

**In the Matter Of:**

*MERCK SHARP & DOHME LLC vs*

*HALOZYME*

---

*KELLY GREZ*

*March 26, 2026*

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Halozyne EX2027  
Merck v. Halozyne  
IPR2026-00314

1 UNITED STATES PATENT AND TRADEMARK OFFICE  
2  
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD  
4

5 MERCK SHARP & DOHME LLC  
6 Petitioner

7 v.

8 HALOZYME, INC.  
9 Patent owner

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

14  
15 \*\* CONFIDENTIAL \*\*  
16

17  
18 VIDEO RECORDED EXAMINATION of KELLY GREZ  
19

20  
21 TAKEN ON THURSDAY, MARCH 26, 2026  
22

23 CERTIFIED STENOGRAPHER:

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

1  
2  
3  
4 VIDEO RECORDED EXAMINATION of  
5 KELLY GREZ, taken before  
6 JESSICA R. WAACK, Registered Professional  
7 Reporter, Registered Merit Reporter,  
8 Certified Realtime Reporter, Registered  
9 Diplomate Reporter, California Certified  
10 Realtime Reporter, New Jersey Certified  
11 Court Reporter (License No. 30XI008238700);  
12 Texas Certified Shorthand Reporter (License  
13 No. 11958); Washington State Certified  
14 Court Reporter (License No. 21007264);  
15 California Certified Shorthand Reporter  
16 (License No. 14420); New York Association  
17 Certified Reporter, New York Realtime Court  
18 Reporter and Notary Public of Washington,  
19 D.C. and the States of New York,  
20 Pennsylvania, Delaware and Virginia, at  
21 Holiday Inn Express Hotel & Suites - Newark  
22 South, 750 West Edgar Road, Linden, New  
23 Jersey, on Thursday, March 26, 2026,  
24 commencing at 9:07 a.m. and concluding at  
25 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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9 \*\* All original exhibits were attached to

10 the original transcript \*\*

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## 1 INDEX TO PREVIOUSLY MARKED EXHIBITS

2 WITNESS: KELLY GREZ

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23  
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1 \*\*\*\*\*

2 PROCEEDINGS

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

4 LINDEN, NEW JERSEY

5 \*\*\*\*\*

6 THE VIDEOGRAPHER: We are now on  
7 the record.

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

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

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

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

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

23 ///

24 ///

25 ///

\*\*\*\*\*

KELLY GREZ, sworn

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

\*\*\*\*\*

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?

1           A.    I don't recall.

2           Q.    About how long ago was that  
3 deposition?

4           A.    About how long ago?  It was  
5 during the pandemic.  So I don't remember  
6 the exact --

7           Q.    Five or six years ago?

8           A.    Yes.

9           Q.    Was that a patent case you were  
10 deposed in?

11          A.    No.

12          Q.    What kind of a case was it?

13          A.    It was a dispute that one of our  
14 collaborators had with one of their  
15 contracting parties.

16          Q.    Was that pertaining to a  
17 particular drug?

18                ATTORNEY HELM:  I'll just caution  
19 you if you can answer without revealing  
20 confidential information from that  
21 case.

22                THE WITNESS:  I don't know if it  
23 was confidential, the proceeding.

24 BY ATTORNEY POWERS:

25          Q.    Do you remember the name of the

1 drug that was at issue in that proceeding?

2 A. No.

3 Q. Was it a cancer drug?

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

6 Q. Was it Keytruda?

7 A. No.

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

9 A. I am an attorney.

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

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

15 Q. Have you ever taken a deposition?

16 A. Never.

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

25 So it's important that we don't



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

5 Is that okay?

6 A. That's okay.

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

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

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

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

16 Q. That's all I ask.

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

20 A. That's what the court reporter  
21 said.

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

1 that break, okay?

2 A. Understood.

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

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

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

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

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

16 A. I will be complete and truthful.

17 Q. Wonderful.

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

20 A. No.

21 Q. Do you have any materials with  
22 you today?

23 A. No.

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

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

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

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

8 BY ATTORNEY POWERS:

9           Q.    Exhibit 1224 in this case.

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

13           A.    I do.

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

16           A.    I do.

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

19           A.    I did.

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

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

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

3           A.    Yes.

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

7           A.    I did.

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

10          A.    No.

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

13          A.    I did.

14          Q.    When were those meetings?

15          A.    I had meetings yesterday and one  
16 week ago.

17          Q.    Were those meetings in person?

18          A.    Meetings yesterday were in  
19 person.

20          Q.    Who attended those meetings?

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

23          Q.    Did anyone else attend those  
24 meetings?

25          A.    There were a couple other lawyers

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

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

5 A. No.

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

8 A. No.

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

11 A. Some were attending by video.

12 Q. Who attended by video?

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

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

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

22 Q. You were there.

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

25 Q. Did anyone else from Merck & Co.

1 attend those meetings yesterday -- the  
2 meeting yesterday?

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

5 Q. Yes.

6 A. Just myself --

7 Q. Okay.

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

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

12 A. (Nods head.)

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

16 A. That was remote.

17 Q. And about how long ago was that  
18 meeting?

19 A. It was last week sometime, I  
20 believe.

21 Q. And who attended that meeting?

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

25 Q. Okay. So no one different

1 attended the previous meeting?

2 A. That's what I remember.

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

6 A. Probably about two hours.

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

10 A. Probably about seven hours.

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

13 A. Nine. Yeah, I think nine.

14 Q. Did you review documents at the  
15 meeting yesterday?

16 A. I did.

17 Q. Which documents did you review?

18 A. I reviewed a number of different  
19 documents.

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

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

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

1 mind?

2 A. No.

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

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

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

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

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

15 A. Not off the top of my head.

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

19 A. No.

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

22 A. No.

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

25 A. No.



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

3 A. No.

4 Q. Beyond your normal pay, correct?

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

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

9 A. I did not.

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

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

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

19 A. I did not.

20 Q. You didn't speak to Jennifer  
21 Zachary?

22 A. I did not.

23 Q. In preparing your declaration?

24 A. Correct.

25 Q. When was the last time you spoke

1 to Ms. Zachary?

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

4 Q. Did you speak to her about your  
5 deposition?

6 A. I did not.

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

9 A. I did not.

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

12 A. I don't know.

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

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

19 BY ATTORNEY POWERS:

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

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

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

1 is that true?

