to intellectual property actions?

A. I don't know.

[redacted]

BY ATTORNEY POWERS:

[redacted]

[redacted].

A. -- and look at my declaration.

Q. I see what the problem is. Let me ask a different question.

[redacted]

Q. Okay. Look at page -- look at Paragraph 36 of your declaration. You say there, "More specifically, in the context of the Halozyme litigation and these PGR proceedings, I understand that Merck Sharp & Dohme LLC employees, including Mark Stewart, provide information that is included in Merck & Co., Inc.'s SEC disclosures."

A. I see that.

Q. But just a moment ago, I asked you if Mr. Stewart provides information to anyone at Merck & Co., Inc., and you said he does not.

A. This is information that's included in Merck & Co., Inc.'s SEC disclosures. [redacted]

Q. [redacted]


1
7
10
18
23

[redacted]

ATTORNEY HELM: And I'll caution you not to answer that if you can't do so without revealing privileged communications.

[redacted]

BY ATTORNEY POWERS:

[redacted]

[redacted]

Q. Going back to Merck & Co.'s SEC filings, does Merck & Co., Inc. know the information in Merck & Co., Inc.'s SEC filings?

A. What does that mean?

Q. Well, I want to understand if there's any flow of information to Merck & Co., Inc. And I'm trying to figure out what the process is.

So how does Merck & Co. come to know the information about global litigations that gets in its SEC filings?

A. So, I mean, obviously Merck & Co., Inc. is not a person. So I just -- I'm, like, trying to understand what you mean.

Q. Well, all action is ultimately individual action, right?

So I'm trying to understand the process by which the information about global litigations involving various subsidiaries around the world ends up in Merck & Co., Inc.'s SEC filings.

And I wonder -- I'm trying to ask

who's reporting that such that it ends up in Merck & Co., Inc.'s SEC filings.

A. So it depends on the SEC filing, but for the consolidated report -- reporting, like a 10-K or a 10-Q, [redacted]

[redacted]

Ultimately, it's a consolidated report on behalf of all of the subsidiaries. And so you may be aware that the CEO of a public company as well as the CFO of a public company have to certify as to the reporting.

Q. Uh-huh. And so does that mean that Mr. Stewart's information ultimately makes it to the CEO and CFO in their roles as officers of Merck & Co., Inc.?

A. I think you're just getting this a little confused. There will be a document that will include information that's consolidated from subsidiaries around the world.

That's synthesized into our required reporting with the SEC. That

document gets reviewed by the appropriate officers of Merck & Co., Inc. since it is a Merck & Co., Inc. filing, because it's reporting whatever is happening on a consolidated basis.

[redacted]

Q. Right. So the officers that review the consolidated document that you're talking about reporting litigations from around the world are the CEO and the CFO; is that correct, of Merck & Co., Inc.?

A. I'm sorry. What's the question?

Q. Sorry. Who at Merck & Co., Inc. reviews the consolidated document reporting on litigations?

A. So they look at the document as a whole.

Q. Right.

A. So the documents, as we talked about before, I believe -- right? -- must not be material -- materially misleading.

Q. Uh-huh.

A. And so they're looking at the document across the board. I don't have --

do I have a 10-K in front of me? I can read you the certifications that they have to do if that would be helpful.

Q. No. My question was pretty simple, actually.

It was: What officers of Merck & Co., Inc. are reviewing the document, consolidated document before it ends up in the SEC filing?

A. So I've now said multiple times that both our CEO --

Q. Uh-huh.

A. -- right -- because he is responsible as CEO of Merck & Co., Inc., that's a requirement under the SEC rules. Our CFO -- and, again, I'm speaking in -- with respect to the annual reporting that goes on. If I had a 10-K in front of me, I could read you the certifications.

Jennifer Zachary, in her role as general counsel of Merck & Co., Inc., would review it as well.

Q. Okay.

A. And when I say "it," I should be concrete. The entire report.

Q. Right. Okay. And if Mr. Davis had questions about the report, as his -- part of his job as CEO of Merck & Co., Inc., who would he ask?

A. It would depend on the question.

Q. Would he be able to ask Jennifer Zachary questions about the foreign litigations?

A. I would depend on what the question was.

Q. What if he wants to know what's going on with the foreign litigations?

A. Well, so it would be -- yeah, I'm not sure what his process is for who he would ask.

Q. But he could ask Jennifer Zachary, right?

A. So he could ask Jennifer Zachary, and she'd be in her role at that point as GC of Merck Sharp & Dohme LLC, because we talked about before, intellectual property litigation is operated through Merck Sharp & Dohme LLC.

Q. Do MCI -- do Merck & Co., Inc. board members review SEC filings?

A. The audit committee of the Merck & Co., Inc. board of directors reviews annual reports on 10-K and the 10-Qs that are filed quarterly.

Q. Mr. Stewart has appeared in a foreign proceeding as a respondent for Merck & Co., Inc., correct?

A. I have no idea. And that would be odd.

(Whereupon, Exhibit 6 is marked for identification.)

BY ATTORNEY POWERS:

Q. You've been handed what's been marked Exhibit 6.

Do you have that in front of you?

A. I have a document labeled Exhibit 6.

Q. This is a transcript from a hearing of the German litigation involving Halozyme against Merck & Co. and its subsidiaries, right?

A. Is it?

Q. Yeah. If you look at about midway throughout first page of the document, it says --

A. You know what, I've never seen this before.

Q. Yeah.

A. I'm going to need to take a minute --

Q. Take your time.

A. -- and look through it.

Q. And at the top of the document, it says, "Reference 7 O 12286/25." And I'll note that it's dated December 5, 2025, at top right. You can see that.

A. I'm sorry. Should I -- can I read it or...

Q. Please.

A. Okay.

(Pause for reading/reviewing.)

BY ATTORNEY POWERS:

Q. Maybe it makes sense for me to ask you some questions as you read it.

A. I mean, you may be a better multitasker than I am. It's pretty hard to read and answer questions at the same time.

Q. Are you going to read the whole document?

A. Are you going to ask me questions

about it?

Q. Yes.

A. Okay. Then I'll read the whole document.

Q. Go ahead.

A. I mean, already there's things on here that I'm not going to understand. They make reference -- references to applicants, respondents. I have no idea what any of that refers to.

Q. Okay. Let's go through it together.

So first of all, we see the front page, Regional Court Judge Dr. Schweyer. Regional Court Judge Tozser.

Do you see that, the front page?

A. Yes.

Q. Yes. And then it says, "In the legal dispute, Halozyme Inc. legally represented by CEO Helen Torley." And then legal representatives, attorneys from Quinn Emanuel & Sullivan -- Quinn Emanuel Urquhart & Sullivan, LLP.

Do you see that?

A. I do.

Q. And then it says, "versus Merck & Co., Inc."

Do you see that?

A. I see that.

Q. "Merck Sharp & Dohme B.V."?

A. Merck Sharp & Dohme B.V., I see that.

Q. "MSD Sharp & Dohme GmbH," right?

A. I see that.

Q. And then on the next page, it says, "Appearing when the case is called." And then there's a list of attorneys. And there's a list of people appearing via videoconference --

A. I see --

Q. -- correct?

A. -- that.

Q. And then if you go down to Point 2 on this page, it says, "Respondent."

Those are the Merck entities, correct? You can compare that to the previous page?

ATTORNEY HELM: Objection. Foundation.

THE WITNESS: If you'll see, it has different -- it lists different entities for the folks listed under Respondent.

BY ATTORNEY POWERS:

Q. Yes. Some of them are law firms.

A. It looks like someone's from Merck Sharp & Dohme UK Limited.

Q. Right. Then I would draw your attention to Mr. Stewart, vice president intellectual property litigation at Merck.

Do you see that?

A. That would be shorthand for Merck Sharp & Dohme LLC.

Q. But if you go back to the previous page, the parties there listed are Merck & Co., Inc., Merck Sharp & Dohme B.V., MSD Sharp & Dohme GmbH, but no MSD LLC, correct?

A. There's no Merck Sharp & Dohme UK Limited either.

Q. You agree that there is no respondent here that is Merck Sharp & Dohme LLC, right?

A. From what I can tell in the two

seconds that I've been looking at this, it doesn't look like all of the entities that were represented are listed on this first page. I mean, already you can see that Merck Sharp & Dohme LLC wasn't.

Also Merck & Co. Merck UK Limited wasn't.

Q. Uh-huh. You agree that Merck Sharp & Dohme LLC was not a party to this proceeding, right?

A. I have no idea who was a party.

Q. Okay. They're not listed as respondents, though?

A. Neither is Merck Sharp & Dohme UK Limited, but someone's listed for them. And Mark is employed at Merck Sharp & Dohme LLC.

ATTORNEY POWERS: Should we take a break?

ATTORNEY HELM: Sure.

ATTORNEY POWERS: Okay.

THE VIDEOGRAPHER: The time right now is 2:51 p.m.

Off the record.

///

(Whereupon, a recess was taken at 2:51 p.m.)

THE VIDEOGRAPHER: The time right now is 3:30 p.m.

We're back on the record.

BY ATTORNEY POWERS:

Q. Welcome back, Ms. Grez.

A. Yes.

Q. Did you speak to your counsel during the break about the substance of your testimony?

A. I did not.

Q. Is it important to the global enterprise of Merck that Keytruda Qlex can be launched in Germany?

A. I'm not sure.

Q. MSD LLC doesn't sell products in Germany, correct?

A. I know that Merck Sharp & Dohme LLC sells products in the U.S.

Q. Do they sell any products in Germany?

A. I don't know.

Q. Now, we talked about how Mark Stewart was present at a German proceeding

before the break, right?

A. I'm sorry. Are you referring to a specific document?

Q. Yes. The document that was marked Exhibit 6, the proceeding with Halozyme Inc. versus various Merck entities.

Do you have that document?

A. I do.

Q. Was --

ATTORNEY HELM: I'd like to object to the authentication of this document and note that it says "English machine translation" on it as well.

BY ATTORNEY POWERS:

Q. Was Mark Stewart there to ensure that global legal strategy is applied?

A. I don't know why Mark Stewart was there. I don't know anything about this proceeding.

Q. Was he there as one of his responsibilities to ensure that global -- global legal strategy is adhered to?

A. I don't know why Mark was here.

Q. Okay.

A. I don't know why anyone was here.
Q. Is ensuring global legal strategy part of his job?
A. I believe in my declaration I state what his job title is. Let me go back.
Yeah, Mark Stewart is vice president global intellectual property litigation at Merck Sharp & Dohme LLC.
Q. So is ensuring that global legal strategy is adhered to part of his job?
A. "Global legal strategy"? What do you mean by that?
Q. I mean, what's your understanding of that?
A. My understanding is he has a role in global intellectual property litigation.
Q. So is it your understanding that part of his job is to ensure that global legal intellectual property strategy is adhered to?
A. I'm not sure.
Q. Okay. I'm going to hand you an Exhibit that we'll mark Number 7.
///

(Whereupon, Exhibit 7 is marked for identification.)

BY ATTORNEY POWERS:

Q. Do you have that document in front of you?

A. I have a document now labeled Exhibit 7 in front of me.

Q. Okay. Do you recognize this document?

A. It looks like the policies of the board of directors of Merck & Co., Inc.

Q. And right at the top of the document under "Philosophy and Functions of the Board," the document states, "The primary mission of the board is to represent and protect the interests of the company's shareholders. In so doing, the board has the legal responsibility for overseeing the affairs of the company and has certain specified powers and authorities with respect to corporate action provided by the New Jersey statutes."

Did I read that correctly?

A. That's what it says.

Q. "The board's oversight function can and should be exercised through the election and appointment of competent officers. The board nevertheless remains responsible for oversight and thus has an obligation to keep informed in order to assist management in formulating and developing plans.

"It also sets necessary criteria and serves as a body to review and advise management on the operations of the company."

Did I read that correctly?

A. That looks right. Sounds right.

Q. And just to finish out that paragraph. "These duties should be discharged by the full board, the board's committees, or the independent members of the board, as appropriate in the circumstance."

Did I read that correctly?

A. Sounds correct.

Q. Does Merck & Co., Inc.'s board know about the litigation between Halozyme and Merck?

A. I believe I answered that before. Not that I'm aware of.

Q. The board has a duty to stay informed about litigations, though, correct?

A. The board has the legal responsibility for overseeing the affairs of the company, which is the company Merck & Co., Inc., that operates through its subsidiaries.

Q. And the board remains responsible for oversight and, thus, has an obligation to keep informed in order to assist management in formulating and developing plans, right?

A. Of what is significant from a global enterprise level.

[redacted]

[redacted]

ATTORNEY HELM: Objection to form and foundation.

[redacted]

[redacted]

Q. Does Robert Davis know about the litigation between -- with Halozyme?

A. I would imagine.

Q. Does Jennifer Zachary know about the litigation with Halozyme?

A. So are you talking about the proceedings or -- I guess what specifically are you talking about?

Q. The dispute with the -- the global dispute with Halozyme.

A. So I would imagine she's been informed in her capacity as head of Merck Sharp & Dohme LLC's legal department.

Q. But you can't say for sure whether or not Robert Davis has been informed?

A. My guess is he would know about it.

[redacted]

[redacted]:

[redacted]

Q. Do the officers of Merck & Co., Inc. know about the Halozyme litigation?

A. So Rob Davis signs the 10-K, so he would know.

Q. Do you know of any other officers besides Robert Davis and Jennifer Zachary

that would know about the Halozyme litigation?

A. So for sure Caroline Litchfield.

Q. Why do you say "for sure"?

A. Remember we talked about before that she signed the 10-K.

Q. Okay. Anybody else?

A. I would imagine our executive officers are reading the 10-K. I don't know.

Q. But besides knowledge these executive officers may have gleaned from reading 10-Ks, you don't know if they know about the litigation with Halozyme?

A. I would assume they do. I don't know. I don't sit in those meetings.

[redacted]



Q. As part of Jennifer Zachary's role as general counsel legal for Merck & Co., Inc., do you have any understanding of

whether or not she has apprised members of the board about the Halozyme litigations?

A. I believe I answered that, that I don't know.

Q. As part of Jennifer Zachary's role as general counsel for legal for Merck & Co., Inc. --

A. I'm sorry. What does -- I don't understand what "general counsel for legal" means.

Q. I'm sorry.

A. Her title is vice president -- or executive vice president and general counsel of Merck & Co., Inc.

Q. Thank you.

As part of her role as general counsel for Merck & Co., Inc., do you have any understanding of whether or not Ms. Zachary has apprised any members of the board of Merck & Co., Inc. about the Halozyme litigations?

A. I'm confused. And I might just not be remembering correctly, but I thought you just asked me that.

Q. No. I was asking about executive

officers.

A. Whether any -- sorry. Can you repeat the previous question? What were you asking about?

ATTORNEY HELM: Objection.

BY ATTORNEY POWERS:

Q. I'm sorry. Let me -- let me -- let me withdraw the question and ask a better one.

As part of Jennifer Zachary's role as general counsel for Merck & Co., Inc., do you have an understanding of whether or not she has apprised any executive officers about the Halozyme litigations?

A. So as I stated before, if Jennifer Zachary is providing an update, it would be as head of the legal department for Merck Sharp & Dohme LLC. [redacted]

Q. Well, it has an officer in Jennifer Zachary, correct?

A. It has multiple officers.

Q. It has an officer in the legal

department as Jennifer Zachary, right?

A. Jennifer is the head of the legal department at Merck Sharp & Dohme LLC. She has concurrent roles, which I think we talked about this morning. One of her -- and I think I talk about it in my declaration too. Let me just go back.

Yes. In 21, I discuss her two roles.

Would it be helpful to read that?

Q. No. Thank you. I've read it.

Why do you believe that the -- I think earlier you told me that you believe that the officers, executive officers of Merck & Co., Inc. know about the litigation with Halozyme, right?

Why do you -- why do you believe that? Is it only because they may have read about it in SEC statements?