2 ATTORNEY HELM: Same caution.

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

8 BY ATTORNEY POWERS:

9 Q. That doesn't quite answer my  
10 question.

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

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

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

19 A. I believe I answered that.

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

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

25 A. I believe I answered that.

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

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

5   BY ATTORNEY POWERS:

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

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

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

13          A.    I just answered your question.

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

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

20          ATTORNEY HELM:  Objection.  Asked  
21   and answered.

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

24   BY ATTORNEY POWERS:

25          Q.    Okay.  Do you know if anybody

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

4 A. I don't know.

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

8 A. I have not.

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

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

15 THE WITNESS: I have not.

16 BY ATTORNEY POWERS:

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

19 A. I have no idea.

20 Q. Who asked you to submit this  
21 declaration?

22 A. Mark Stewart.

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

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

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

6 BY ATTORNEY POWERS:

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

9           ATTORNEY HELM: I'm going to --

10          THE WITNESS: Yeah, I --

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

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

18 BY ATTORNEY POWERS:

19          Q. On the basis of privilege?

20          A. Yeah.

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

24          ATTORNEY HELM: I'll --

25          THE WITNESS: I can't --

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

6 BY ATTORNEY POWERS:

7           Q. Can you answer?

8           A. I'm sorry. Say again.

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

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

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

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

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

25          A. I am a secretary of Merck Sharp &

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

4 Q. For both entities?

5 A. For each entity, correct.

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

9 A. Can you explain what you mean?

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

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

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

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

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

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



1 Q. What don't you understand?

2 A. Fiduciary -- what about the  
3 proceedings involve fiduciary duties?

4 Q. Well, you have an ongoing  
5 fiduciary duty to both entities, right?

6 A. Right. So fiduciary duties to  
7 act in the best interests of each  
8 corporation --

9 Q. Yes.

10 A. -- is that what you mean?

11 Q. Yes.

12 A. Yes.

13 Q. And so the answer to my question  
14 is yes?

15 ATTORNEY HELM: Objection to  
16 form.

17 THE WITNESS: I honestly don't  
18 understand what you mean in connection  
19 with this proceeding.

20 BY ATTORNEY POWERS:

21 Q. Do you know why Jennifer Zachary  
22 didn't submit a declaration instead of you?

23 ATTORNEY HELM: Objection.  
24 Foundation.

25 THE WITNESS: I don't know. But

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

5 BY ATTORNEY POWERS:

6 Q. Do you own Merck & Co. stock?

7 A. [REDACTED]

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

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

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

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

23 [REDACTED]  
24 [REDACTED]  
25 A. [REDACTED]

1 Q. Can you [REDACTED]

2 A. [REDACTED].

3 Q. [REDACTED]

4 A. [REDACTED]

5 Q. [REDACTED]

6 A. [REDACTED]

7 Q. Can't even give me a ballpark?

8 ATTORNEY HELM: Objection --

9 THE WITNESS: I can't.

10 ATTORNEY HELM: -- form.

11 BY ATTORNEY POWERS:

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

15 A. I do not.

16 Q. Does submitting your declaration  
17 impact any performance reviews?

18 A. It does not.

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

22 A. I don't know what that means.

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

25 A. If I were not employed in my

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

3 Q. But you are employed, right?

4 A. By Merck Sharp & Dohme LLC.

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

7 A. I do.

8 Q. And those fiduciary duties are  
9 ongoing, correct?

10 A. Yes.

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

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

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

23 ATTORNEY POWERS: Temporarily.

24 ATTORNEY HELM: -- appropriate  
25 redactions.

1           ATTORNEY POWERS: Temporarily.

2           And we can work out a proposal for  
3           redactions.

4   BY ATTORNEY POWERS:

5           Q.   Now, in Paragraph 5 of your  
6           declaration, you talk about review of  
7           corporate records, governance documents and  
8           other materials referenced.

9                   Do you see that in Paragraph 5?

10          A.   I see that.

11          Q.   Did you review any materials not  
12          cited in your declaration in preparing your  
13          declaration?

14          A.   I don't recall.

15          Q.   Did you review any corporate  
16          records in preparing your declaration that  
17          weren't cited in your declaration?

18          A.   Not that I recall.

19          Q.   Did you review any government --  
20          governance documents in preparing your  
21          declaration that aren't cited in your  
22          declaration?

23          A.   Not in connection with preparing  
24          the declaration.

25          Q.   So it's just general familiarity

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

3 A. I am generally familiar with  
4 them, yes.

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

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

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

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

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

19 BY ATTORNEY POWERS:

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

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

25 Q. Did you rely on any of those

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

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

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

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

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

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

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

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

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

9   BY ATTORNEY POWERS:

10          Q. And conversations aren't  
11          mentioned, right?

12          A. Conversations are not written  
13          there.

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

17                 ATTORNEY HELM: Objection to  
18          form.

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

22   BY ATTORNEY POWERS:

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

25                 ATTORNEY HELM: Objection to



1 form.

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

4 BY ATTORNEY POWERS:

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

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

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

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

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

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

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

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

25 Q. Okay. If there's anything else

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

3           A.     Is that a question?

4           Q.     It's a request.

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

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

11  BY ATTORNEY POWERS:

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

15                   Ms. Grez, are you reading your  
16    whole declaration?

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

19           Q.     I'll withdraw the question.

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

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

25    ///

1 BY ATTORNEY POWERS:

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

4 A. Yes.

5 ATTORNEY POWERS: Counsel, whose  
6 privilege are you asserting?

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

15 BY ATTORNEY POWERS:

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

21 A. Correct. That's correct.

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

24 A. [REDACTED]

25 Q. Do you sometimes not review the

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

3 A. [REDACTED]

4 Q. What kinds of filings do you [REDACTED]  
[REDACTED]

6 to the SEC?

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

9 Q. No. I'm asking you what kinds of  
10 documents you [REDACTED]  
[REDACTED]

12 A. [REDACTED]

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

17 ATTORNEY HELM: Objection to  
18 form.

19 THE WITNESS: I can't.

20 BY ATTORNEY POWERS:

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

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

1 Q. Who sends them to the SEC?

2 A. Well, they're filed with the SEC.

3 Q. Okay. Fair enough.

4 And so there are documents that  
5 you sign that are filed with the SEC,  
6 right?

7 A. Correct.

8 Q. And you review some kinds of  
9 documents that are filed with the SEC, but  
10 not others; is that what you're saying?

11 ATTORNEY HELM: Objection to  
12 form.

13 THE WITNESS: I'm asking if you  
14 have specific filings you're talking  
15 about.

16 BY ATTORNEY POWERS:

17 Q. I'm asking you if you can give me  
18 an example of a kind of a document you do  
19 review before signing it and filing it with  
20 the SEC.

21 A. Section 16 filings.

22 Q. You review those before signing  
23 them and filing them with the SEC.

24 Any others?

25 A. I gave you an example.

1 Q. Can you give me other examples?

2 A. Not off the top of my head.

3 Q. So it's not your normal course to  
4 review documents that you sign that are  
5 then filed with the SEC?

6 ATTORNEY HELM: Objection to  
7 form.

8 THE WITNESS: I did not say --  
9 yeah, I did not say that.

10 BY ATTORNEY POWERS:

11 Q. Why would you not review a  
12 document that you sign and then is filed  
13 with the SEC?

14 A. What document are you talking  
15 about?

16 Q. Any document.

17 A. It would be helpful to have  
18 specifics.

19 Q. I'm asking you for specifics.

20 A. And I'm trying to understand what  
21 filings you're talking about.

22 Q. I'm trying to understand why you  
23 would allow your signature to be affixed to  
24 a document that is filed with the SEC  
25 without having reviewed it.

1 ATTORNEY HELM: Objection to  
2 form. Lack of foundation.

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

5 BY ATTORNEY POWERS:

6 Q. I think you said that sometimes

7 [REDACTED]

[REDACTED]

9 ATTORNEY HELM: Objection. Lack  
10 of foundation.

11 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 BY ATTORNEY POWERS:

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 A. [REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

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

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

8 Q. Is it outside counsel?

9 A. It depends.

10 Q. Is it in-house counsel at Merck?

11 A. What entity do you mean?

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

16 A. I can't speak to generalities.

17 Q. Can you give me an example?

18 A. I gave you an example.

19 Q. A specific example?

20 A. I cannot.

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

25 A. I don't understand why you keep



1 saying "affixed."

2 Q. Sure. Would a different word  
3 help you?

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

8 A. Correct.

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

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

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

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

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

20 ATTORNEY HELM: Objection to  
21 form.

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

24 BY ATTORNEY POWERS:

25 Q. They're not misleading, correct?

1           A.    That is correct.

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

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

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

10          A.    I take this very seriously.

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

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

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

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

1 Q. And, therefore --

2 A. -- because they are relied upon  
3 by investors.

4 Q. And if the filings with the SEC  
5 were misleading or unreliable, you wouldn't  
6 sign them, right?

7 A. Merck & Co., Inc. is obligated  
8 for its disclosures to be presented in a  
9 clear and accessible way. For investors,  
10 that's one of the requirements of being a  
11 public company.

12 Q. Right. And if they weren't clear  
13 and accessible to investors, then you  
14 wouldn't sign the document, right?

15 A. Well, I'm not our securities  
16 lawyer, but when I'm signing a document, I  
17 do understand my obligations.

18 Q. And that the document should be  
19 clear and accessible to the investing  
20 public, right?

21 A. Yes. That is one of the  
22 requirements.

23 Q. From time to time in Jennifer  
24 Zachary's capacity as an officer for  
25 Merck & Co., Inc., she signs documents that

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

3 A. She does.

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

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

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

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

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

18 A. I'm sure she does.

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

22 A. I cannot imagine her doing that.

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

1 declaration, right?

2 A. I do.

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

6 A. Not to my knowledge.

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

11 A. I have no idea.

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

15 A. I have no idea.

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

19 A. I have no idea.

20 Q. Does MSD LLC have an operating  
21 agreement?

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

24 Q. Is an LLC agreement like an  
25 operating agreement?

1           A.    Yeah, different states call them  
2 different things.

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

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

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

9           A.    Correct.

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

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

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

17          A.    It sets forth how it is governed.

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

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

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

24          A.    That's correct.

25          Q.    And MSD LLC's LLC agreement sets

1 out how distributions are taken, correct?

2 ATTORNEY HELM: Objection. Lack  
3 of foundation.

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

9 BY ATTORNEY POWERS:

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

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

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

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

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

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

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

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

14          A.    Yes.

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

18          A.    Correct.

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

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



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

3 A. What do you mean?

4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 [REDACTED]

[REDACTED]

[REDACTED]

17 A. [REDACTED]

18 Q. [REDACTED]

[REDACTED]

[REDACTED]

21 ATTORNEY HELM: Objection. Lack  
22 of foundation.

23 THE WITNESS: O [REDACTED]

[REDACTED]

[REDACTED]

1 BY ATTORNEY POWERS:

2 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 Q. A [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. That's not my question.

14

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. That's not my question.

21

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 Q. Still not my question. Yes or

1 no: [REDACTED]  
[REDACTED]

3 ATTORNEY HELM: Objection. Form.

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

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

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

18 BY ATTORNEY POWERS:

19 Q. You're not answering my question.  
20 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

24 Q. That still doesn't answer my  
25 question.

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

3 ATTORNEY HELM: Objection. Asked  
4 and answered.

5 THE WITNESS: To speculate and  
6 from a governance perspective?

7 BY ATTORNEY POWERS:

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

13

18

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

20

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

22

Q.

24

ATTORNEY HELM: Objection to

25

form.

1 THE WITNESS: [REDACTED]

3 BY ATTORNEY POWERS:

4 Q. And other officers of Merck &  
5 Co., Inc. [REDACTED]

8 Q. [REDACTED]

13 Q. That doesn't answer my question.

14 My question is: [REDACTED]

22 Q. According to the governance  
23 documents that you say you're familiar  
24 with, [REDACTED]

1

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

4 ATTORNEY HELM: Objection to

5 form.

6 BY ATTORNEY POWERS:

7 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 Q. Still not answering my question.

14 Do you know whether or not in her  
15 role at Merck & Co., Inc. Jennifer Zachary  
16 has the authority to appoint managers at  
17 MSD LLC?18 ATTORNEY HELM: Counselor, she's  
19 asked -- answered this question --20 ATTORNEY POWERS: She hasn't  
21 answered the question.22 ATTORNEY HELM: -- several times.  
23 You may not be happy with the answer,  
24 but she's put on the record what her  
25 answer is.

BY ATTORNEY POWERS:

A. [REDACTED]

Q. Yeah, that's not my question.

Q. [REDACTED]

ATTORNEY HELM: Objection to

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14

Q.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17

Q.

Still not answering my question.

18

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



1 Q. [REDACTED]

[REDACTED]

[REDACTED]

4 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 [REDACTED]

[REDACTED]

14 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 ATTORNEY HELM: Objection to

20 form.

21 THE WITNESS: What do you mean by

22 "signature authority"?

23 BY ATTORNEY POWERS:

24 Q. I think you're the one that

25 brought that up.

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

4           A.    Yes.

5           [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13          [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

1

6

11 ATTORNEY HELM: Objection to --  
12 objection to form.

13

16 BY ATTORNEY POWERS:

17 Q. No. I'm asking about the same

18

22 ATTORNEY HELM: Objection. Lack  
23 of foundation.

24

THE WITNESS:

1

[REDACTED]

3

BY ATTORNEY POWERS:

4

Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13

Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18

[REDACTED]

[REDACTED]

21

[REDACTED]

[REDACTED]

24

[REDACTED]

1

3

4

5

6

12

13

14

15

16

17

18

19

20

21

22

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

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.

1

Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

6

Q. Based on the corporate governance

7

documents that you say you're familiar

8

with, other officers at Merck &amp; Co. can

9

sign, though. We've established that.

10

So I would like to know who those

11

officers at Merck &amp; Co. are.

12

A. I'm a little confused, because if

13

we established it, why do you keep asking

14

me the same question?

15

Q. I'm not asking you the same

16

question.

17

I would like to know the list of

18

the Merck &amp; Co. officers that can sign --

19

A. And I'm saying --

20

Q. -- that document?

21

A. -- [REDACTED]

22

Q. Yes. [REDACTED]  
[REDACTED]  
[REDACTED]

25

Q. Okay. So who else can sign?

1 A. [REDACTED]

3 Q. [REDACTED] I'm

4 asking based on her authority in the  
5 governance documents, who else can sign?