A. So Jennifer Zachary, in her capacity as head of Merck Sharp & Dohme LLC's legal department, may have reported out to those that hold roles at Merck & Co., Inc. in the context of understanding what's going on at the global enterprise,

which is what the officers -- the Section 16 officers who file Form 4s with the SEC who are -- have roles as officers of Merck & Co., Inc.

[redacted]

[redacted]

Q. Is it your testimony that Ms. Zachary only communicates with directors of Merck & Co., Inc. as general counsel of Merck & Co., Inc., or can she also communicate with executive officers of Merck & Co., Inc. in her capacity as general counsel for Merck & Co., Inc.?

A. [redacted] I think you read in the policies of the board, and we can go back to that. That, "The board's oversight function can and should be exercised through the election and appointment of competent officers."

Q. How does the board make sure that they're kept informed of litigations for which they have oversight and an obligation to keep informed?

A. I definitely don't understand your question --

Q. Okay.

A. -- there were multiple parts.

Q. How does -- how does the board keep informed of things they have an obligation to keep informed about?

A. Through meetings.

Q. Are there -- okay. Meetings with who?

A. Board of directors meetings -- meetings of the board of directors of Merck & Co., Inc.

Q. Is that the only way the board keeps informed about things they have an obligation to keep informed about?

A. Sometimes there will be communications between meetings. They also -- as you may be aware, but as directors of publicly traded entities, directors oftentimes pursue director

education and that sort of thing as well. So they may do other things to stay, you know, up-to-date on best practices being a member of a publicly traded board of directors.

Q. Does Ms. Zachary communicate about patent litigations to directors of Merck & Co., Inc.?

A. [redacted]

Q. And I think we've established today that litigation with Halozyme is a global litigation.

Do you agree?

A. You --

ATTORNEY HELM: Objection to form.

THE WITNESS: I mean, I -- I know from -- that there is litigation that's happening in countries outside the U.S.

I don't know to what extent it's global.

BY ATTORNEY POWERS:

Q. Well, it involves one, two, three, four -- five subsidiaries of Merck & Co., Inc., right?

ATTORNEY HELM: Objection to foundation.

THE WITNESS: So as I mentioned before, I listed the various proceedings in 34 to show that Merck & Co., Inc.'s filings are filed on a consolidated basis and references to the company in those filings are to the broad global enterprise.

BY ATTORNEY POWERS:

Q. In her capacity as general counsel for Merck & Co., Inc., does Jennifer Zachary have a fiduciary duty to keep the board of Merck & Co., Inc. informed of patent litigation?

A. It would depend on the patent litigation.

Q. What about a patent litigation that is related to one of the company's

largest products?

A. If it were significant for the board to see it, then she would.

Q. Who makes the determination -- who makes the determination about whether or not it's significant for the board to see it?

ATTORNEY HELM: I'll just caution you to answer if you can do so without revealing privileged communications.

THE WITNESS: Yeah, so to speak in generalities, it's hard to answer that question.

BY ATTORNEY POWERS:

Q. Does Ms. Zachary herself make that determination?

A. She would definitely be, in her role as general counsel, thinking about that.

Q. Deciding whether or not it makes sense to disclose to the board patent litigation involving the company's subsidiaries?

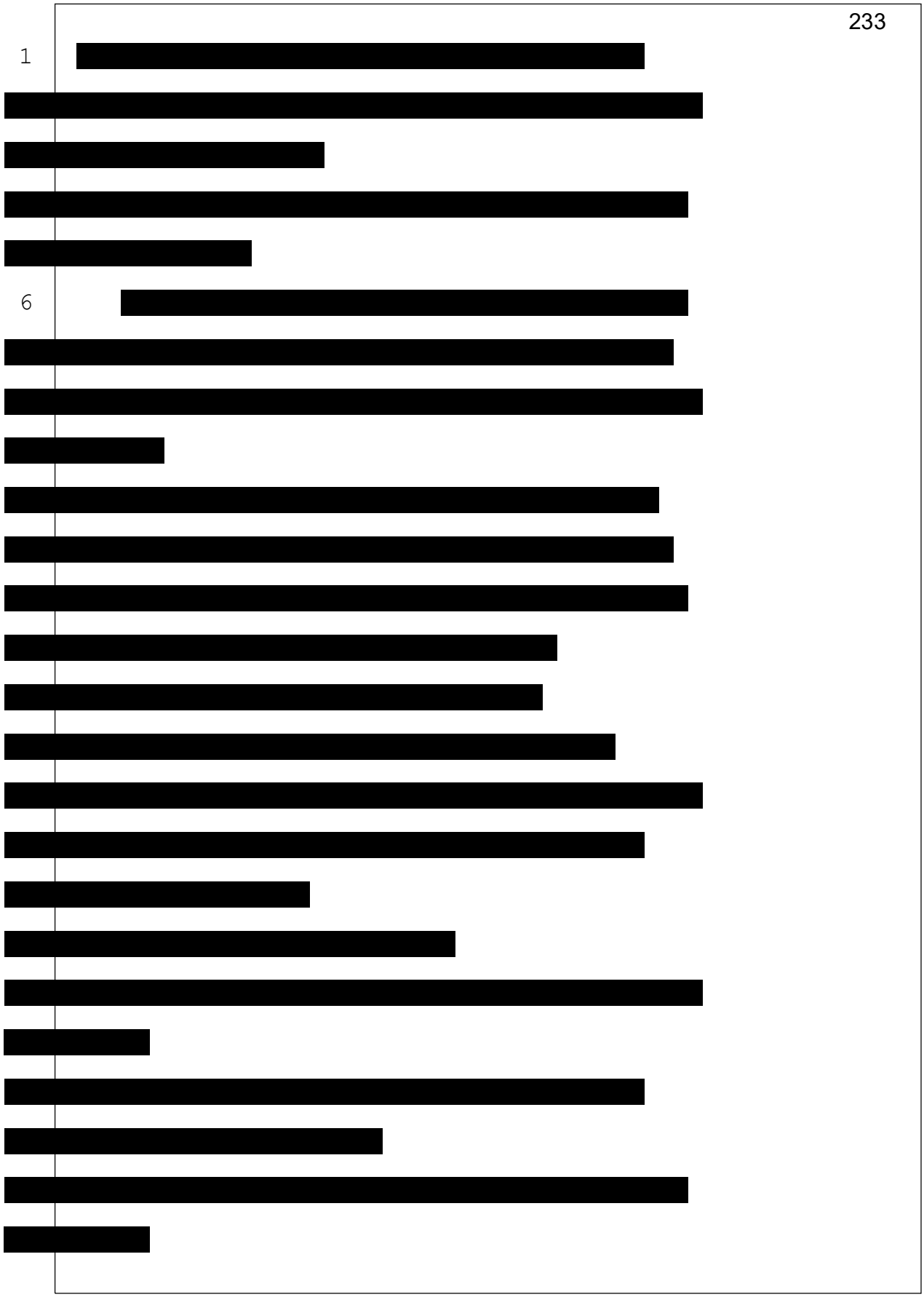
A. So I would say based on our global enterprise, whether it rises to the

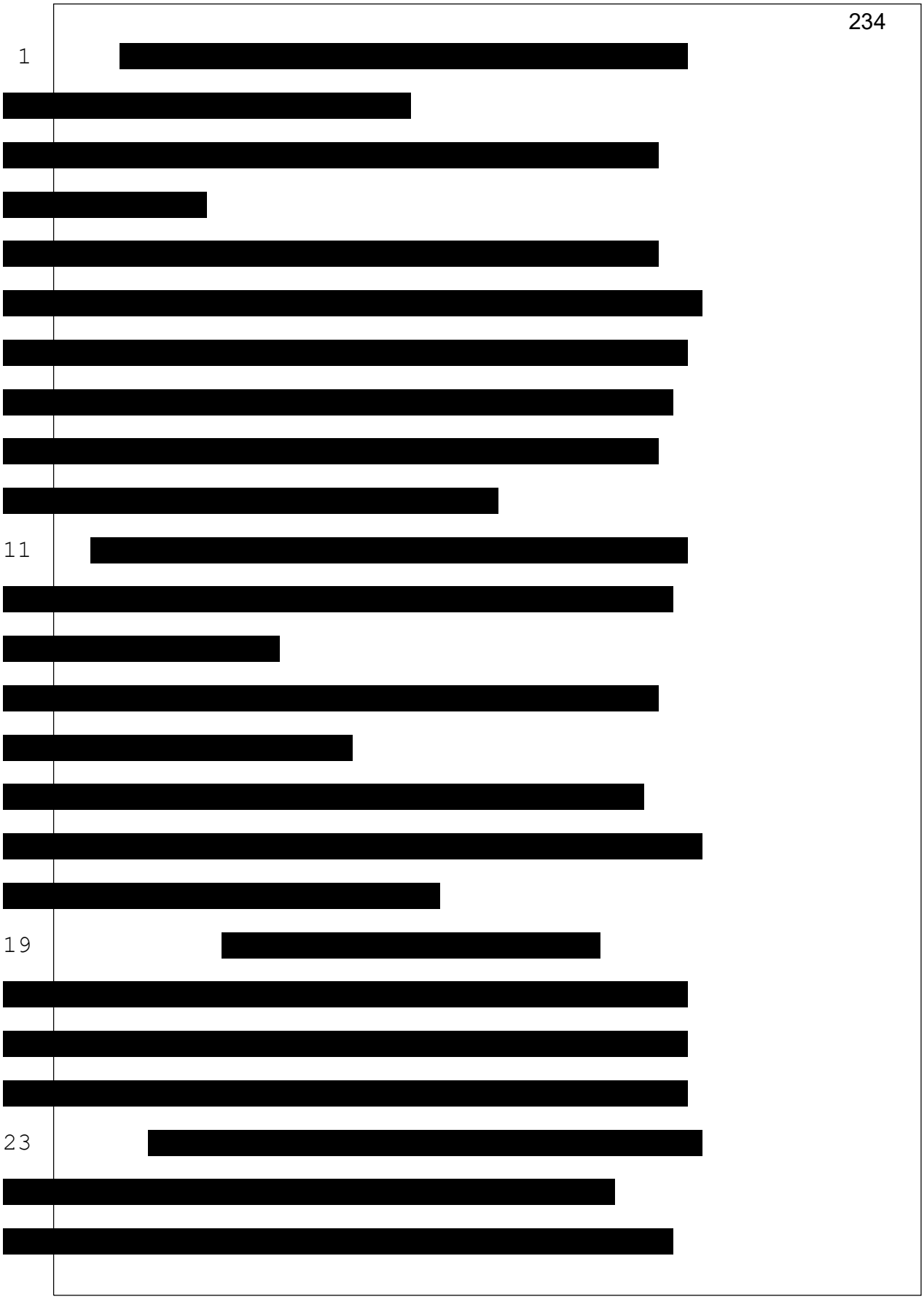
level of being something that the board should be reviewing.

Q. But you do agree that at least if it's significant -- a significant litigation, Ms. Zachary has a fiduciary duty to keep the board informed, right?

A. I'm not here to speak about fiduciary duties, but I can say in her role as general counsel, she would be thinking about what rises to the level of needing to be shared with the board from a legal perspective.

[redacted]


1
6


1
11
19
23

[redacted]

Q. I see. So if Merck -- if Ms. Zachary informed the board about any Halozyme litigation, she would be doing it in her capacity as general counsel of Merck & Co., Inc., right?

A. That's not what I said. I thought I answered that.

Q. Well, you said she'd know about it in her capacity as head of legal department for MSD LLC.

A. And that she would advise, since Merck & Co., Inc. is charged with

overseeing the global enterprise, in her capacity as general counsel of Merck & Co., Inc., she would advise the board of directors of Merck & Co., Inc. on the global enterprise impact.

Q. So in meetings with the board of Merck & Co., Inc., Ms. Zachary is acting as general counsel for Merck & Co., Inc., right?

A. I wouldn't say that's right.

Q. You're saying that within a board meeting of Merck & Co., Inc., Ms. Zachary is also acting as general counsel of MSD LLC?

A. She could hold -- she holds concurrent roles, and at different times is -- I guess, as they say, wearing different hats.

Q. Within one board meeting of the board of directors of Merck & Co., Inc., Ms. Zachary could wear different hats?

A. Yes.

Q. And it would depend on what she was talking about?

A. As general counsel of Merck &

Co., Inc., she's charged with advising, from a legal perspective, the board of directors of Merck & Co., Inc. Information she may know in connection with the litigation would be known by virtue of her being head of the legal department of Merck Sharp & Dohme LLC.

Q. So she knows information in her capacity as head of the legal department of Merck Sharp & Dohme LLC, but she can use that information as general counsel of Merck & Co., Inc. to advise members of the board, correct?

A. Just like any information from subsidiaries. Because that's how the business is conducted, through subsidiaries.

Q. Do you happen to know if Keytruda Qlex contains an antibody that's directed to a target called PD-1?

A. I don't know anything about that.

Q. To your knowledge, is anyone employed exclusively by MSD LLC authorized to execute a power of attorney related to patent matters on behalf of Merck & Co.,

Inc.?

A. Sorry. Say that again.

Q. Is anyone employed exclusively by MSD LLC and with a role only at MSD LLC authorized to execute a power of attorney related to patent matters on behalf of Merck & Co., Inc.?

ATTORNEY HELM: Objection to form.

THE WITNESS: So, to my knowledge, Merck & Co., Inc. doesn't hold any patents.

BY ATTORNEY POWERS:

Q. Okay. So, to your knowledge, would Merck & Co., Inc. authorize an employee solely of MSD LLC to authorize a power of attorney related to patent matters?

A. Sorry. Say the question again.

Q. Sure. To your knowledge, would Merck & Co., Inc. authorize an employee solely of MSD LLC to authorize -- to sign a power of attorney related to patent matters?

A. I believe the Merck board of

directors has a general corporate resolution with respect to patent matters.

Q. And that general corporate resolution authorizes employees of MSD LLC to execute powers of attorney for patent matters, right?

A. I'd have to look at the general corporate resolution.

Q. Okay.

ATTORNEY POWERS: This is going to be 8.

(Whereupon, Exhibit 8 is marked for identification.)

(Comments made while stenographer marked requested exhibit.)

BY ATTORNEY POWERS:

Q. Do you have Exhibit 8 in front of you, Ms. Grez?

A. I do. This is much bigger than a general corporate resolution would be.

Q. This is a prosecution history for a patent application. I'm going to take you to --

A. Oh, I've never seen one before.

Q. If you flip to Page 20 of this

document.

ATTORNEY HELM: Do you want to clarify what you're talking about?

BY ATTORNEY POWERS:

Q. Sure. Approximately 20 pages in to the --

A. Should I count the pages? Sorry. I wasn't --

Q. Yes, please.

A. Just by, like, page, not, like, back and front?

Q. Back and front --

A. Back and front.

Q. -- yes, please.

I think you're there. First of all, just to set the stage a little bit, if we go -- don't lose your place there, but if we go to the first page here of this document, you can see that it says, "Application Number 19346638," right?

A. It says that. I have no idea what that means.

Q. And -- well, that's a patent application number.

And then it says, "Document date:

10/1/25," right? This document?

A. That's the document date it says.

Q. And then if we go a little further into the document where I think you were, Page 20 of the document, there's a page that says, "Merck & Co., Inc." at the top, right?

A. The page I'm looking at says, "Power of Attorney to Prosecute Applications Before the USPTO."

Q. Right. And this is actually the first page of the submission that was sent to the Patent Office.

You can see that it was signed by Cynthia A. Francisco -- right? -- at the bottom of the page you're looking on?

A. And it says, "Merck Sharp & Dohme LLC."

Q. It does.

Then if you go to the next page, you'll see at the top a document I think you will recognize. It says, "Merck & Co., Inc." at the top.

Do you see that?