6 ATTORNEY HELM: Objection. Lack  
7 of foundation.

8 THE WITNESS: [REDACTED]

10 BY ATTORNEY POWERS:

11 Q. And I'm asking who else has the  
12 authority [REDACTED]  
[REDACTED]?

14 A. [REDACTED]

17 Q. Anyone else?

18 A. [REDACTED]

20 Q. Those are the [REDACTED]  
[REDACTED] that  
22 could [REDACTED]

24 A. [REDACTED]

1 Q. Okay.

2 ATTORNEY POWERS: Let's take a  
3 break.

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

6 We are off the record.

7 (Whereupon, a recess was taken at  
8 10:12 a.m.)

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

11 We're back on the record.

12 BY ATTORNEY POWERS:

13 Q. Welcome back, Ms. Grez.

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

17 A. I did not.

18 Q. You hold positions of -- scratch  
19 that.

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

25 A. I am employed by Merck Sharp &



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

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

6 A. I am not.

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

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

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

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

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

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

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

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

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

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

11 Q. That's not quite my question.

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

15 A. Merck Sharp & Dohme LLC.

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

18 A. Correct.

19 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

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

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

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

7           Q.    Okay.  That's not my question.

8           [REDACTED]  
[REDACTED]  
[REDACTED]

11          A.    T [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

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

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

1           A.    I think I'm getting a little  
2 tripped up [REDACTED]

3           Q.    In your role as corporate  
4 secretary of MCI, Merck & Co., Inc.,

5 [REDACTED]

6           A.    [REDACTED]

[REDACTED]

8           Q.    You said [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12                   So I want to understand what you  
13 meant when you said [REDACTED]

[REDACTED]

15                   Can you please explain?

16           A.    With my work [REDACTED]

[REDACTED]

[REDACTED].

19           Q.    And does [REDACTED]

[REDACTED] in your role as

21 corporate secretary on behalf of Merck &  
22 Co., Inc.?

23           A.    I'm not sure what you mean.

24           Q.    What's unclear about my question?

25                   Does anyone [REDACTED]

1

3

A.

8

Q. Do you receive performance

9

reviews --

10

ATTORNEY HELM: Sorry. Did you

11

let her finish? Were you finished?

12

BY ATTORNEY POWERS:

13

Q. Were you finished? I'm sorry. I

14

didn't mean --

15

A. Yes, yeah.

16

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

17

Do you receive performance

18

reviews in your role as corporate secretary

19

for Merck &amp; Co., Inc.?

20

A. So

23

Q. I've understood -- I've

24

understood that to be your testimony.

25

That's not my question, okay?

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

4           A.    [REDACTED]

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

7           A.    [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14          Q.    Does your [REDACTED]

[REDACTED]

[REDACTED]

17          A.    I hold both roles concurrently.

18          Q.    Right. And so when you're

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

2

Q. And who

11

Q. What's Jon Filderman's title?

12

A. Vice president corporate legal.

13

Q. At which entity?

14

A. At Merck Sharp & Dohme LLC.

15

Merck & Co.

16

Q. You agree that Merck & Co., Inc.

17

does have officers, right?

18

A. I do.

19

Q. And you agree that Merck & Co.,

20

Inc. has a board of directors, right?

21

A. Merck & Co., Inc. has a board of

22

directors, that is correct.

23

Q. Does Jon Filderman have a role at

24

Merck & Co., Inc.?

25

A. He does not.

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

3 A. He is not.

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

6 A. He is not.

7

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 A. [REDACTED]

15 [REDACTED]

[REDACTED]

17 A. [REDACTED]

18 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 [REDACTED].



1 Q. [REDACTED]

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

8 A. Yes, I do state that.

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

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

15 Q. Any --

16 A. Advising them.

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

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

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

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

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

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

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

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

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

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

21 A. It means that they're  
22 independent.

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

1           A.    I am the secretary of the  
2 governance committee.

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

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

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

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

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

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

25          Q.    What other committees are there

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

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

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

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

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

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

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

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

1 committees of the board.

2 A. Each of the committees does have  
3 a charter.

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

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

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

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

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

16 A. When I function in my Merck &  
17 Co., Inc. role, I'm serving Merck & Co.,  
18 Inc. When I function in my Merck Sharp &  
19 Dohme LLC role, I'm serving Merck Sharp &  
20 Dohme LLC.

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

25 A. I'm serving the interests of

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

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

5 A. Yeah, it can happen.

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

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

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

15 ATTORNEY HELM: Objection to  
16 form.

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

24 BY ATTORNEY POWERS:

25 Q. Have you ever been required to

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

4 A. Not that I recall.

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

9 ATTORNEY HELM: Objection to  
10 form.

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

13 BY ATTORNEY POWERS:

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

17 A. Not in my role.

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

22 A. I don't want to speculate.

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

25 A. I don't know.

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

4           A.    I don't have business cards.

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

8           A.    I do not.

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

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

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

16          A.    I do.

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

20          A.    I do not.

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

24          A.    I do.

25          Q.    When you switch roles between MSD



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

3             A.     I have one email address.

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

7             A.     I have the one email address.

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

11            A.     I do.

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

15            A.     I do not.

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

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

21            Q.     Well --

22            A.     I do not have a different  
23    telephone number.

24            Q.     I see. Thank you.

25            A.     I apologize if I misspoke.

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

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

6           A.    I do use the same telephone  
7   number.

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

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

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

16          A.    No.  I hold the roles  
17   concurrently.

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

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

25          Q.    If someone went to your office

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

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

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

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

11 Q. How is it obvious?

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

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

17 A. Yes. It's a parent-subsidary  
18 relationship.

19 Q. Can you access -- strike that.

20 Who is Kenneth Frazier?

21 A. Our former chair and CEO.

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

23 A. Yes. He held that position.

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

1           A.    That's my understanding.

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

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

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

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

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

18          A.    Yes, I do state that.

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

21          A.    That's correct.

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

25          A.    She holds concurrent roles.

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

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

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

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

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

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

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

19 ATTORNEY POWERS: Counsel.

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

23 BY ATTORNEY POWERS:

24 Q. Do you recognize this document?

25 A. I do.

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

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

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

8           A.    Correct.

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

12          A.    Sorry.  Last page of the  
13 Exhibit 2451?

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

17          A.    I see that.

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

22          A.    It does say that.

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

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

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

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

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

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

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

17 ATTORNEY HELM: Objection to  
18 form.

19 BY ATTORNEY POWERS:

20 Q. Are you changing that testimony?

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

1           Q.   Well, this paragraph continues.

2   And it says, "In the position, you will  
3   report to me, will be a member of my  
4   executive team and will be an officer of  
5   Merck (as defined in Section 16 of the  
6   Securities Exchange Act of 1934)." [As  
7   read]

8                   Do you see that?

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

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

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

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

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



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

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

6           A.    He did.

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

10          A.    I don't know.

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

14          A.    With public filings, yes.

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

18          A.    Jennifer Zachary reports to Rob  
19   Davis.

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

22          A.    That's correct.

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

25          A.    Like Ms. Zachary, Rob Davis is

1 employed by Merck Sharp & Dohme LLC.