A. I do.

Q. And then under that, it says, "Certification," right?

A. It does.

Q. And under that, it says, "I, Kelly E.W. Grez, corporate secretary of Merck & Co., Inc., a corporation duly organized and existing under the laws of the State of New Jersey, United States of America (the 'company'), do hereby certify that the attached: (1) is a true and correct copy of general corporate resolution Number 5 - Patent Matters, as amended by the board of directors at the -- the board of directors of the company at a meeting thereof duly called and held on July 22, 2025; and (2) is in full force and effect as of the date hereof." Right?

A. I see that.

Q. And then under that, it says, "In witness whereof, I have hereunto subscribed my signature and affixed the seal of the company this 29th day of July, 2025."

Did I read that correctly?

A. It says that.

Q. And under that text, you see the

seal there?

A. I do.

Q. And what is that seal?

A. It says "Merck & Co., Inc. corporate seal."

Q. That's the corporate seal of Merck & Co., Inc.?

A. That's correct.

Q. And then right next to that seal, a little bit to the right, there's a signature.

Is that your signature?

A. That is.

Q. Because it says, "By: Kelly E.W. Grez," and then it says, "Title: Corporate secretary," right?

A. It does.

Q. And you were acting in your capacity as a corporate secretary of Merck & Co., Inc. when you signed this document, right?

A. I was acting in my capacity as the corporate secretary of Merck & Co., Inc., that's correct.

Q. And then under that, this is

notarized by a notary, correct?

A. It is.

Q. Do you recall having this document notarized?

A. No.

Q. But it was notarized by Karen R. Ettelman, right?

A. That's right.

Q. And she notarized it on the 29th day of July, 2025, right?

A. That's what this says.

Q. And then if you go to the next page of this document, you'll see the Corporate Resolution Number 5. It says, "General Corp. Resolution Number 5, Patent Matters," right?

A. That's what it says.

Q. And it says "Resolved, that any of the following" -- I'm going to name the names -- "Robert M. Davis, chairman, chief executive officer and president; Jennifer Zachary, executive vice president and general counsel; Laura M. Ginkel, senior vice president and assistant general counsel; Mark Stewart, vice president,

global IP litigation; Anna Cocuzzo, associate vice president, group managing counsel; Alysia Finnegan, associate vice president, group managing counsel; Catherine D. Fitch, managing counsel, patents; Emily K. Sauter, managing counsel, patents; Jenny Cromsigt, managing counsel, animal health IP; John C. Todaro, managing counsel, patents; Andrew W. Custer, managing counsel, patents; Deeba Hussein, assistant managing counsel, European patents; James Horgan, director, IP litigation; and Cynthia A. Francisco, executive director, IP administration."

Those are all the names on the document, right?

A. The names of individuals, yes.

Q. Yes. And then the corporate resolution -- General Corporate Resolution Number 5 states: "Are hereby authorized to execute and to revoke on behalf of Merck & Co., Inc. and its affiliates (including subsidiaries) the following documents related to patent matters."

Did I read that correctly?

A. That's what it says.

Q. And there's a colon after that statement I just read, and then it goes on: "Powers of attorney as fully in law as may be necessary and proper in connection with the acquisition, registration, maintenance and enforcement of patents and applications for patents, including powers of attorney relating to the prosecution or defense of patent rights before courts of law or other governmental tribunals, agencies or departments; affidavits and declarations; and any other documents which are necessary and proper for the acquisition, registration, maintenance, litigation and protection of patents."

Did I read that correctly?

A. That sounds correct.

Q. Laura Ginkel is authorized to execute or evoke a power of attorney related to patent matters on behalf of Merck & Co., Inc. by this resolution, right?

A. [redacted]

[redacted]

Q. Laura Ginkel is authorized to execute or revoke a power of attorney related to patent matters on behalf of Merck & Co., Inc., right?

A. Right.

Q. And Mark Stewart is authorized to execute or revoke a power of attorney related to patent matters on behalf of Merck & Co., Inc., right?

A. So, again, as I said, if there were a patent that Merck & Co., Inc. had, which to my knowledge it doesn't, someone would need to be authorized. [redacted]

Q. And Robert Davis -- well, strike that.

Merck & Co., Inc. has officers, though, right?

A. Merck & Co., Inc. has officers.

Q. And one of them is Robert Davis, right?

A. Yes.

Q. And Robert Davis is authorized to execute or revoke a power of attorney

related to patent matters on behalf of Merck & Co., Inc. and its subsidiaries, right?

A. That's what this says.

Q. And on behalf of MSD LLC, Robert Davis is authorized to execute or revoke other documents that are necessary and proper for the litigation of patents, right?

A. That's not his role. There are employees at -- there are legal department employees at Merck Sharp & Dohme LLC, and it's those individuals who would do that.

Q. But this corporate resolution that you certified authorizes Mr. Davis to execute or revoke documents that are necessary and proper for the litigation of patents, right?

A. The following documents relating to patent matters. We'd have to read them again. Powers of attorney, as fully in law as may be necessary and proper in connection with acquiring, registering, maintaining.

What was your -- what was your

point?

Q. Documents that are necessary and proper for the acquisition, registration, maintenance, litigation and protection of patents.

A. And what was the question about?

Q. Does Mr. Davis have the authority, based on this corporate resolution, to execute documents which are necessary and proper for the litigation of patents --

A. Sorry. I don't see litigation. Am I missing that word?

Q. You must be. It's the fourth word from the end -- fifth word from the end.

A. Okay. So, yes, that says that he's one of the authorized people. As a practical matter, he doesn't do that.

Q. He's authorized to do it. And he's authorized to do it on behalf of Merck & Co. and its affiliates including subsidiaries, right?

A. But that's not his role, so he doesn't.

Q. All of these people on the list that we went through are authorized to do it on behalf of Merck & Co. and its subsidiaries, right?

A. Were Merck & Co., Inc. to have patent, they -- each person is authorized. Each of these individuals is employed by subsidiaries of Merck & Co., Inc.

Q. I think we've established that they have the authorization to act this way on behalf of Merck & Co., Inc., though, correct?

A. What do you mean by "act this way"?

Q. To execute and revoke any other documents which are necessary and proper for the litigation of patents.

A. Sorry. Where is the revoke?

Q. That's up just before the last paragraph.

A. I only see one paragraph.

Q. There's a portion that starts "are hereby authorized to execute and revoke."

A. Okay.

Q. Do you see that language?

A. To execute and revoke the following documents relating to patent matters, and then it lists the specific documents.

Q. Right.

A. But the way it works in a global enterprise is that the people with responsibilities for those matters are the ones that do that. So Merck Sharp & Dohme LLC, Mark Stewart, vice president global IP litigation, as I discussed specifically in my declaration, he's employed by Merck Sharp & Dohme LLC.

Q. But this corporate resolution that we've been talking about authorizes Mr. Stewart to act on behalf of Merck & Co., Inc. to execute these documents, correct?

A. Were there any documents from Merck & Co., Inc., he would be authorized.

Q. Okay.

[redacted]

[redacted]

Q. Got it.

(Whereupon, Exhibit 9 is marked for identification.)

BY ATTORNEY POWERS:

Q. So this is another similar document. Do you see the first page of this document -- this is also from a patent prosecution history.

A. I'll have to take your word for it.

Q. I'll show you. And it's signed by Anna, "Cocuzzo," right?

A. I don't recognize her signature, but it says Anna Cocuzzo --

Q. Cocuzzo.

A. -- under her name.

Q. And it was dated November 5, 2019, right? That signature?

A. That's the date written there.

Q. Okay. And then go to the next page, you'll see a certification similar to the one we saw before?

A. I see a certification.

Q. And it's -- at the top of this

page, it says, "Merck & Co., Inc.," right? And then certification? With then it says -- do you see that?

A. I do.

Q. Okay. And then it says, "I, Faye C. Brown, senior assistant secretary of Merck & Co., Inc. (the company) the corporation duly organized and existing under the laws of the State of New Jersey, United States of America, do hereby certify that the attached presently in full force and effect is a true and correct copy of General Corporate Resolution Number 5, patent matters as amended and readopted the board of directors of said company at the meeting thereof duly called and held on July 23, 2019, at which a quorum of directors was present."

Did I read that correctly?

A. It seems correct.

Q. And then first of all, do you know who Faye C. Brown is?

A. She used to be an employee of Merck Sharp & Dohme LLC.

Q. Okay. Did she have a role at

Merck & Co., Inc.?

A. I mean, based on her certification, she was saying that she did.

Q. She was a senior assistant secretary at Merck & Co., Inc., right?

A. That's what this says.

Q. Okay. And then it says after that, "In witness whereof, I have hereunto subscribed my signature and affixed the seal of the company on this 13th day of August, 2019."

Did I read that correctly?

A. Seems correct.

Q. And then there's a signature from Ms. Brown, correct?

A. I assume. I don't know what her signature looks like.

Q. Okay. And then this document is notarized here, subscribed and sworn to me -- strike that.

It's notarized and says, "Subscribed sworn to before me on this 13th day of August, 2019," right?

A. That's what I read.

Q. And there's a notary public that

signed it, Sandra Marie McFadden, right?

A. I see that. It looks like a stamp.

Q. Can you make out the seal there on the middle of the left part of the page?

A. I cannot.

Q. Okay. If you move to the next page of this document, it says, "General Corporate Resolution Number 5," right?

A. It does.

Q. And then the title is "Patent Matters" right under that?

A. Yes.

Q. And it says, "Resolved that any of the following Kenneth C. Frazier, chairman, president and chief executive officer; Jennifer Zachary, executive vice president and general counsel; William Krovatin, senior vice president and assistant general counsel; Laura M. Ginkel, associate vice president and group managing counsel; Anna Cocuzzo, managing counsel patents; Gerard M. Devlin, managing counsel, IP litigation; Catherine D. Fitch, managing counsel, patents; J.J.L. Mestrom,

managing counsel, animal health IP; John C. Todaro, managing counsel, patents; James Horgan -- Horgan, assistant managing counsel, European patents; Cynthia A. Francisco, director, asset management."

Did I get those names right?

A. I don't know some of them. This is before my time.

Q. That's who is listed, right?

A. That's -- seems correct.

Q. Those are the -- those are the names that are listed here -- right? -- that I read?

A. Yes.

Q. Okay. And the document continues, "Are hereby authorized to execute and revoke on behalf of Merck & Co., Inc. and its affiliates (including subsidiaries) the following documents related to patent matters: Powers of attorney as fully in law as may be necessary and proper in connection with the acquisition, registration, maintenance and enforcement of patents and applications for patents including powers of attorney

relating to the prosecution or defense of patent rights before courts of law or other governmental tribunals.

"Agencies or departments; affidavits and declarations; and any other documents which are necessary and proper for the acquisition, registration, maintenance, litigation and protection of patents."

Did I read that correctly?

A. Sounded correct.

Q. Kenneth Frazier was the CEO of Merck & Co., right?

A. I know that Ken Frazier was C -- chairman and president CEO of Merck & Co., Inc., and this date would be in that time period, as I understand it. He also, as I understand it, was an employee of Merck Sharp & Dohme LLC.

Q. Did he have a title with Merck Sharp & Dohme LLC?

A. Not to my knowledge.

Q. So he's paid through Merck Sharp & Dohme LLC, but his title was with --

A. He's -- I'm saying it's -- that's

before my time in this role. He's -- would have been employed by Merck Sharp & Dohme -- oh, Corp. it would have been at the time as I think about it. The LLC -- the corporation -- I believe I covered this in my declaration -- converted into --

Q. Right.

A. -- changes corporate form.

Q. You did mention that in your declaration.

A. Into a limited liability company --

Q. While we're --

A. -- I believe in 2022. I can just double-check.

Q. No, I don't need you to. It's not responsive to my question.

While we're on the subject, let's talk about Mr. Davis, the CEO of Merck & Co., Inc.

You mentioned before earlier that he -- Mr. Davis is an employee of MSD LLC.

Does he have a title at MSD LLC?

A. I believe the title he uses is chairman and CEO.

Q. Of MSD LLC?

A. I'm not aware that he has a separate title. He's not president of Merck Sharp & Dohme LLC.

Q. He's not an officer of Merck Sharp & Dohme LLC, is he?

A. He's not.

Q. Okay. So he is president and CEO of Merck & Co., Inc., right?

A. That is his title at Merck & Co., Inc.

Q. [redacted]

[redacted]

Q. Just officers and directors, right?

A. Merck & Co., Inc. does have officers and directors.

Q. If we go to -- let's see -- third-to-last page of the document before you, Exhibit 8 --

A. Exhibit 8?

Q. I think that's what we were on. I'm sorry. Exhibit 9. There's a document --

A. I'm sorry, what page did you say?

Q. The third-to-last page from the end.

Okay. And do you see at the top of that page "Electronic Acknowledgement Receipt"?

ATTORNEY HELM: Objection. Form.

THE WITNESS: I see that the page says Electronic Acknowledgement Receipt.

BY ATTORNEY POWERS:

Q. Okay. And then under that, it says, "Application Number," right, two lines down?

A. Yeah, there's a number written in that cell.

Q. Right. And would you mind reading that application number, please?

A. It says, "16/609612."

Q. That's right.

I'm going to hand you what will be Exhibit 10.

(Whereupon, Exhibit 10 is marked for identification.)

BY ATTORNEY POWERS:

Q. Okay. This is a United States patent, right?

A. I have no idea.

Q. It says at the top United States Patent, right?

A. It does say that.

Q. And it says, "Patent Number 11,633,476," right?

A. It also says B2.

Q. That's right. It does. 11,633,476 B2.

And then if you go down to about the middle of the first cover page there, it says, "Application Number 16/609612."

Do you see that?

A. Are you looking at where there's a parenthetical and it says, "21"?

Q. Yes, ma'am.

A. So it says, "Ap.No: 16/609,612."

Q. That's right. And now I just want you to compare that to the application number we saw on the previous exhibit,

Exhibit 9, which we just looked at there on the third-to-last page.

Those numbers are the same, right?

A. There's no slash and there's no comma in the one under Electronic Acknowledgement Receipt.

Q. That's fair. The integers present are the same, correct?

A. It's been a long time since I took a math class.

Q. The whole numbers?

A. Sure.

Q. Okay. And that number, for the record, is 16/609612.

And that relates to U.S. Patent Number 11,633,476. Okay. Right?

A. So am I supposed to be confirming stuff? I have no idea what the application numbers mean.

Q. Fair enough.

A. You're asking me to read points.

Q. Fair enough.

ATTORNEY HELM: Objection.

THE WITNESS: I tried to read the

whole document --

ATTORNEY HELM: Outside the scope.

THE WITNESS: -- I don't -- this is not my area.

BY ATTORNEY POWERS:

Q. Fair enough. I'm going to hand you what we will mark Exhibit 11.

(Whereupon, Exhibit 11 is marked for identification.)

BY ATTORNEY POWERS:

Q. Okay. You have Exhibit 11 in front of you now?

A. Yes. I have a document that's been labeled Exhibit 11.

Q. Okay. And if you look at the top of that document, it says, "Product Patents."

Do you see those words?

A. I see the words.

Q. And --

A. I've never -- I don't know what this document is, though.

Q. Sure.

A. I think I should probably take a

look. I haven't been able to look through the patent materials you've been providing me --

Q. Okay.

A. -- but I feel like I need to be looking through documents.

Q. Let me direct you to the bottom left-hand corner of this document where it says, "Merck.com/products/patents," right?

A. I see that written there.

Q. And this document says, "In accordance with Section 287(a) of Title 35 of the United States Code, the following list identifies Merck's rights in U.S. patents associated with the relevant product."

Do you see that?

A. So based on my just couple seconds of looking at this document, it looks like it's purporting to be from our U.S. website --

Q. It is.

A. -- for our global enterprise --

Q. Yep.

A. -- of Merck & Co., Inc. And so

like in SEC filings, which I believe I discuss in my declaration, this is speaking to the general public.

Q. Uh-huh.

A. Okay.

Q. My question was merely: Did I read that text properly? And I'll read it again. "The following list identifies Merck's rights in U.S. patents associated with the relevant product."

Did I read that correctly?

A. Those are the correct words as long as we're acknowledging that it's the global enterprise's website.

And so Merck does not refer to Merck & Co., Inc. there.

Q. Okay. And down about 2/3 of the way down on this page you see a heading that says, "Keytruda Qlex"?

A. I do see a heading.

Q. And then the last entry in that list is U.S. Patent Number 11,633,476, right?

A. That's what's written here.

Q. And that's the same number as the

U.S. Patent I showed you in Exhibit 10?

A. In Exhibit 10. Let me look.

So the numbers are the same. There's a B2 up at the top of Exhibit 10. I don't know what that means.

Q. Okay. Thank you.

I want to ask you some questions about what you say in your declaration at Paragraph 36. We touched on this a little bit earlier, but I just wanted to follow up on some things.

How does Merck & Co., Inc. contact the employees at the subsidiaries regarding patent litigation, and in PGR proceedings?

A. I'm sorry. I just --

Q. Sure --

A. -- a minute to read.

Q. -- go ahead.

(Pause for reading/reviewing.)

THE WITNESS: Okay. Sorry. What was your question?

BY ATTORNEY POWERS:

Q. How does Merck & Co., Inc. contact the employees at the subsidiaries

regarding patent litigation in PGR proceedings?

[redacted]

Q. You've mentioned that. And so it's -- I mean, you say in your declaration, "Employees of the relevant operating subsidiary are contacted for information," and I noticed your -- you used a passive voice there.

So I'm trying to understand who is doing the contacting.

A. [redacted]

[redacted]

Q. [redacted]

Q. [redacted]

[redacted]

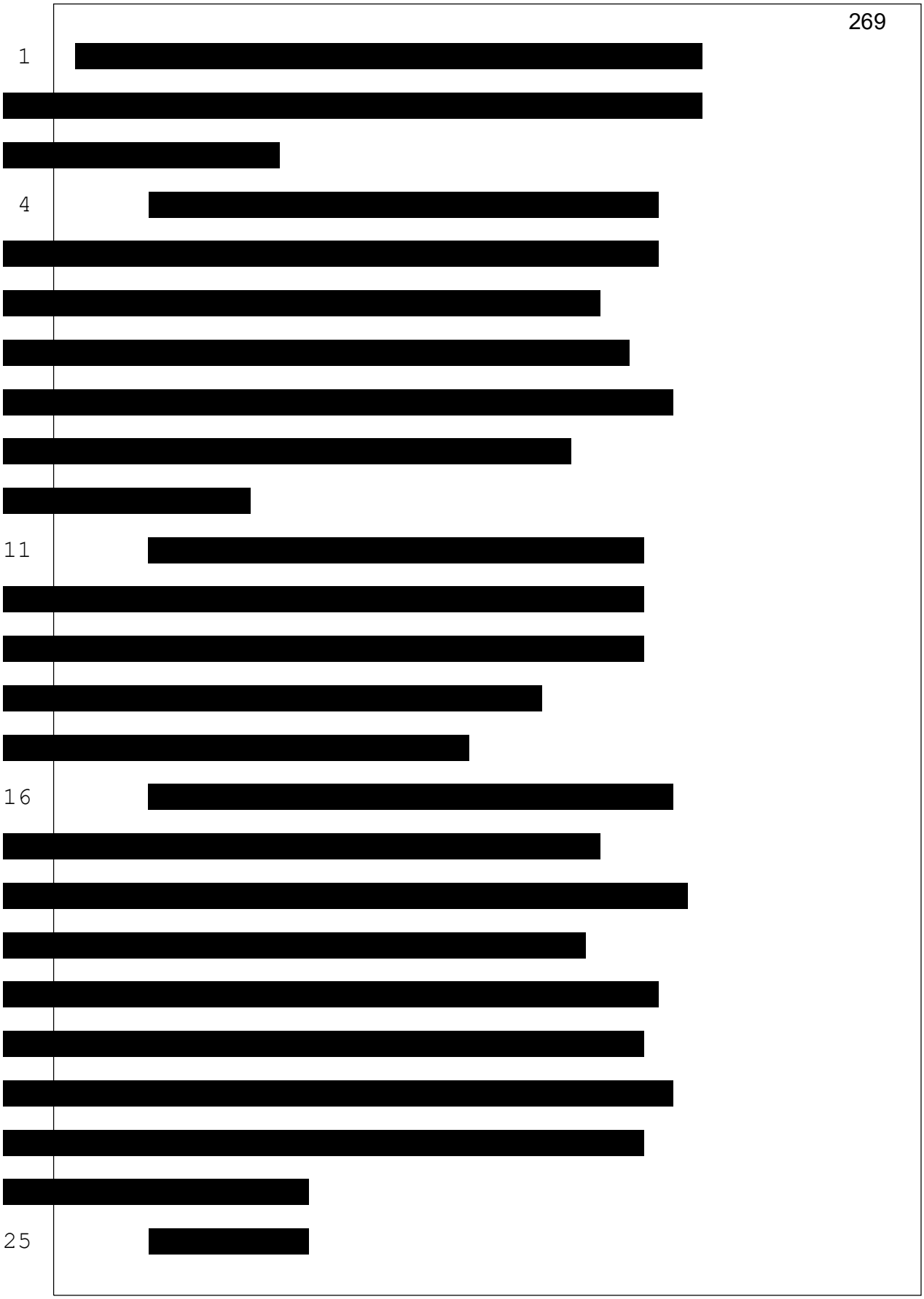
ATTORNEY HELM: Objection to form.

THE WITNESS: [redacted]

[redacted]

BY ATTORNEY POWERS:

[redacted]


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A. [redacted]

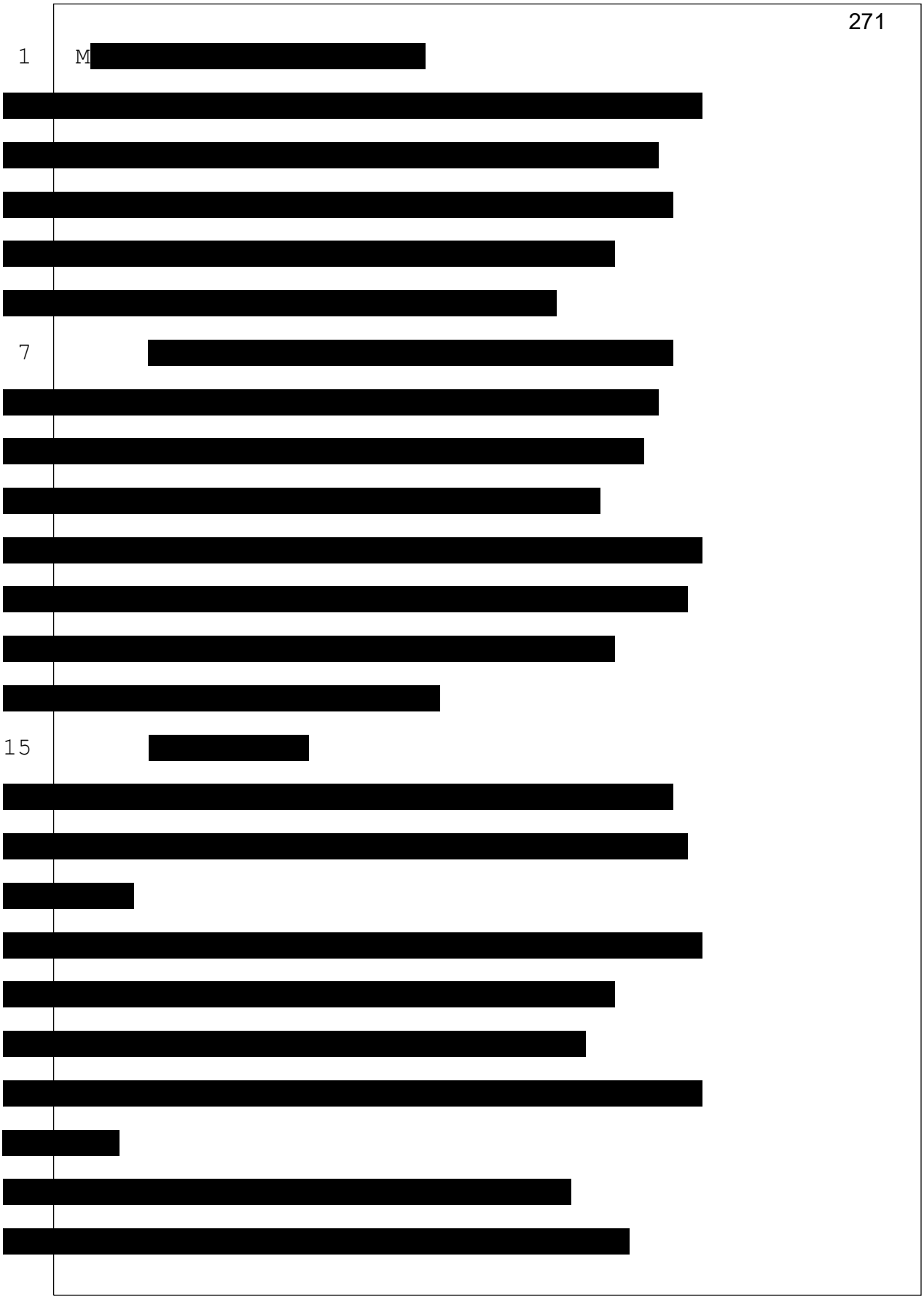
[redacted]

Q. [redacted]

A. [redacted]

Q. D[redacted]

A. [redacted]


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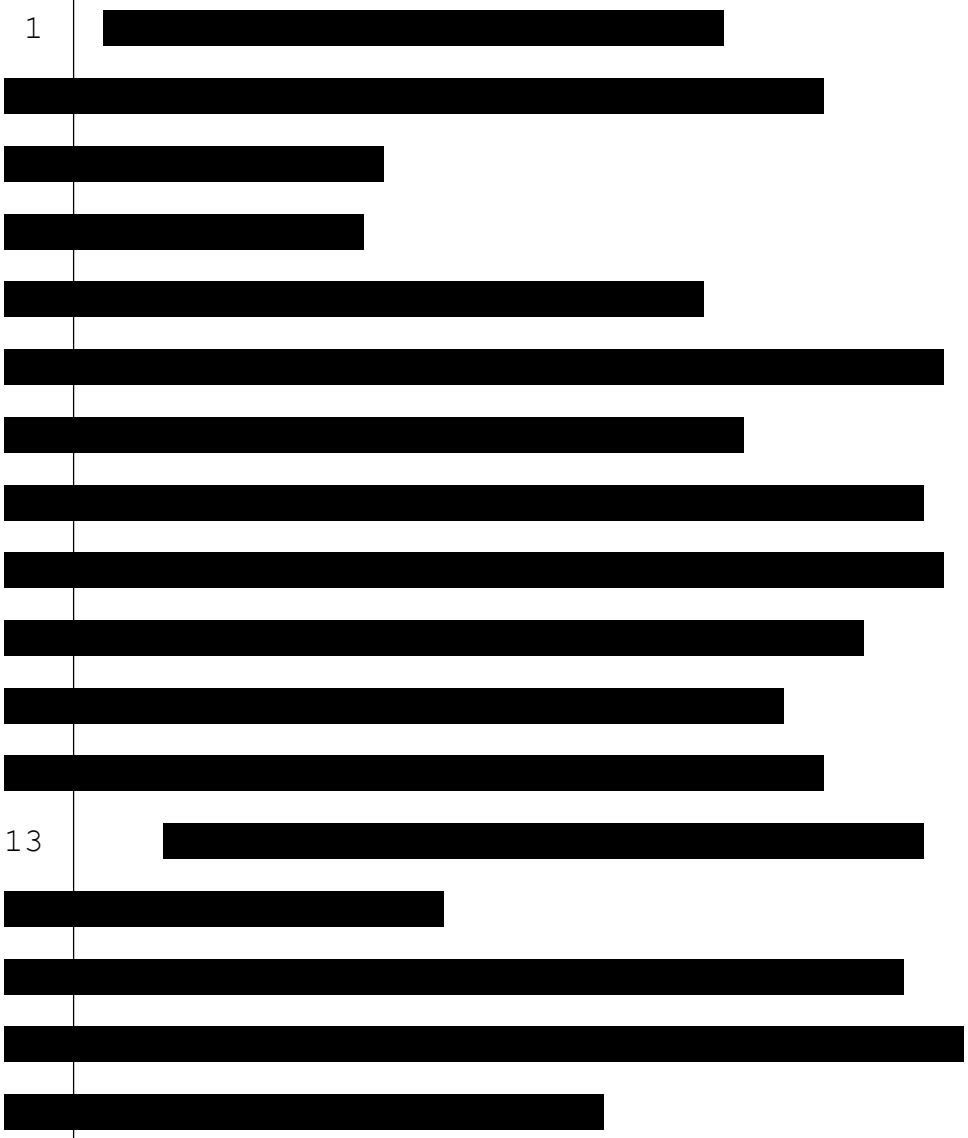
[redacted]

A. So I believe I stated already that from the 10-K perspective, the global consolidated report of Merck & Co., Inc. and its subsidiaries is certified by Rob Davis and Caroline Litchfield.

Q. Does --

A. If I had a copy of the -- of a 10-K, I could show you.

[redacted]



Q. Is it true that the global enterprise is reflected in the SEC filings of Merck & Co., Inc.?

A. What do you mean?

Q. I think my question is clear.

You keep referring to global enterprise, right --

A. Uh-huh --

Q. -- the global enterprise?

A. -- yeah.

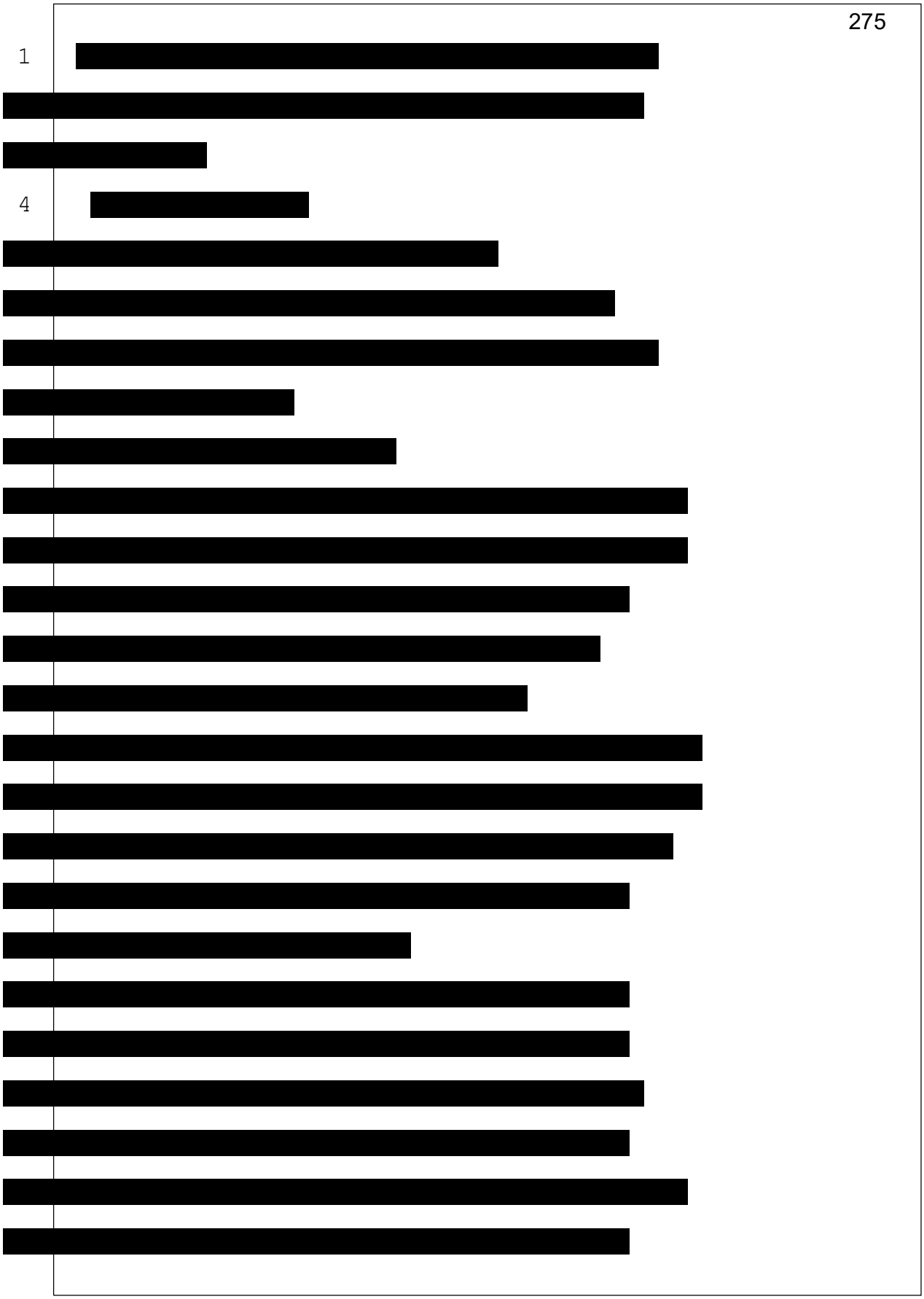
Q. And is the global enterprise what is reflected in the Merck & Co., Inc. SEC filings?