2 That's the operating entity to actually  
3 conduct business.

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

7 A. Yes.

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

11 A. I believe I addressed this in my  
12 declaration.

13 Yes. In 19, I discuss her two  
14 roles.

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

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

20 Q. So --

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

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

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

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

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

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

15                   ATTORNEY HELM:  Objection to  
16 form.

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

20 BY ATTORNEY POWERS:

21          Q.    [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

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

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

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

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

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

16 ATTORNEY HELM: Objection.

17 Foundation.

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

20 BY ATTORNEY POWERS:

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

25 A. Ms. Zachary has direct reports at

1 Merck Sharp & Dohme LLC who report to her.

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

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

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

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

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

[REDACTED]  
19 A. [REDACTED]  
[REDACTED]  
[REDACTED]

22 Q. And --

23 A. -- [REDACTED].

24 Q. And those [REDACTED]  
[REDACTED] in her role as

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

3 A. So as I mentioned before, Merck &  
4 Co., Inc. [REDACTED]

[REDACTED] The [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11 Q. Ms. Zachary, in her role in  
12 advising the board of Merck & Co., Inc.,

13 [REDACTED]

[REDACTED]

[REDACTED]

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

17 A. [REDACTED]

[REDACTED]

[REDACTED] The business is conducted through  
20 subsidiaries. Merck Sharp & Dohme LLC is  
21 the subsidiary in the U.S. for the human  
22 health business.

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

25 A. Rob --

1 ATTORNEY HELM: Objection.

2 Foundation.

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

5 BY ATTORNEY POWERS:

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

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

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

15 ATTORNEY HELM: Objection. Form.

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

21 BY ATTORNEY POWERS:

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

1 A. What's the instruction about?

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

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

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

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

19

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



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

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

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

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

13          A.    It would depend, as I said.

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

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

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

25                We're a vast company.  You know,

1 she's not -- [REDACTED]  
[REDACTED]  
[REDACTED]

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

6 A. But it's hard to speak in "if  
7 they wanted to." [REDACTED]  
8 And as companies, you operate through the  
9 employees.

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

13 A. So in her role as head of --  
14 let's see. I want to get it correct.  
15 Her role at Merck Sharp & Dohme  
16 LLC is to oversee the legal strategy.  
17 Conceptually, if she didn't agree, she  
18 could. But we're a really large company.

19 [REDACTED]  
[REDACTED]  
[REDACTED]

22 Q. If the board of MCI, the board of  
23 Merck & Co., Inc. [REDACTED]  
[REDACTED]  
[REDACTED]

1 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

12 The operations of Merck & Co.,  
13 Inc. are [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

17 And recall Merck & Co., Inc. [REDACTED]

[REDACTED]

[REDACTED] It's all

20 conducted through the subsidiaries.

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

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

25 Q. -- correct?

12 ATTORNEY HELM: Objection. Form.

| Age Group | Percentage Vaccinated |
|-----------|-----------------------|
| 18-24     | 85%                   |
| 25-34     | 95%                   |
| 35-44     | 75%                   |

18 Q.

| Bar Index | Approximate Length (%) |
|-----------|------------------------|
| 1         | 100                    |
| 2         | 65                     |
| 3         | 35                     |
| 4         | 75                     |
| 5         | 25                     |
| 6         | 70                     |
| 7         | 100                    |
| 8         | 20                     |

1

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16

Q. Not asking about -- that's not

17

answering my question.

18

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24

Q. The board of Merck &amp; Co., Inc.

25

has the authority to tell MSD LLC to

1 terminate a litigation, though, correct?

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

6 Q. Does --

7 A. [REDACTED]  
[REDACTED]

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

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

16 Q. Right. And the board of  
17 directors has [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

25 Q. But the board of Merck & Co.,

1 Inc. has oversight authority over the  
2 subsidiaries, right?

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

6 Q. And as part of that authority,  
7 the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 ATTORNEY HELM: Objection.

12 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

15 BY ATTORNEY POWERS:

16 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. So are you saying that Merck &  
21 Co., Inc.'s board -- board's authority

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

2 [REDACTED]  
3 [REDACTED]  
4 Q. Okay. So the board does have  
5 authority over the legal affairs of  
6 subsidiaries, correct?

7 A. That is not what I'm saying.

8 Q. The board provides oversight over  
9 subsidiaries.

10 We agree on that, right?

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

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

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

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

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



1 Inc.

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

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

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

9 Q. You haven't.

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

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

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

20 

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

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

1 times --

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

4 ATTORNEY HELM: -- and she  
5 answered it.

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

9 ATTORNEY HELM: It's on the  
10 transcript.

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

13 BY ATTORNEY POWERS:

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

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

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

25 Does that authority of Merck &

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

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

8 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
12 Q. Right. And so the question is:  
13 Merck & Co., Inc. in its -- scratch that.

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

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

24 [REDACTED]  
25 Q. Merck & Co., Inc. -- subsidiaries

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

4 A. Subsidiaries are separate and  
5 distinct entities.

6 Q. You're not answering my question.

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

10 A. [REDACTED]  
[REDACTED]  
[REDACTED]

13 Q. That's not the question.

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

17 ATTORNEY HELM: Objection. Asked  
18 and answered.

19 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23 BY ATTORNEY POWERS:

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

1 correct?

2 ATTORNEY HELM: Objection. Asked  
3 and answered.

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

8 ATTORNEY POWERS: Okay. Can we  
9 take a break?

10 ATTORNEY HELM: Sure.

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

13 We are off the record.

14 (Whereupon, a recess was taken at  
15 11:30 a.m.)

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

18 We're back on the record.

19 BY ATTORNEY POWERS:

20 Q. Welcome back, Ms. Grez.

21 A. Thanks.

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

24 ///

25 ///

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

4   BY ATTORNEY POWERS:

5       Q.   Exhibit 2463.

6           ATTORNEY POWERS:  Counsel, here  
7       you go.

8           ATTORNEY HELM:  Thank you.

9   BY ATTORNEY POWERS:

10       Q.   Now, do you recognize this  
11   document?

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

14       Q.   I don't think so.

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

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

20       A.   That's what this looks like.

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

25       A.   We talked about Merck and -- or I

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

3 Q. Everybody but the CEO is  
4 independent, correct?

5 A. 12 directors except for Rob  
6 Davis.

7 Q. Who is the CEO, right?

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

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

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

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

16 A. That's correct.

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

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

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

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

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

6 Q. Glocer?

7 A. Correct.

8 Q. Thank you.

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

14 A. As the enterprise, yes.

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

19 A. Of Merck & Co., Inc.

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



1           A.    So recall that Merck & Co., Inc.  
2   conducts i [REDACTED]

[REDACTED]  
4           Q.    Do you disagree with the  
5   statement that the board selects and  
6   oversees the senior management team, which  
7   is charged with conducting the company's  
8   daily business?

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

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

15          A.    That's not correct.

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

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

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

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

9 Did I read that correctly?

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

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

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

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

25 Q. Right. And it says, "The board

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

4 A. "Company" refers to the global  
5 enterprise.

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

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

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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

18 A. Which, again, refers to the  
19 global enterprise that is Merck & Co., Inc.  
20 Merck & Co., Inc. [REDACTED]  
21 that public investors are investing in.

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

25 A. The global enterprise that is

1 Merck & Co., Inc.

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

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

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

10 A. It has the responsibility to the  
11 [REDACTED] that the shareholders of  
12 Merck & Co., Inc. that holds entities that  
13 operate throughout the globe.

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

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

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

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

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

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

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

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

9           Q.    And because Merck & Co., Inc.  
10   ████████████████████████████████████████ the  
11   board of Merck & Co., Inc. reviews and  
12   advises management on the operation of the  
13   subsidiaries, correct?

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

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

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

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

1 and deliver to patients medicines, correct?

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

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

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

10 Q. Including through its  
11 subsidiaries, right?

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

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

17 A. Yes.

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

25 A. At the global enterprise of

1 Merck & Co., Inc., correct.

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

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

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

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

16 Q. Right. And you say that Merck &  
17 Co., Inc. [REDACTED]

[REDACTED]  
19 A. [REDACTED]  
[REDACTED]

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

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

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

5 Merck & Co., Inc. [REDACTED]

6 [REDACTED] So Merck & Co.,  
7 Inc.'s board of directors is responsible  
8 for overseeing the affairs of the whole  
9 global enterprise.

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

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

15 Q. And that includes the oversight  
16 of the subsidiaries?

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

19 Q. But Merck & Co., Inc. [REDACTED]  
20 [REDACTED]  
[REDACTED]

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

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



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

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

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

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

15 ATTORNEY POWERS: Just a moment.

16 BY ATTORNEY POWERS:

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

21 Do you see that?

22 A. I do.

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

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

4 Did I read that correctly?

5 A. Yes.

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

14 Did I read that correctly?

15 A. You did.

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

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

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

25 A. It is true.

1 Q. All right. And the text --

2 A. And recall, as we've discussed  
3 before, "company" is the global enterprise  
4 of Merck & Co., Inc., which is operated  
5 through subsidiaries.

6 Q. Right. And the language  
7 continues, "The board's oversight and  
8 guidance are inextricably linked to the  
9 development and review of the company's  
10 strategic plan."

11 Did I read that correctly?

12 A. Yes.

13 Q. And the text continues. "By  
14 exercising sound and independent business  
15 judgment on the strategic issues that are  
16 important to the company's business, the  
17 board facilitates the company's long-term  
18 success," right?

19 A. You read that correctly.

20 Q. Merck & Co., Inc.'s board  
21 provides guidance to MCI's senior  
22 leadership, correct?

23 A. It does to Merck & Co.'s  
24 executive officers.

25 Q. And Merck & Co., Inc.'s board

1 monitors implementation of its guidance by  
2 the subsidiaries, correct?

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

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

12 Do you see that?

13 A. I do.

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

24 A. That's what that says.

25 Q. I'm going to hand you a document

1 that we will mark Exhibit 1.

2 (Whereupon, Exhibit 1 is marked  
3 for identification.)

4 BY ATTORNEY POWERS:

5 Q. This is a new document.

6 Do you recognize this document,  
7 Ms. Grez?

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

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

11 A. Co., Inc., yes.

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

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

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

22 A. That's what the first line says.

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

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

4 Correct?

5 A. Sorry. Where are you reading  
6 that?

7 Q. Well, do you agree with that  
8 statement?

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

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

18 A. [REDACTED]

[REDACTED] and the  
20 committee's looking at that from the global  
21 enterprise perspective.

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

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

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

12          A.    So the flow would be [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15          Q.    Yeah. So there's a communication  
16 up [REDACTED] but  
17 in order to make recommendations on matters  
18 related to the company's strategic --  
19 strategies and operations, [REDACTED]

[REDACTED]?

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

1 business is operated through subsidiaries.

2 So it's people at the meetings.

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

6 A. That's what happens at meetings.

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

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

15 Q. And that necessarily means  
16 oversight of the subsidiaries?

17 A. No.

18 Q. How does the board perform that  
19 oversight?

20 A. [REDACTED]e

21 [REDACTED]

22 [REDACTED]

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

25 A. [REDACTED]



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[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]

[REDACTED]

A. [REDACTED]

[REDACTED]

[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]

[REDACTED]

[REDACTED]

Q. Uh-huh.

1 A. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

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

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

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

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

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

21 A. The board is charged with  
22 overseeing the global enterprise that is  
23 Merck & Co., Inc. [REDACTED]

24 [REDACTED]

25 [REDACTED]

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

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

11          A. What do you mean by "charge"?

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

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

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

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

3 A. I see that.

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

10 Did I read that correctly?

11 A. Sounds like it, yeah.

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

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

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

22 A. Through its subsidiaries.

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

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

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

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

13 A. In what capacity?

14 Q. In this capacity.

15 A. But, like --

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

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

25 Q. And how does the board perform

1 the oversight that you just spoke of?

2 A. [REDACTED]

3 Q. [REDACTED]

4 A. [REDACTED]

5 Q. [REDACTED]

6 [REDACTED]

7 [REDACTED]?

8 A. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

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

15 A. I know that individuals who have  
16 attended research committee [REDACTED]

17 [REDACTED]

18 Q. And does the board provide  
19 guidance and instruction [REDACTED]

[REDACTED]?

21 A. The [REDACTED]

22 [REDACTED]

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

25 A. No. So the -- Merck Sharp &

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

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

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

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

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

18 A. As I've discussed, Merck & Co.,  
19 Inc. [REDACTED]

20 [REDACTED]

21 [REDACTED]

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

25 The next bullet is "Evaluating

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

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

8 Q. But I read that correctly, right?

9 A. The words are -- yeah.

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

13 Did I read that correctly?

14 A. Yes.

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

20 Did I read that correctly?

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

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



1 subsidiaries, right? [REDACTED]

2 [REDACTED]

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

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] And the board of directors of  
7 Merck & Co., Inc. is responsible for the  
8 global enterprise and owes its fiduciary  
9 duties to the shareholders of Merck & Co.,  
10 Inc.

11 Q. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 A. [REDACTED]

15 Q. [REDACTED]

[REDACTED]

[REDACTED]

18 Q. Do you attend board meetings?

19 A. I do.

20 Q. Do you attend all board meetings?

21 A. I attend most board meetings.

22 Q. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 A. [REDACTED]

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

5 A. I don't know when that started.

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

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

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

14 A. That's correct.

15 Q. What portions of meetings do you  
16 not attend?

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

23 Q. [REDACTED]  
[REDACTED]  
25 [REDACTED]

1

2

A.

3

Q. Do you attend attorney-client

4

privileged sections or legally privileged

5

sections of board meetings?