A. So we'd have to take each SEC filing. So from a 10-K perspective, that's reporting on the consolidated financial statements of Merck & Co., Inc. and its subsidiaries.

[redacted]

Q. [redacted]

[redacted]


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[redacted]

(Whereupon, Exhibit 12 is marked for identification.)

BY ATTORNEY POWERS:

Q. So can you answer the question without looking at additional documents?

A. No.

[redacted]

A. The board of directors does not oversee litigation. The litigation is

overseen at the subsidiary.

Q. There's more to Merck & Co., Inc. than the board, though, right?

A. I don't know what that means.

Q. It has officers, doesn't it?

A. I believe we talked about that before.



[redacted]

ATTORNEY POWERS: Can we take a break?

ATTORNEY HELM: We can take a break.

Before we take a break, I just --

could you tell us the time on the record?

THE VIDEOGRAPHER: 5 hours, 16 minutes.

ATTORNEY POWERS: Okay.

ATTORNEY HELM: Okay. I'd just like to point out we started this deposition at 9:00. It's almost 5:00. Every break that we've taken you've given an indication of how long that break will be, and it's been significantly longer. So we ask that you keep this break to 10 minutes.

ATTORNEY POWERS: We'll try. Thank you.

THE VIDEOGRAPHER: The time right now is 4:52 p.m.

We are off the record.

(Whereupon, a recess was taken at 4:52 p.m.)

THE VIDEOGRAPHER: The time is 5:12 p.m.

We're back on the record.

BY ATTORNEY POWERS:

Q. Welcome back, Ms. Grez.

A. Thanks.

Q. Just a few moments ago, we discussed that Merck & Co., Inc. expects Keytruda Qlex to take about 30 to 40 percent of Keytruda sales, correct?

ATTORNEY HELM: Objection. Form.

THE WITNESS: If I remember correctly, we were looking at either a transcript from earnings or -- I don't remember what other documents that you showed.

BY ATTORNEY POWERS:

Q. Yeah. There were statements by the CEO of Merck & Co., Inc., right?

A. I'm not sure. Which document were you talking about? I feel like there was one where I wasn't sure what he was answering.

Q. He was talking about the growth of Keytruda Qlex and it was expected to take 30 to 40 percent of Keytruda sales?

A. Can we look back at the document?

Q. If we need to.

A. It's been a long day.

Q. Exhibits 2 through 6.

A. I feel like in one document you showed me Rob Davis wasn't even one of the presenters.

Q. I'll help you. Let's go to Exhibit 5 on Page 9. Robert Davis says, "So maybe to say it as plainly as possible, we expect to be able to see adoption of about 30 to 40 percent of all Keytruda into subcutaneous pembrolizumab," right?

ATTORNEY HELM: We maintain our objection to this exhibit.

BY ATTORNEY POWERS:

Q. Do you see that statement?

A. I do see it.

Q. And Keytruda is roughly 50 percent of Merck & Co., Inc.'s global sales, right? We talked about that earlier.

A. I think you showed me an earnings release.

Q. So just roughly speaking, Keytruda Qlex is expected to be between 15 and 20 percent of Merck's overall sales, right?

A. Do you want to -- so from a point

in time in the past? So sales change over time --

Q. Sure.

A. -- and Merck & Co., Inc. is in a period of transformation with many growth drivers --

Q. Just --

A. -- so I can't speak to what that percentage would be.

Q. Based on what the CEO of Merck & Co., Inc. said, if you have 50 percent of the sales and you take 50 percent, and then you do 30 to 40 percent of 50 percent of the sales, then we're talking about 15 to 20 percent of Merck's overall sales, right?

A. I don't know. I would need a calculator to do that.

Q. Well, just based on what Mr. Davis said to investors, if Keytruda Qlex is expected to take 30 to 40 percent of Keytruda's sales, then we're talking about a very large selling drug, right?

A. I don't know what time period he's talking about.

Q. You can't say right now -- you

can't say whether or not Keytruda is expected to be a big seller for Merck & Co., Inc.?

ATTORNEY HELM: Objection. Form.

THE WITNESS: So are you asking about Keytruda IV? I think you showed me documents with the earnings release --

(Simultaneous unreportable crosstalk occurs among parties.)

(Stenographer requests one speaker at a time.)

THE WITNESS: That it shows its sales, and then it showed the sales for Keytruda Qlex. I believe it had --

BY ATTORNEY POWERS:

Q. It had both.

A. -- indicated that on its own, the Keytruda Qlex.

Q. Right.

A. Should we look back at that document --

Q. No, we don't need to.

Do you disagree with Mr. Davis's projections on sales of Keytruda Qlex?

A. I have no capacity to weigh in on projections.

Q. Okay. So let's accept his projections that Keytruda Qlex takes 30 to 40 percent of Keytruda sales.

That would make Keytruda to be a very big selling, great selling drug for Merck & Co., Inc., right?

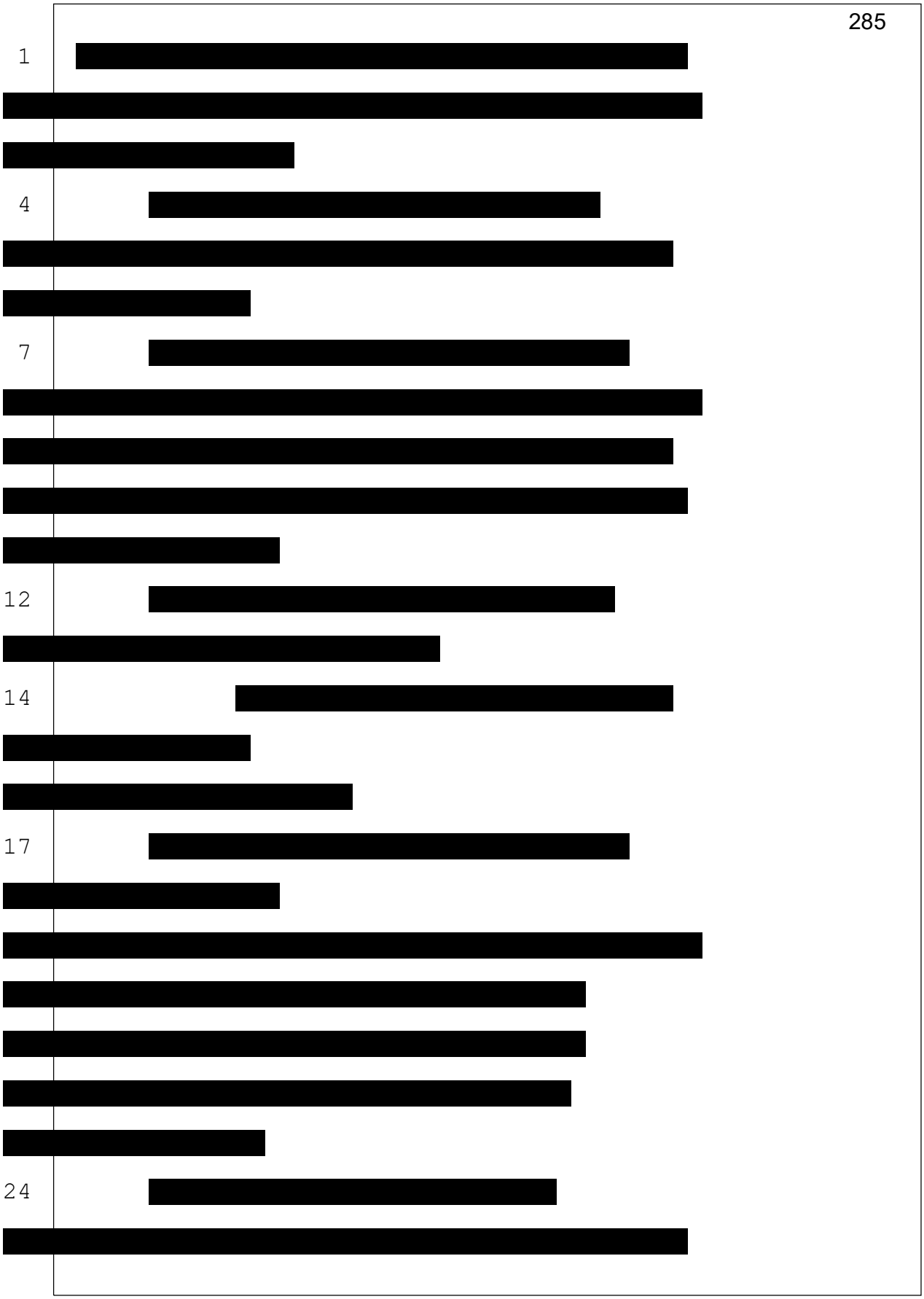
A. So we've talked about Keytruda IV, and Keytruda IV --

Q. Gosh, I'm sorry. Let me -- let me get my question right. I'm sorry.

So if we accept Mr. Davis's projections that Keytruda Qlex takes 30 to 40 percent of Keytruda sales, that would make Keytruda Qlex a very good selling drug for Merck & Co., Inc., right?

A. I, in my role, that is not something that I'm responsible for.

[redacted]


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[redacted]

Q. This litigation between Halozyme -- this litigation involving Halozyme involves Keytruda Qlex, though, right?

A. "This litigation" meaning the PGR proceedings?

Q. The global litigation against Halozyme involves Keytruda Qlex, right?

ATTORNEY HELM: Objection to form.

THE WITNESS: That's my understanding, but I didn't -- that's not my...

///

BY ATTORNEY POWERS:

Q. And you can't say whether the board is aware of litigation with Halozyme excluding the Keytruda Qlex product from the German market?

A. I believe you asked me before, and we talked about this. The -- to the extent that's listed in one of the 10-Qs, which I believe it is, because I think I cited to it -- let's see.

Right. So the 10-Q that I cited to states that the company filed revocation actions against EP patent, and then it lists a patent, owned by Halozyme Inc. in the UK, France, Germany and the Netherlands.

Again, "company" refers to Merck & Co., Inc. and its subsidiaries, because that filing is about a consolidated basis. And I believe I already mentioned that the audit committee does review annual and quarterly SEC filings.

Q. Do you think that its review of the annual and quarterly SEC filings is the only way that the audit committee has

learned about the Halozyme litigation?

A. As I mentioned, I don't know what happens at the audit committee. I'm not a party -- I don't go to those meetings.

Q. Sitting here today, you can't say definitively that the board or a board committee of Merck & Co., Inc. has even heard about the Halozyme litigation; is that correct?

A. So I believe as I said before, I know the audit committee reviews the quarterly filings filed with the SEC. So to the extent that's listed there, which it looks like for the quarter ended September 30, there was a listing of a revocation action in Germany. That would be something that the audit committee would have seen.

Q. And you can't say whether or not the board of Merck & Co., Inc. has the authority to settle litigation with Halozyme, including these PGRs; is that correct?

A. So the board of directors of Merck & Co., Inc. is not involved in

operations.

Q. As part --

A. [redacted]

Q. That's not my question.

Can you say whether or not the board of Merck & Co., Inc. has the authority to settle litigation with Halozyme, including these PGRs?

A. [redacted]

Q. Does it have authority to settle the litigation with Halozyme, including these PGRs?

[redacted]

[redacted]

So responsibility for litigation resides in the subsidiary Merck Sharp & Dohme LLC.

[redacted]

[redacted]

Q. You mentioned that the board provides guidance. Who is it providing guidance to?

A. It's providing guidance in connection with the global business of the company.

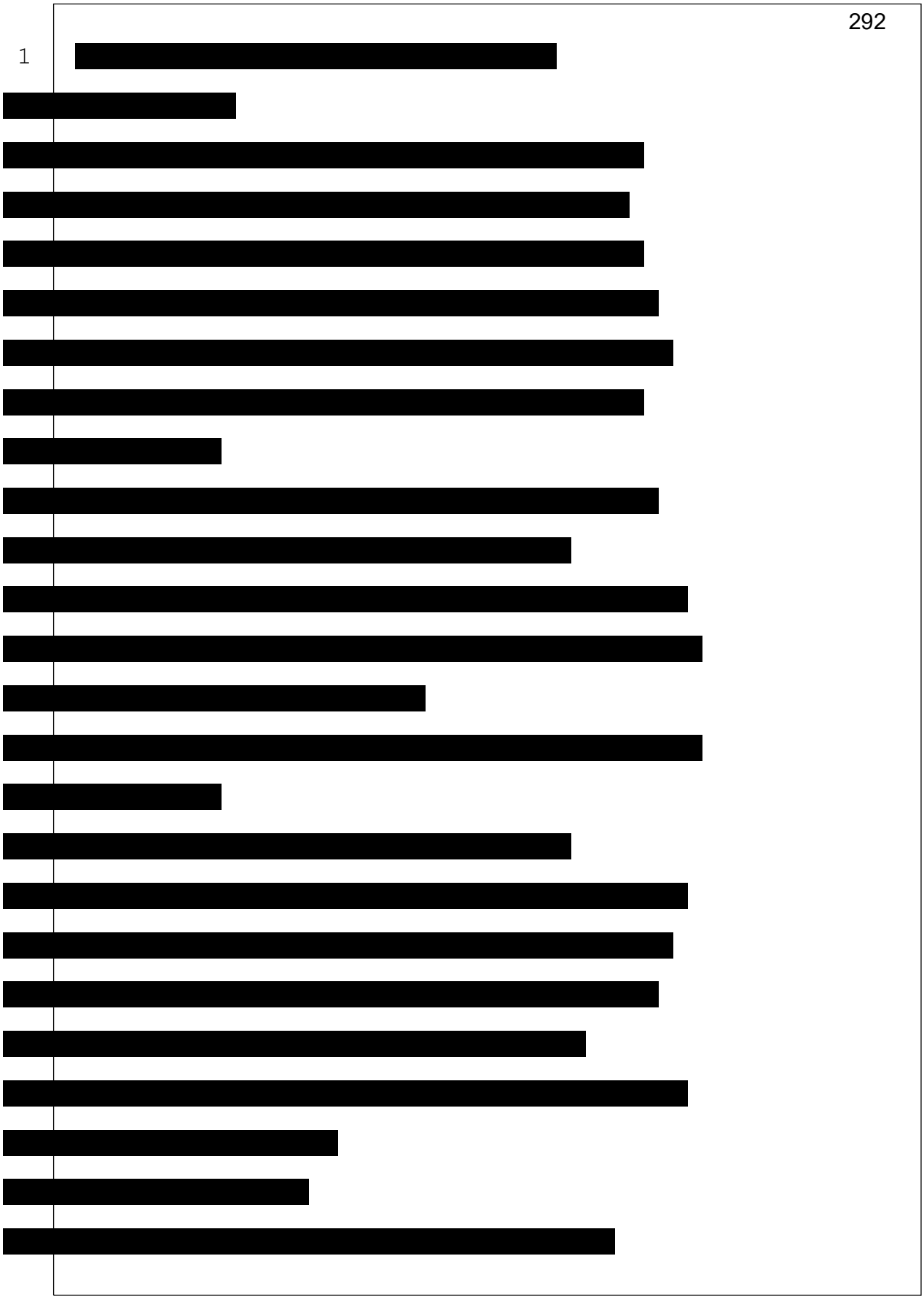
Q. Who is it providing guidance to?

A. I believe you read out of the proxy statement the executive officers.

Q. The executive officers of Merck & Co., Inc.?

A. Correct.

[redacted]


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authority to effectuate settlement in any way?

A. No.

Q. The research and development committee of the MCI board is responsible for overseeing licensing, right?

A. Let me look back at the research committee charter. I don't believe that's what it says.

"Strategies" is the word, "licensing strategies." So, again, the Merck & Co., Inc. board of directors is responsible for overseeing the global business that is conducted through subsidiaries.

One of those, and I think you referred to it in the proxy statement from last year, is with respect to strategic matters impacting the global enterprise.

Q. Can the board instruct Jennifer Zachary to act?

A. In what regard?

Q. In a way to settle the litigation with Halozyme.

A. I believe I already answered that

question.

Q. [redacted]

Q. No, that doesn't really answer my question.

Does the board have the authority to instruct Jennifer Zachary to settle the litigation with Halozyme?

A. [redacted]

Q. So could the board instruct Jennifer Zachary, in her capacity as general counsel for Merck Sharp Dohme LLC, to settle the litigation with Halozyme?

A. [redacted]

Q. I'm asking you. Does the board have the authority to instruct Jennifer

Zachary in any capacity of hers to resolve the litigation with Halozyme?

A. [redacted]

Q. So who has, within the Merck entities, the authority to settle the litigation with Halozyme?

A. [redacted]

Q. Could she settle that litigation globally?

A. I don't know what "that litigation" refers to.

Q. Could she settle the cases that are occurring in Europe?

A. I'm not familiar with the cases other than just what I have seen, like, which subsidiary is involved.

Q. Uh-huh.

A. I think from an intellectual property perspective, there may be some sort of intercompany agreement with respect to intellectual property globally, but I don't know.

Q. So Jennifer Zachary might be able to settle the litigation globally, but you don't know?

A. So each subsidiary would have to determine it for themselves.

[redacted]

ATTORNEY HELM: I'm going to object strenuously on the record. This is getting borderline harassing, the extent to which you've asked the identical question over a course of

many hours of this day.

ATTORNEY POWERS: Your objections are inappropriate.

BY ATTORNEY POWERS:

Q. Who does Jennifer Zachary report to in her role as general counsel of MSD LLC?

A. She reports to Rob Davis.

Q. And he is the CEO of Merck & Co., Inc., right?

A. He's also an employee of Merck Sharp & Dohme LLC.

Q. He has no title or role with MSD LLC, though, right?

A. He doesn't -- you asked me if he had an officer position. He does not have an officer position at Merck Sharp & Dohme LLC.

Q. His role is as CEO, president and chair of Merck & Co., Inc., right?

A. He has responsibility for the global business. As you read in the proxy, I believe, with the -- you know...

Q. Yeah. And let's go back to the research and development committee.

Can you say if the research and development committee of the board of Merck & Co., Inc. has provided guidance as to the global litigation over Keytruda Qlex with Halozyme?

A. I would highly doubt that they would.

Q. You can't say one way or the other?

A. I don't sit in the research committee meetings. I've seen minutes.

Q. But you don't --

A. They'd have no reason to. It's not their role. It's not their function.

Q. Can you say one way or the other whether the litigation with Halozyme is material to Merck & Co.?

A. I'm not responsible for making that determination. I'm not an SEC lawyer.

Q. So is that a "I don't know"?

A. I don't know.

Q. Okay.

A. Yes. But I do know, as I've shared before, that just because something is in a Merck & Co., Inc. filing with the

SEC does not mean that it's material.




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Q. As a voting, could -- okay.

ATTORNEY HELM: We encourage you to move on. We've now counted up in the transcript, and you've asked nearly 80 times some almost identical permutation of the oversight --

ATTORNEY POWERS: That's inappropriate.

(Simultaneous unreportable crosstalk occurs among parties.)

ATTORNEY HELM: -- question.

ATTORNEY POWERS: That's inappropriate for you to say that.

ATTORNEY HELM: You're harassing the witness. Please move on.

ATTORNEY POWERS: That's far from true. I'm being a gentleman, as always.

BY ATTORNEY POWERS:

Q. So could the board -- does the board have the authority to effectuate -- effectuate a settlement in any way with Halozyme?

ATTORNEY HELM: Same objections.

[redacted]

[redacted].

BY ATTORNEY POWERS:

Q. Does Ms. Zachary have the power to pull the plug on these PGRs as part of a global settlement or Merck & Co., Inc.'s global business?

A. [redacted]

Q. Stop the PGRs or settle the PGRs?

A. [redacted]

Q. Does Ms. Zachary have the power to settle these PGRs on behalf of MSD LLC?

A. [redacted]

for their governance structures, so I wouldn't be able to speak to that piece.

Q. If the board of Merck & Co., Inc. asked Ms. Zachary to settle litigation with Halozyme, can she refuse?

ATTORNEY HELM: Same objections. Please move on.

THE WITNESS: [redacted]

BY ATTORNEY POWERS:

Q. If Merck & Co., Inc.'s CEO Mr. Davis told Ms. Zachary to settle the litigation with Halozyme as part of a global settlement for MCI's global business, she would do so, correct?

A. [redacted]

Q. If Merck & Co., Inc.'s CEO

Mr. Davis told Ms. Zachary to settle the litigation as part of a global settlement on behalf of -- strike that.

If Merck & Co., Inc.'s CEO Mr. Davis told Ms. Zachary to settle the litigation between Halozyme and MSD LLC, she would do so, correct?

A. [redacted]

Q. If Ms. Zachary -- so Ms. Zachary could by herself settle the litigation on behalf of Merck Sharp & Dohme LLC?

A. [redacted]

Q. And so she could do that by herself?

A. [redacted]

Q. Would she typically request board oversight or board approval for such a move?

A. [redacted]

Q. The board of Merck & Co., Inc.

[redacted]

Q. Does Mr. Stewart in his role at MSD LLC have the authority to settle the litigation between Halozyme and MSD LLC?

A. I'm not sure what his level of authority is, but I know he manages the proceedings.

Q. Would he need approval from anyone to settle the litigation with Halozyme on behalf of MSD LLC?

ATTORNEY HELM: I'll give you the privilege instruction caution not to reveal any information that would be -- that is protected by legal privilege.

ATTORNEY POWERS: I'm not asking for any of that.

ATTORNEY HELM: If you can answer that without doing so, you may.

[redacted]

[redacted]

BY ATTORNEY POWERS:

Q. Could Ms. Zinkel -- Ms. Ginkel settle the PGRs with Halozyme without talking to Ms. Zachary about settling the PGRs with Halozyme?

A. [redacted]

Q. Would Jennifer Zachary discuss settlement with Mr. Davis before settling?

A. [redacted]

Q. Does Ms. Zachary in her role at MSD have the authority to settle this litigation by herself without informing anyone?

A. I feel like I already answered that question. So --

Q. Remind me.

A. Is there -- can we see if I

already answered it?

Q. No.

A. [redacted]

Q. She could do that without informing anybody?

A. [redacted]

Q. And what about the authority of settling these PGRs that we're here to talk about today? Does Ms. Zachary have authority to settle them?

A. [redacted]

Q. [redacted]

Q. Now, Mr. Stewart could not sign a settlement agreement with Halozyme without informing MCI, right, the Merck & Co.,

Inc.?

A. [redacted]

Q. Forgive me.

Anyone at Merck & Co., Inc.

A. [redacted]

Q. It has officers, though, right?

A. [redacted]

Q. Mr. Stewart could not sign a settlement agreement with Halozyme without informing Merck & Co., Inc., though, correct?

A. [redacted]

[redacted]

Q. Mr. Stewart can't settle the litigation -- strike that.

Mr. Stewart can't settle these PGRs with Halozyme without the MCI board being informed by someone, right?

A. [redacted].

Q. So is it your testimony that [redacted]

Q. Could Mr. Stewart settle the litigation without the Merck & Co., Inc. board being informed?

ATTORNEY HELM: Objection. Asked and answered. Again, move on. You're harassing the witness.

BY ATTORNEY POWERS:

Q. Can you answer my question?

A. [redacted]

Q. Could Mr. Stewart settle the litigation without the Merck & Co. -- without an MCI officer being informed?

Let me ask that a little bit better.

Could Mr. Stewart settle the litigation with Halozyme without a Merck & Co., Inc. officer being informed?

A. [redacted]

Q. At Paragraph 22 of your declaration, you wrote that Ms. Zachary acts in her capacity at MSD LLC when she

makes decisions on whether to "initiate, pursue, continue or terminate patent litigation," right?

A. Yeah, I mean, there's a broader sentence.

Q. You agree that Ms. Zachary can decide to initiate patent litigation or patent proceedings, right?

A. [redacted]

Q. You agree that Ms. Zachary can decide whether to pursue, continue or terminate patent litigation or patent proceedings, right?

A. [redacted]

Q. If Ms. Zachary gave outside counsel an instruction, you'd expect them to follow it, right?

ATTORNEY HELM: Objection. Form.

THE WITNESS: I'm not sure what you mean.

BY ATTORNEY POWERS:

Q. If she gave them an instruction about legal strategy, you would expect

outside counsel to follow that instruction, right?

A. What if they disagreed and wanted to have a conversation about it?

Q. If Ms. Zachary said, it had to be this way, outside counsel would follow that instruction, right?

A. I can't speak for outside counsel.

Q. You're not sure, okay.

A. No. I said I can't speak for outside counsel.

Q. All right. If Jennifer Zachary gave outside counsel instructions regarding strategy in these proceedings, you'd expect them to follow her instructions, right?

A. [redacted]

Q. That's true that Ms. Zachary is the ultimate Merck lawyer with the power to make calls on strategy with respect to these PGRs, right?

A. I don't know what "ultimate Merck

lawyer" means.

Q. She's the last say at Merck?

A. I don't know what --

ATTORNEY HELM: Objection.

THE WITNESS: -- "last say at Merck" means.

BY ATTORNEY POWERS:

Q. She's the highest ranking attorney at Merck to make calls about strategy on these PGRs, right?

A. [redacted]

Q. Does Jennifer Zachary need anyone else's approval before making calls related

to these PGRs?

A. [redacted]

Q. Do you agree that Merck & Co., Inc.'s and MSD LLC's interests are aligned in terms of these PGRs?

A. I don't know what you mean by "aligned."

Q. Do you see any difference in the interests between Merck & Co., Inc. and -- strike that.

Do you believe that Merck & Co., Inc. and Merck Sharp & Dohme LLC's interests are the same in terms of these PGRs?

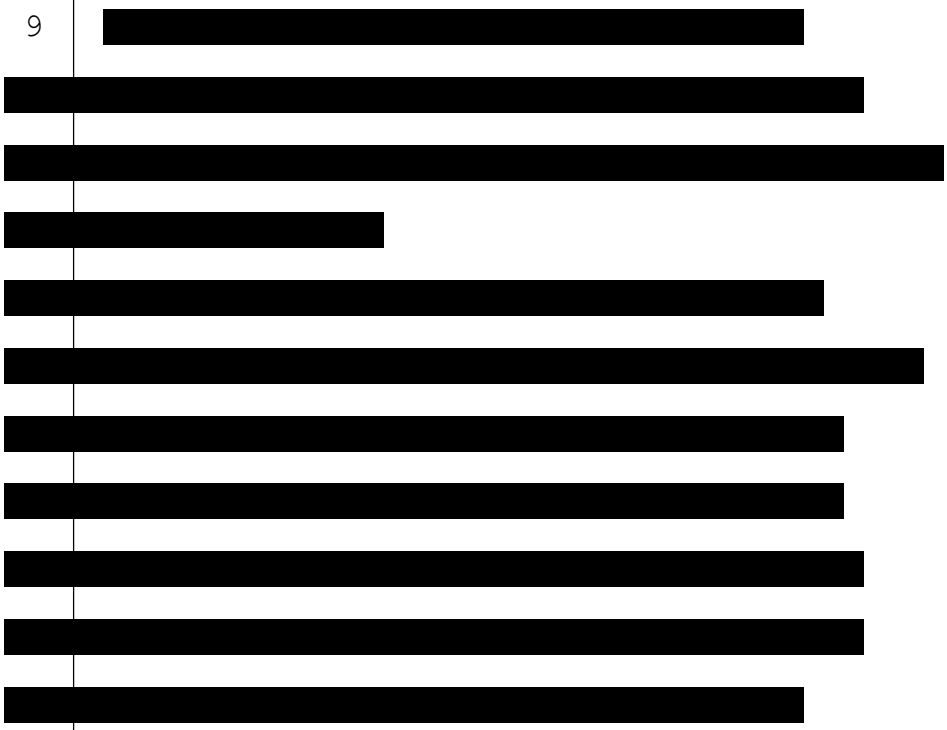
A. So Merck & Co., Inc., the board of directors of Merck & Co., Inc. in that role is looking at the global enterprise. So it's got a lot of different things that it thinks about. Merck & Co., Inc. as we

have discussed, is the sole owner of Merck Sharp & Dohme LLC.

Q. Are you aware of any divergence in the interest of Merck & Co., Inc. and MSD LLC in terms of these PGRs?

A. I wouldn't be aware of any.

Q. Now, you mentioned in your declaration at Paragraph 24 that there are



Q. How does she interact with the people involved in the proceedings that you mentioned in Paragraph 24?

A. I don't know what you mean, "how does she interact."

Q. Well, you mentioned interactions

in Paragraph 24 -- right? -- Ms. Zachary's interactions, right?

A. [redacted]

Q. Does she have phone calls with these people?

A. I don't know.

Q. Does she have videoconferences with these people?

A. I don't know how they communicate.

Q. Does she have in-person meetings with these people?

A. I don't know how they communicate.

Q. Do you know that they communicate?

A. I'm sure they communicate.

Q. How do you know that they communicate?

A. Because Ms. Zachary is general counsel of Merck Sharp & Dohme LLC.

Q. So that means that these four

people must necessarily communicate with Ms. Zachary about these PGR proceedings?

A. [redacted]

Q. So one or more of these people is necessarily communicating with Ms. Zachary about these PGR proceedings; is that right?

A. [redacted]

Q. You just -- a few minutes ago, you said I'm sure they communicate.

A. Indeed.

Q. Okay. And so are you sure that they communicate about these PGR proceedings?

A. [redacted]

Q. And are you sure that they --

A. And I believe -- yeah, I think I cite to something here, 2401. I don't have that exhibit in front of me. It would be good to understand what I was citing to. There's a lot I cited to in here.

Q. Do you know if Jennifer Zachary has reviewed documents related to these PGRs, like, filings?

A. I don't know.

Q. Do you know if Jennifer Zachary has requested updates on these PGRs?

A. I don't know.

Q. Do you know if Jennifer Zachary has ever met with outside counsel related to these proceedings, these PGRs?

A. [redacted]

Q. Since that time --

A. Sorry, am I not going to be able to see 2401, or...

Q. I'm -- 2401? The exhibit?

A. That was -- yeah, that was what I had cited from 24.

(Simultaneous unreportable crosstalk occurs among parties.)