6

A. I have before.

7

Q. Do you regularly attend such

8

sessions?

9

A. I don't know what "regularly"

10

means.

11

Q. Is it your normal practice?

12

A. There's no normal practice.

13

Q. Do you attend all attorney-client

14

privileged sections of board meetings?

15

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

16

all.

17

Q. Do you normally step out of board

18

meetings when there's privileged matters

19

being discussed?

20

A.

21

22

Q. Are legal matters involving

23

litigations discussed at board meetings?

24

A.

25

Q.

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2

A.

3

Q.

4

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7

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

9

10

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12

13

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?

14

15

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

16

17

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

18

19

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

20

21

22

23

We are off the record.

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

24

25

THE VIDEOGRAPHER: The time is

1:36 p.m.

1                   We are back on the record.

2       BY ATTORNEY POWERS:

3           Q.     Welcome back, Ms. Grez.

4           A.     Thank you.

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

8           A.     I did not.

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

12          A.     Keytruda IV?

13          Q.     Yes.

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

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

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

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

23          A.     I'm not sure about the  
24    percentage.

25          Q.     Is it roughly 50 percent? Does

1     that sound right?

2             A.     I'm not sure.

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

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

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

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

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

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

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

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

1 perspective for Merck & Co., Inc.

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

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

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

11 A. For the loss of exclusivity of  
12 Keytruda IV.

13 Q. Yeah.

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

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

18 A. So it's something --

19 Q. A loss --

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

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

1 exclusivity of Keytruda?

2 A. What do you mean "concerned"?

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

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

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

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

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

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



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

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

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 Q. I'm going to hand you what we  
11 will mark Exhibit 2.

12 (Whereupon, Exhibit 2 is marked  
13 for identification.)

14 BY ATTORNEY POWERS:

15 Q. Do you recognize this document?

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

19 Q. That's right.

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

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

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

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

4 A. Counting, like, the cover page?

5 Q. Yes.

6 A. Okay.

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

9 A. I'm sorry. Counting both sides?

10 Q. Yes.

11 A. And counting the cover page?

12 Q. Yes.

13 A. Okay.

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

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

19 Q. One page past that.

20 A. Okay.

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

1           some third-party transcript.

2           ATTORNEY POWERS:   Okay.

3   BY ATTORNEY POWERS:

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

6           A.    Back to the first page?

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

10          A.    I see that.

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

13                Do you see that?

14          A.    I do.

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

17                Do you see that?

18          A.    I do.

19          Q.    Do you know what MRK.N is?

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

21          Q.    Do you know what MRK is?

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

25          Q.    Right.  And then after that, it

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

3 A. It does say that.

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

7 A. That's what it says.

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

11 A. It does say that.

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

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

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

19 A. I have no idea.

20 Q. Did you attend the earnings call?

21 A. Did I attend the earnings call?

22 Q. This earnings call.

23 A. I listened.

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

1 said?

2 ATTORNEY HELM: Objection to  
3 form.

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

6 BY ATTORNEY POWERS:

7 Q. Fair enough.

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

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

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

17 Is that what you're asking?

18 Q. Yes.

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

22 Is that where you are?

23 BY ATTORNEY POWERS:

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

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

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

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

17 Do you see that?

18 A. I see that.

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

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

25 ATTORNEY HELM: Just for the

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

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

6 (Whereupon, Exhibit 3 is marked  
7 for identification.)

8 BY ATTORNEY POWERS:

9 Q. Do you recognize this document?

10 A. I can read what it says.

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

15 A. It does.

16 Q. And then it says, "MRK.N."  
17 We talked about before, right?

18 A. It says that here.

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

22 A. It says that.

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

1 A. It says that.

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

5 A. It says that.

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

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

14 A. That's written here.

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

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

19 Q. TD Cowen and Healthcare  
20 Conference is a respected conference that  
21 investors listen to, right?

22 A. TD Cowen is a conference.

23 Q. Do you agree that it's respected  
24 that investors listen to it?

25 A. There are investors there. I



1 don't know to what extent.

2 Q. And you agree that Dean Li is the  
3 executive vice president and president of  
4 research laboratories at Merck & Co.,  
5 right?

6 A. That is his officer role at  
7 Merck & Co., Inc.

8 Q. And Caroline Litchfield is the  
9 chief financial officer and executive vice  
10 president of Merck & Co., Inc., right?

11 A. That is her officer role at  
12 Merck & Co., Inc.

13 Q. I'm sorry I'm going to ask you to  
14 count some pages again, go to Page 9.

15 A. Counting the same way as before  
16 starting --

17 Q. Yes --

18 A. Okay.

19 Q. -- I think so.

20 ATTORNEY HELM: We'll put a lack  
21 of authentication objection in for the  
22 same reasons as the last document.

23 BY ATTORNEY POWERS:

24 Q. Yeah, it's the ninth page  
25 counting cover.

1           And we see a statement from  
2     Caroline Litchfield on that page, right?

3           A.    It looks like there's a  
4     statement.

5           Q.    And she says, "Yeah.  So we're  
6     really excited about Qlex, our subcutaneous  
7     formulation of pembrolizumab and the  
8     benefits it can provide patients.  As Dean  
9     just demonstrated in just a very short  
10    duration shot, you have been given your  
11    treatment for cancer.

12                "So what we have with this is a  
13    sales level of around 35 million in the  
14    fourth quarter of 2025."

15                Did I read that correctly?

16           A.    That's what's written here.

17           Q.    And she continues a few  
18    paragraphs down.  "So we expect still and  
19    have confidence in the 30 percent to  
20    40 percent penetration of our overall  
21    Keytruda business with adoption here for  
22    that patient group.

23                "And we will continue to provide  
24    insights to our investors as we see this  
25    unfold over the coming months and

1 quarters."

2 Did I read that correctly?

3 ATTORNEY POWERS: I'm going to  
4 hand you what we will mark 4.

5 (Whereupon, Exhibit 4 is marked  
6 for identification.)

7 BY ATTORNEY POWERS:

8 Q. Do you recognize this document?

9 A. I see that it says it's an edited  
10 transcript.

11 Q. And it says on the first page,  
12 "LSEG StreetEvents," right?

13 A. It does.

14 Q. It says, "Edited Transcript" --

15 A. Correct.

16 Q. -- it does?

17 And MRK.N as before?

18 A. It says, "MRK.N," yes.

19 Q. This time it says, "Merck & Co.,  
20 Inc. at J.P. Morgan Healthcare Conference,"  
21 right?

22 A. It does say that.

23 Q. Are you familiar with J.P. Morgan  
24 Healthcare Conference?

25 A. That there's an annual

1 J.P. Morgan Healthcare Conference, yes.

2 Q. Do you know where that takes  
3 place?

4 A. I believe in San Francisco.

5 Q. And then it says, "Event Date and  
6 Time, January 13, 2026." And then it says,  
7 "12:30 a.m. GMT," right?

8 A. It does say that.

9 Q. Then just under that, it says,  
10 "Overview Company Summary," right?

11 A. It does say that.

12 Q. And then on the bottom right  
13 corner, it says, "LSEG Data and Analytics,"  
14 right?

15 A. It does.

16 Q. Do you know what LSEG Data and  
17 Analytics is?

18 A. I don't.

19 Q. Now if we go to Page 10 -- I'm  
20 sorry -- the first page with text, it's  
21 actually Page 2 of this document, we see  
22 corporate participants at the top of that  
23 page, right?