BY ATTORNEY POWERS:

Q. Oh, no, we don't need to see that. I'm just asking you some questions.

A. We don't get to see that, okay.

Q. Do you know if Ms. Zachary has ever met with outside counsel related to these PGR proceedings since she signed the engagement letters?

A. I don't know.

Q. [redacted]

Q. [redacted]

Q. Was that related to your declaration?

A. Yeah, I recall we discussed that earlier.

Q. You did --

A. You asked me.

Q. -- yeah.

Before you started preparing for your declaration and your deposition, did

you have any knowledge of how Ms. Ginkel, Mr. Stewart, Mr. Majchrzak and Ms. Su communicated with counsel from Sidley or Dechert related to these PGRs?

A. [redacted]

Q. So you didn't know, right?

ATTORNEY HELM: Objection to form.

THE WITNESS: I'm sorry. Was that a question?

BY ATTORNEY POWERS:

Q. Yeah.

So you don't know?

A. Don't know whether and how they interacted?

Q. Right.

A. Correct.

Q. Okay. Do you know if Ms. Zachary or Mr. Davis ever joined calls with outside counsel related to these PGRs?

A. [redacted]

[redacted].

Q. Okay.

A. [redacted]

Q. All right. Now, in Paragraph 26 of your declaration, you said that, "Merck Sharp & Dohme LLC is the only entity that [redacted]

Q. And you say that MSD LLC, "is also the only entity that [redacted]

Q. And you say that, "Merck & Co., Inc. is [redacted] Nor does Merck & Co., Inc. have [redacted]

Q. But Merck & Co., Inc. owns all

rights to make and use and sell Keytruda, right?

A. [redacted]

Q. Okay. I'm going to hand you what has been marked Exhibit 13.

(Whereupon, Exhibit 13 is marked for identification.)

BY ATTORNEY POWERS:

Q. Do you have --

A. I do not.

Q. Do you have Exhibit 13 in front of you now?

A. I do. I don't know what this is.

Q. This is a letter from Merck & Co., Inc. to the SEC, right?

A. I've never seen this before. I'll need to read through it.

Q. Go ahead. It's a letter dated April 16, 2025, right?

A. So am I gonna be able to read through it --

Q. Yeah.

A. -- or are you going to ask me questions? Because I'm good at a lot of things, but doing two things at once is a

challenge.

Q. Go ahead.

A. Okay.

(Pause for reading/reviewing.)

BY ATTORNEY POWERS:

Q. I just have a few questions about this document, and maybe you can answer them without reading the whole thing, but if you want to read portions of this document to answer my questions, feel free.

ATTORNEY HELM: Just for the record, this document is one page.

ATTORNEY POWERS: Right.

ATTORNEY HELM: Front and back. So please give her the time that she asked to read the document.

(Simultaneous unreportable crosstalk occurs among parties.)

BY ATTORNEY POWERS:

Q. Okay.

(Pause for reading/reviewing.)

THE WITNESS: Okay.

BY ATTORNEY POWERS:

Q. All right. So this is a letter to the SEC dated April 16, 2025, right?

A. That's what it appears to be.
Q. And the letter went to the SEC on behalf of Merck & Co., Inc., right?
A. It doesn't actually say.
Q. Well, right there under the "re" line or right next to the "re" line at the top of the document, it says, "Merck & Co., Inc.," right?
A. It certainly is -- "re" to me means about.
Q. Right. Okay. And then it says, "Ladies and Gentlemen, Merck & Co., Inc. ('Merck' or the 'company')," right?
A. I do see that there.
Q. Okay. And so --
A. And as I've shared before, with respect to filings with the SEC, and this looks like a letter to the SEC, and our 10-K as we've talked about before, and I think specifically this particular 10-K, it's a 10-K that reports the consolidated financial statements of Merck & Co., Inc. and its subsidiaries.
Q. And the SEC asked Merck & Co. why it's not substantially dependent on

licensing agreements providing it with the right to sell Keytruda, right? Isn't that what the SEC asked?

A. So here it says, "Please either file these agreements or explain why you believe you are not substantially dependent on licensing agreements providing you with the right to sell Keytruda."

Q. Right. Because under Item 1, Business, Product Sales, Page 1, the SEC wrote to Merck & Co., "We note that Keytruda accounted for 46 percent of your revenues in 2024," and then it asks Merck & Co., Inc. to do the things that you just mentioned, right?

A. Yes. Recall that the revenues that are reported are revenues of Merck & Co., Inc. and its subsidiaries. M[redacted]

Q. This letter informed the SEC that the company, Merck & Co., Inc., has all rights to make and use -- to make, use and sell Keytruda, right?

A. No. That refers to the consolidated subsidiaries of Merck & Co., Inc.

Q. But this letter says the company, right?

A. So once again, as I've stated before, with respect to filings with the SEC -- and I believe I shared this in my declaration as well -- it refers to the global enterprise of Merck & Co., Inc. that operates its business through subsidiaries.

In fact, in the 10-K, it specifically talks about the consolidated financial statements of its subsidiaries.

Q. This document states, "The company announced that it had entered into a settlement and license agreement resolving worldwide patent infringement litigation related to a third party's patent -- patents directed generally to PD-1 inhibitors but which did not specifically claim pembrolizumab."

Did I read that correctly?

A. It seems like it.

Q. Under the settlement -- the

document continues, "Under the settlement and license agreements -- agreement, the company made a one-time payment of $625 million and agreed to pay royalties on the worldwide sales of Keytruda for a nonexclusive license to market Keytruda in any market in which it is approved."

Did I read that correctly?

A. It seems correct.

Q. It also continues, "As discussed in the Form 10-K, the company paid a royalty of 6.5 percent on worldwide sales of Keytruda through December 2023 to that third party, but this royalty declined to 2.5 percent in 2024 and terminates on December 31, 2026," right?

A. That's what it says. And as we've discussed before, "company" refers to Merck & Co., Inc. and its consolidated subsidiaries.

Q. And Merck & Co., Inc. told the SEC that it owns all rights to Keytruda, right?

A. So Jon Filderman it looks like signed this. And as we've talked about

before, he's in the legal department of Merck Sharp & Dohme LLC.

Q. That wasn't quite my question. Merck & Co., Inc. told the SEC that it owns all rights to Keytruda, right?

A. It did not.

ATTORNEY HELM: We object to the introduction of this document as being outside the Court's March 12th order concerning the permissibility of introducing new documents that are outside the record to aid in cross-examination. This is well outside the scope of any cross-examination that's legitimate for this witness.

BY ATTORNEY POWERS:

Q. The document states, "As a result, the company owns all rights to make, use and sell Keytruda," right?

A. As I've said, "company" refers to Merck & Co., Inc. and its subsidiaries.

Q. This document states, "the company owns all rights to make, use and sell Keytruda," correct?

A. That's what it says. And as we've discussed, "the company" refers to Merck & Co., Inc. and its subsidiaries.

[redacted]


1

A. [redacted]

[redacted]

Q. [redacted]

[redacted]

[redacted]

Q. Do you know if Merck & Co., Inc. has job descriptions for patent attorneys posted on the Merck.com website?

A. So the Merck.com website is a

website for the U.S. It's not a Merck & Co., Inc. specific website. It's for the Merck & Co., Inc. global business that's operated through subsidiaries and is accessible in the U.S. and Canada.

ATTORNEY POWERS: I'm going to hand you what will be marked Exhibit 14.

(Whereupon, Exhibit 14 is marked for identification.)

ATTORNEY HELM: Trey, can I get a copy?

ATTORNEY POWERS: Oh, of course. I'm sorry. It's getting late.

ATTORNEY HELM: Yes, it is.

BY ATTORNEY POWERS:

Q. Do you see -- do you have this document in front of you, Exhibit 14?

A. I do.

Q. And you can see on the right side of this document -- first of all, this document is a printout from the Merck.com website. And it is a job posting for patent counsel.

Do you see that?

A. I see there's a label patent counsel on our website that's accessible in the U.S. and Canada.

Q. And it says on the right side of this document, About Us: "We are one company, but we operate under two different corporate brand names. We are known as Merck & Co., Inc., Rahway, New Jersey, USA in the United States, Canada and Puerto Rico. We are known as MSD everywhere else."

Did I read that correctly?

A. That's what that says.

Q. And then on the left side of this page, it says, "Job Description, Patent Attorney." Right?

A. It does.

Q. And then if you go to Page 5 of the document.

A. Sorry. Counting starting with the first page?

Q. Yes, ma'am. That's a header that says, "Search Firm Representatives Please Read Carefully."

A. I think I'm on the wrong page.

Mine says U.S. and Puerto Rico Residents Only.

Q. Go -- let's see, one more page, please.

A. Mine starts with Effective September 5, 2023.

Q. Okay. One page after that.

It says, "Search Firm Representatives Please Read Carefully."

Do you see that?

A. (No verbal response.)

Q. Then the document states, "Merck & Co., Inc. Rahway, New Jersey, USA, also known as Merck Sharp & Dohme LLC, Rahway, New Jersey, USA, does not accept unsolicited assistance from search firms for employment opportunities."

Did I read that correctly?

A. You read it correctly, but that's incorrect.

Q. What's incorrect?

A. Merck & Co., Inc. is not also known as Merck Sharp & Dohme LLC.

Q. This is a printout from the Merck.com web page.

A. Yeah, and that's unfortunate. That needs to be corrected.

Q. Okay.

(Whereupon, Exhibit 15 is marked for identification.)

ATTORNEY POWERS: I'm going to hand you what's been marked Exhibit 15.

ATTORNEY HELM: Trey, can I have a copy, please?

ATTORNEY POWERS: Of course. Sorry.

BY ATTORNEY POWERS:

Q. Okay. You have Exhibit 15 in front of you?

A. I have a document labeled Exhibit 15, yes.

Q. Do you know if anyone in legal reviews job postings before they're posted?

A. I don't believe so.

Q. Even a posting for patent counsel?

A. I guess if one of the patent lawyers was seeking a patent lawyer for Merck Sharp & Dohme LLC, they would read the portion that discusses what the

position is about.

Q. Go to Page 9 of Exhibit 14, please.

A. Sorry.

Q. 15?

A. I thought we were looking at 15.

Q. 15.

A. And to be clear, 15 says, "Oncology Customer Team Leader (District Sales Manager) - Music City District."

Q. Thank you.

A. So this does not appear to be in a position for a patent attorney.

Q. The last one was, right? This is a position for oncology customer team leader, right?

A. That's what this says.

Q. Yeah. And let's go to Page 9 of this document. This is a job posting on Merck.com website:

A. "The successful candidate will be eligible for annual bonus."

Q. That's how it starts.

A. Okay.

Q. But then if I direct you to some

text a little further down on Page 9, it says, "Search Firm Representatives Please Read Carefully."

And then it says, "Merck & Co., Inc., Rahway, New Jersey, USA, also known as Merck Sharp & Dohme LLC, Rahway, New Jersey, USA, does not accept unsolicited assistance from search firms for employment opportunities."

Did I read that correctly?

A. Yes. And as I said before, that's incorrect. My understanding is that this type of language is put together and then just used. And I don't know whether anyone has had oversight of this, but this is wrong and needs to be corrected.

Q. Okay.

ATTORNEY POWERS: Take a break.

ATTORNEY HELM: Okay. Can we limit the break to 10 minutes?

ATTORNEY POWERS: We'll try.

ATTORNEY HELM: How much time is left on the record?

THE STENOGRAPHER: Can we go off the record?

THE VIDEOGRAPHER: The time right now is 6:23 p.m. We're off the record.

(Whereupon, a recess was taken at 6:23 p.m.)

THE VIDEOGRAPHER: The time is 6:37 p.m.

We are back on the record.

BY ATTORNEY POWERS:

Q. Ms. Grez, at any point during the break, did you speak about the substance of your testimony with counsel?

A. I did not.

Q. [redacted].

Q. What's your definition of "employee"?

A. I'm not sure what you mean. That's a pretty basic word.

Q. I'm asking you what you meant when you say "employee."

A. I mean employee.

Q. Do you mean someone that works

for the entity?

A. I mean employee.

Q. You mean someone on a salary?

A. There's plenty of people that can work for various entities. I believe our court reporter talked about being an independent contractor. I'm talking about employees.

Q. Can you give me your definition of "employee" as you used the term today?

A. I used the term "employee" to mean what the basic understanding of employee is.

Q. What's your basic understanding of what the word "employee" means?

A. Employee is what employee means. I don't...

Q. That's tautological.

A. I don't know what "tautological" means.

Q. That's all right.

A. Is it? Okay. Thanks.

Q. There's no reason to get testy.

A. Agreed.

Q. Do you agree that an employee is

a person employed for wages or salary, especially at a nonexecutive level?

A. I wouldn't agree that it's a nonexecutive level. I'm not sure what you're reading from.

Q. Can you give me a definition of "employee" that doesn't use the word "employee" in the definition?

ATTORNEY HELM: Objection to form.

THE WITNESS: I didn't realize I was here to define basic words.

BY ATTORNEY POWERS:

Q. Can you please define "employee" as you used it many times today?

A. I used "employee" in the basic meaning of "employee."

Q. Someone who is salaried and paid by the entity in question?

A. Well, folks can be employed by an entity and not have a salary. They could be paid on an hourly basis and still be employees.

Q. Basically, I think what you're saying is that you can't give me a clear

definition of "employee" sitting here right now; is that right?

ATTORNEY HELM: Objection to form.

THE WITNESS: What I said was there's a basic definition of "employee."

BY ATTORNEY POWERS:

Q. What's your basic definition of "employee"?

A. As I said, I'm using it in the context of employee.

Q. What does "employee" mean to you?

A. I don't know what you mean.

Q. I mean employee.

A. I'm not sure what else I can say.

Q. Okay. When you said that someone is an employee of MSD LLC and not Merck & Co., Inc., what did you mean by that?

A. That they're employees of Merck Sharp & Dohme LLC.

Q. How does someone -- how do you know what someone -- strike that.

How can you know if someone is an employee or not if you can't define

employee?

A. Are you -- do you know when someone is an employee?

Q. I'm asking you the questions today.

A. I know you are.

Q. Okay. Well, we're almost through this, so let's work together. Can you define "employee" for me?

A. I think we should agree we're not working together.

Q. Fair enough. I'm just going to ask you some questions.

Can you define "employee"?

A. As I've said before, I don't have a definition for employee other than basic usage in English.

Q. What's your understanding of the word "employee" as you used that term throughout today?

ATTORNEY HELM: Objection. Come on, you've asked and answered that same question --

ATTORNEY POWERS: I haven't gotten an answer. And your objections

are inappropriate.

BY ATTORNEY POWERS:

Q. Can you please define "employee" for me as you've used that word throughout today's proceedings?

A. I don't have a definition of employee. I'm using it in the sense of employee.

Q. How do you know that you are an employee of MSD and not MCI?

A. So I look at employment -- well, for myself, I know. For others, I believe in my declaration I cited to employment records.

Q. Can you define "employee" for me?

A. I said I couldn't.

[redacted]

[redacted]

Q. And Ms. Zachary is a Section 16 officer of Merck & Co., Inc.?

A. She is. [redacted]

[redacted]

[redacted]

Q. Now, do you agree that members of the MSD LLC board of managers have positions at Merck & Co., Inc.?

A. I do not agree.

Q. Do you agree that the MSD -- do the MSD LLC board of managers have executive roles at Merck & Co., Inc.?

A. Dalton Smart is one of the members of the board of managers of MSD LLC. He is also the global controller of Merck & Co., Inc.

Q. Does anyone else on the board of managers of MSD LLC have a role at Merck & Co., Inc.?

A. Melissa Leonard is a member of the board of managers of MS -- Merck Sharp & Dohme LLC, and she is the treasurer for Merck & Co., Inc.

Q. Does anyone else on the board of managers of MSD LLC have a position at

Merck & Co., Inc.?

A. No.

Q. Do you agree that the MSD LLC officers have positions at Merck & Co., Inc.?

A. So not all of them have dual roles at Merck & Co., Inc.

Q. Some of them do, right?

A. Yes.

Q. The vice president of MSD LLC is the vice president of Merck & Co., Inc., right?

A. Are you talking about a specific person?

Q. I am.

A. Who?

Q. I'll find that.

And the managers of MSD LLC are also executive officers at Merck & Co., Inc., right?

A. So I just answered that there are two members of the board of managers of MSD LLC who hold roles at Merck & Co., Inc.

Q. Do you agree that Jon Filderman is the manager and vice president of MSD

LLC and also serves as the vice president of Merck & Co., Inc.?

A. I do not agree.

Q. Okay.

ATTORNEY POWERS: Mark this, please.

(Whereupon, Exhibit 16 is marked for identification.)

BY ATTORNEY POWERS:

Q. You've just been handed what's been marked Exhibit 16.

Do you recognize this document?

A. I do not.

Q. This is a filing with the U.S. Securities and Exchange Commission.

Do you see that, top of the page?

A. I do.

Q. If you go to the last --

A. Yeah, I was going to say, can I have a minute to look at what it is?

Q. Sure. If you go to the last page, I think you'll notice your signature on it.

A. Well, if my signature is on it, I definitely want to look at it.

(Pause for reading/reviewing.)

THE WITNESS: Okay.

BY ATTORNEY POWERS:

Q. Do you see that your signature is on the last page of this document?

A. I do.

Q. And just above your signature, it says, "After due inquiry and to the best of my knowledge and belief" -- sorry.

"After due inquiry and to the best of my knowledge and belief of the undersigned" -- sorry. Strike that. Getting late.

"After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certify that the information set forth in this statement is true, complete and correct."

Did I read that correctly?

A. You did.

Q. And then you signed it on behalf of Caymus Purchaser, Inc., right?

A. I did.

Q. And under your name, Sunit --

Sunil A. Patel signed, right?

A. I see Sunil's signed.

Q. Sunil signed on behalf of Merck & Co., Inc., right?

A. It looks like he did.

Q. And then right under that, Merck Sharp & Dohme LLC, Sunit -- Sunil A. Patel signed on behalf of Merck Sharp & Dohme LLC, right?

A. I see that.

Q. And then --

A. Now, this is a -- this was an acquisition --

Q. Right.

A. -- of Cidara Therapeutics, Inc. Okay.

Q. Yep. And on Page 2 of this document, there's a list of exhibits to the Cidara tender offer, right?

A. It looks like it.

Q. And the first exhibit is (a)(1)(i), "Offer to purchase dated as of December 5, 2025," right?

A. That's what it says.

Q. When Sunil signed this document,

he had on two hats at the same time, right?

A. I don't know. Honestly, I don't know why he would have signed for Merck & Co., Inc. He doesn't have any role at Merck & Co., Inc.

Q. Okay. Well, he signed this document on behalf of Merck & Co., Inc. as well as MSD LLC, and I want to go to the exhibits here. One of the exhibits is Cidara tender offer Exhibit 99(a)(1)(i). I'm going to hand you what that -- exhibit.

(Whereupon, Exhibit 17 is marked for identification.)

ATTORNEY POWERS: Which will be marked Exhibit 18 -- 17.

BY ATTORNEY POWERS:

Q. You have that document in front of you, Exhibit 17.

A. I have the document labeled Exhibit 17.

Q. Now, on Page 4 of table of contents, it has Schedule I, right? If you look at Page 4, there's a table of contents that says Schedule I?

A. I can't tell if that says I or 1.

Is it right above, like, sort of towards the bottom?

Q. It's towards the bottom.

A. Yeah.

Q. It says Schedule 1 or -- it's Schedule I, I think, Roman 1.

A. Okay. I'll take your word for it.

Q. And then it says, "Directors and Executive Officers of Merck & Co., Inc.," right?

A. It does say that.

Q. And below that is a section for "Managers and Executive Officers of Parent."

Do you see that?

A. I do. I'd have to look at who the parent refers to.

Q. Let's do that. On Page 5 of the Cidara tender off of Exhibit 17, it states -- the first line of that paragraph there says, "Merck Sharp & Dohme LLC parent," right?

A. It does say that.

Q. So Merck Sharp & Dohme LLC is

defined as parent in this document, right?

A. Based on looking at that page, that would seem correct.

Q. And in Schedule I-2.

If we go to Section 1 Schedule I-2 for the "Managers and Executive Officers of Parent," those would be the managers and executive officers of MSD LLC, right?

A. I'm assuming based on what it says, but should we just go look?

Q. Yes. And that's on Page 68. So here we have the managers and executive officers of parent on Page 68 of this document, right?

A. Yes.

Q. And Dalton Smart is the manager and president of parent MSD LLC, right?

A. That's what it says.

Q. And this document is accurate to the best of your knowledge?

A. So I have not reviewed this document.

Q. You signed this document?

A. On behalf of Caymus Purchaser, I

believe.

Q. Correct. And you also said before you signed it, there's a little section we went over and said that it was accurate, right?

A. You're signing on behalf of the entity that's making the particular statements. I was on behalf of Caymus Purchaser, I believe.

Q. Do you think that made it so you didn't have to certify that it was accurate?

A. You asked whether I signed, and I did, on behalf of Caymus Purchaser.

Q. Right. But you also said right above your signature, we went over this, it says, "After due inquiry and to the best of my knowledge and belief, the undersigned, each of the undersigned certify that the information set forth in this statement is true, complete and correct," right?

A. It says with respect to the statement.

Q. Okay. And if we go to the next page, you see that Dalton Smart is listed

as an executive officer of purchaser, right?

ATTORNEY HELM: I'm sorry. Are you back to the Exhibit 17 now?

ATTORNEY POWERS: Yes. On page -- Exhibit 17.

THE WITNESS: I see that.

BY ATTORNEY POWERS:

Q. If -- Dalton Smart it says director and president of parent. "He has also served as senior vice president finance, global controller since December 2023 and vice president, internal audit from 2015 to 2023 at Merck & Co., Inc.," right?

ATTORNEY HELM: Objection to form.

THE WITNESS: That's what it says here. But he became global controller in December 2023, and at that point, he would have had a role at Merck & Co., Inc.

BY ATTORNEY POWERS:

Q. I see. So he has a role at MSD LLC and Merck & Co., Inc., right, Dalton

Smart?

A. I believe we talked about him being on the board of managers of Merck Sharp & Dohme LLC. He also serves as president of Merck Sharp & Dohme LLC.

Q. Okay. And let's go --

A. And he -- sorry. And he serves as our global -- as Merck & Co., Inc.'s global controller.

Q. Okay. Let's go back to Page 68 and look at Melissa Leonard. She's listed as "Manager, senior vice president and treasurer of parent," right?

A. I see that here.

Q. And parent is MSD LLC?

A. One thing that is important to note, this is an SEC filing. And as we've discussed, in SEC filings referenced to Merck & Co., Inc. refer to the consolidated reporting of Merck & Co., Inc. and its subsidiaries.

Q. Right. You've mentioned that before.

Melissa Leonard is listed on this page as director, senior vice president and

treasurer of purchaser, one --

A. I'm sorry. What page are you on?

Q. I'm sorry. My fault.

ATTORNEY HELM: Yeah, objection to form.

BY ATTORNEY POWERS:

Q. Okay. On Page 68, Melissa Leonard is listed as, "Manager, senior vice president and treasurer of parent." And then it says, "She has served as senior vice president and treasurer since 2024, VP finance manufacturing from 2021 to 2024, and AVP Organon transition management lead from 2020 to 2021 at Merck & Co., Inc.," right?

A. That's what it says.

Q. And Melissa Leonard, you agree, has a role at both MSD LLC and Merck & Co., Inc., right?

A. Only since becoming treasurer in 2024.

Q. So she currently has a dual role, right?

A. She does.

Q. Okay. And let's go to Jon

Filderman.

A. And I'm not understanding why Merck & Co., Inc. was used here. So my best understanding is because it -- it sometimes refers to her correctly as being senior vice president and treasurer since 2024. That is a role at Merck & Co., Inc.

The remaining roles that are listed here are not roles at Merck & Co., Inc.

Q. So you think this is an error in the document?

A. I -- my best guess is that they are meaning Merck & Co., Inc. on a global basis with its subsidiaries, but I don't know.

Q. Let's go to Jon Filderman. It says, "He's manager and vice president of parent."

That's MSD LLC, right?

A. And that's true.

Q. And it continues -- it continues, "Jon Filderman has served as vice president of Merck & Co., Inc. since 2020."

Did I read that correctly?

A. You did, but that's not accurate.
Q. That's a mistake in this document to the SEC?
A. So, again, my guess is that Merck & Co., Inc. is referring to the Merck & Co., Inc. and its consolidated subsidiaries.
Q. I see. Let's go to Gary Henningsen.
A. And, again, facing the SEC, that's a typical phraseology.
Q. Okay. Let's go to Gary Henningsen. It says he's "senior vice president tax of parent," right?
A. It does.
Q. And parent is MSD LLC, right?
A. That's what it says on the first page.
Q. And then --
A. Not one of the other pages.
Q. -- it continues, "Gary A. Henningsen, Jr. has served as senior vice president, corporate tax of Merck & Co., Inc. from 2022 to present," right?
A. It does say that, but, again,

Gary, like Jon, does not have a role at Merck & Co., Inc. And I've shared with you my best speculation as to why that was written.

Q. I see.

Timothy Dillane is listed here on this document to the SEC as, "assistant treasurer of parent," right?

A. Yes.

Q. And then Timothy G. Dillane, it's list -- it says, "Timothy G. Dillane has served as assistant treasurer of Merck & Co., Inc. from 2018 to present," right?

A. And he does serve in that role. He has a dual role.

Q. So he's a dual-role person?

A. He is.

Q. And then there's Mark Walker.

You see that?

A. I do.

Q. And then it says, "Assistant treasurer of parent," right?

A. I do.

Q. That's MSD LLC.

And Mark Walter -- then it

continues, "Mark Walker has served as assistant treasurer of Merck & Co., Inc. since 2025," right?

A. That's correct. He has a dual role.

Q. He's a dual-role person as well, okay.

And then there's Robert Smartwood -- Swartwood, right?

A. That says that.

Q. Okay. And the document states, "Assistant treasurer of parent," right?

A. Yes.

Q. And then it says, "Robert V. Swartwood has served as assistant treasurer of Merck & Co., Inc. since January 2022," right?

A. That's correct. He has a dual role.

Q. So he's a dual role person as well.

Then there's Ms. Grez. We've been talking about her today.

A. Actually it's Grez like PEZ.

Q. Thank you for correcting me.

Sorry about that.

Ms. Grez, you've told us about your dual role.

Are your roles reflected accurately in this document?

A. Yes.

Q. Okay. "Secretary of parent and corporate secretary of Merck & Co., Inc."

Then there's Karen --

A. Prior to that, I was deputy corporate secretary of Merck & Co., Inc.

Q. Okay. Thank you.

And then there's Karen R. Ettelman.

Do you see that?

A. I do.

Q. And it says, she's "assistant secretary of parent," correct?

A. That's correct.

Q. Then it says, "Karen Ettelman has served as senior specialist legal at Merck & Co., Inc. since 2021."

A. That's not correct.

Q. So that's another error in this document you certified to the SEC; is that

correct?

A. So there is an error in this document.

Q. So you're saying that Karen Ettelman does not have a dual role?

A. She does not.

Q. And then there's Anthony Wildasin.

Do you see that?

A. I do.

Q. It says, "Assistant secretary of parent," correct?

A. That's correct.

Q. And that's MSD LLC. And then it continues in this document, "Anthony Wildasin has served as associate director, legal at Merck & Co., Inc. since October 2021" --

A. He --

Q. -- is that correct?

A. -- no longer works at Merck Sharp & Dohme LLC, but when he was employed by Merck Sharp & Dohme LLC, he served in a dual role as assistant corporate secretary of Merck & Co., Inc.

Q. Was he an attorney on behalf -- at Merck & Co., Inc.?

A. He was not.

Q. Did he function as an attorney at Merck & Co., Inc.?

A. He did not.

Q. But he was dual role, right?

A. He had a dual role.

Q. Okay. So let's count them. One, two, three, four, five -- six dual role people that we agree are dual role?

A. Seven.

Q. Seven, thank you.

A. One, two, three, four, five, six, seven.

ATTORNEY HELM: Can we get the remaining time on the record, please?

THE VIDEOGRAPHER: We've been on the record for 6 hours and 55 minutes.

ATTORNEY POWERS: Okay. We'll take a break. It will be a quick one.

THE VIDEOGRAPHER: Off the record?

ATTORNEY HELM: Okay. Five minutes?

ATTORNEY POWERS: Five minutes. Let's go off the record.

THE VIDEOGRAPHER: The time is 7:05 p.m.

We are off the record.

(Whereupon, a recess was taken at 7:05 p.m.)

THE VIDEOGRAPHER: The time right now is 7:09 p.m.

We're back on the record.

ATTORNEY POWERS: Thank you, Ms. Grez. We have no further questions for you. We'll pass the witness.

ATTORNEY HELM: We have no questions for you. Thank you very much.

I just want to put on the record that we've made our objections to the introduction of new documents as being contrary to the board's order that they did not aid in your cross-examination.

As you know also from the order, you are not authorized to file those documents as exhibits in the proceeding as an expressed authorization pursuant

to a particularized showing of good cause. We request immediately if you intend to seek particularized showing of good cause for any of the new exhibits introduced today.

Given the brevity of the time for the remaining briefing in this case, we may need to go to the Board.

ATTORNEY POWERS: Counsel, your arguments on the record are improper. We're well aware of the Board's order, and that's all we have to say on it.

ATTORNEY HELM: We have nothing further on the record.

THE VIDEOGRAPHER: The time is 7:09 p.m.

We are off the record.

(Time noted: 7:09 p.m.)

REPORTER CERTIFICATE

I, JESSICA R. WAACK, Certified Realtime Reporter, Registered Diplomate Reporter, California Certified Realtime Reporter, Certified Court Reporter in New Jersey, New York Association Certified Reporter, New York Realtime Court Reporter and Notary Public of the State of New York, County of Kings, the officer before whom the proceedings were taken, do hereby certify that the foregoing transcript is a true and accurate record of these proceedings; that said proceedings were taken in Stenotype note by me on March 26, 2026, commencing at 9:07 a.m. and ending at 7:09 p.m.

I further certify that present on behalf of MERCK, KATHERINE A. HELM, PH.D., of DECHERT LLP, and on behalf of HALOZYME, R. WILSON "TREY" POWERS of STERNE KESSLER GOLDSTEIN & FOX.

(Certification continued to next page.)

REPORTER CERTIFICATE CONTINUED

I further certify that I am not related to, nor associated with any of the parties or their attorneys, nor do I have any disqualifying interest, personal or financial in the actions within.

Dated this 26th day of March, 2026, at Kings County, New York.



JESSICA R. WAACK
Registered Diplomate Reporter
Certified Realtime Reporter
California Certified Realtime Reporter
New York Realtime Court Reporter
New York Association Court Reporter
Notary Public, State of New York
CCR-NJ (No. 30XI008238700) CSR-TX (No. 11958)
CCR-WA (No. 21007264), CSR-CA (No. 14420)

DECLARATION UNDER PENALTY OF PERJURY

Date of Deposition: March 26, 2026

I, KELLY GREZ, hereby certify under penalty of perjury under the laws of the State of _____ that the foregoing is true and correct.

Executed this____ day of , 2026, at _____.

_____

KELLY GREZ

SUBSCRIBED AND SWORN BEFORE ME

THIS __ DAY OF _____, 20

_____

NOTARY PUBLIC

MY COMMISSION EXPIRES:_____

WITNESS: KELLY GREZ

Date of Deposition: March 26, 2026

Reason Codes: 1. Clarify the record
2. Conform to the facts
3. Correct transcription errors

WITNESS ERRATA

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KELLY GREZ