24 A. I see that.

25 Q. There are two corporate

1 participants for Merck & Co., one is Robert  
2 Davis, chairman of the board, president and  
3 CEO, right?

4 A. Correct.

5 Q. The other participant is Dean Li  
6 from Merck & Co., executive vice president,  
7 president of Merck Research Laboratories,  
8 right?

9 A. Correct.

10 Q. And this time Robert Davis starts  
11 off, and he says just a couple lines down,  
12 he says, "Before I get started, just real  
13 quickly, I would like to remind you that we  
14 do have forward-looking statements being  
15 made. I point you to our language on our  
16 website if you would like more information  
17 about that."

18 Do you see that?

19 A. I do.

20 Q. And he says, "If you look at  
21 where we are at Merck, I'm pleased to say  
22 where we're really starting to see our  
23 transformation underway. We've been  
24 executing on our strategy. I can tell you  
25 we're in a position now where I think we

1 are well-positioned for success."

2 Do you see that?

3 A. I do.

4 Q. Now if we go to Page 10 of this  
5 document. I'm going to need you to count  
6 again. I apologize.

7 There's a question from a  
8 J.P. Morgan analyst called Christopher  
9 Schott. Tell me when you're there.

10 A. I'm not sure if I'm on the right  
11 page. I think he's the only one asking  
12 questions.

13 Q. Fair enough. Christopher Schott  
14 asks a question on the page that I'm on  
15 that says, "You're only just thinking in  
16 terms of what a tail could look like on  
17 Keytruda when we can consider that  
18 30 percent or 40 percent opportunity?"

19 Do you see that text?

20 A. I see that.

21 Q. And Mr. Davis responds, and he  
22 says, "Our intention is to price, to ensure  
23 we can maintain share and maximize that  
24 tail as long as possible. So we're looking  
25 much more at the value under the curve as

1     opposed to trying to do something where you  
2     take a short window of time to optimize  
3     value and then have it fall off a cliff, if  
4     you will."

5             Do you see that?

6             A.    I see that.

7             Q.    And Mr. Davis there was talking  
8     about the Keytruda Qlex opportunity, right?

9             A.    I'm not sure what he was talking  
10    about.

11            ATTORNEY HELM:  Objection to  
12    form.  Objection to authentication of  
13    the document.

14    BY ATTORNEY POWERS:

15            Q.    If you look at --

16            ATTORNEY POWERS:  One-word  
17    objection, please.

18            ATTORNEY HELM:  And hold on.  And  
19    this is going outside the scope of the  
20    board's order from March 24 that  
21    specifically says, patent owner may  
22    introduce documents outside the record  
23    during the deposition to aid its  
24    cross-examination given that both sides  
25    have already had ample opportunity to

1 introduce evidence on the IPR dispute,  
2 neither side is authorized to enter new  
3 exhibits into the record other than  
4 those specifically authorized by the  
5 March 23, 2026, order.

6 This is the third exhibit that  
7 you've introduced that is new into the  
8 record, and this is the first of those  
9 three new exhibits that you've had any  
10 questions on cross-examination for the  
11 witness.

12 So it's an improper attempt to  
13 get in new exhibits on the record that  
14 you are specifically only asking the  
15 witness to see if that is correct what  
16 you have read into the record.

17 ATTORNEY POWERS: Thank you. I'm  
18 not finished with my cross, and we are  
19 specifically allowed to introduce new  
20 exhibits as part of this deposition.  
21 So we disagree with you, Counsel.

22 ATTORNEY HELM: It's limited to  
23 aid in cross-examination.

24 ATTORNEY POWERS: That's what I'm  
25 doing.



1           ATTORNEY HELM: You had no cross  
2           on the last two exhibits.

3           ATTORNEY POWERS: I'm working on  
4           it. Thank you.

5 BY ATTORNEY POWERS:

6           Q. So you can see that Mr. Davis  
7           says, "Yeah" -- this is the first paragraph  
8           -- "Yeah, if you look at where we are, our  
9           goal is in 18 to 24 months to have  
10          30 percent to 40 percent adopted. That  
11          would put us out about the period of time,  
12          depending on what happens with the LOE, to  
13          be in a situation that we have that at the  
14          time we lose exclusivity."

15                  Do you see that?

16          A. I see that.

17          Q. And Mr. Davis was talking about  
18          Keytruda Qlex, correct?

19          A. So I'm not familiar with this  
20          document. I can go and read it to make  
21          sure I understand what's being said.

22          Q. You don't know one way or the  
23          other whether or not he's talking about  
24          Keytruda Qlex there?

25          A. I don't know what he's talking

1 about.

2 Q. He was talking -- he was asked a  
3 question about Keytruda, right?

4 A. So if you want me to answer, I'll  
5 need to look at the context for the  
6 questions in order to try to answer your  
7 questions.

8 Q. You can't say right now whether  
9 or not this is about Keytruda Qlex; is that  
10 correct?

11 A. I would need to look at the  
12 context.

13 Q. Okay. Okay. I'm going to hand  
14 you another document.

15 (Whereupon, Exhibit 5 is marked  
16 for identification.)

17 ATTORNEY HELM: I'd just like to  
18 clarify my earlier objection about this  
19 being outside the scope of the board's  
20 order. I think I said March 24, and I  
21 meant to say the March 12 order.

22 ATTORNEY POWERS: Okay. Thank  
23 you.

24 BY ATTORNEY POWERS:

25 Q. Do you have the document in front

1 of you?

2 A. I do.

3 Q. Okay. And this document -- have  
4 you seen this document before?

5 A. Not that I recall.

6 Q. This document has "Refinitiv  
7 StreetEvents" at the top, right? It says  
8 that?

9 A. I see that written.

10 Q. And it says, "Edited Transcript."  
11 Then it says, "MRK.N" as before, right?

12 A. I see MRK.N.

13 Q. Then it says Merck & Co., Inc. at  
14 J.P. Morgan Healthcare Conference, right?

15 A. I see that written.

16 Q. And then it says, "Event  
17 Date/Time January 14, 2025. 12:30 a.m.  
18 GMT," right?

19 A. It says that.

20 Q. Then if you go to the first page  
21 of that document with text on it?

22 ATTORNEY HELM: I want to  
23 maintain the authentication objection  
24 for this document as well.

25 ///

1 BY ATTORNEY POWERS:

2 Q. You see at that top of the page,  
3 it says, "Corporate Participants," right?

4 A. I see that.

5 Q. And you -- and here you have  
6 Robert Davis, Merck & Co., Inc., chairman  
7 of the board, president and chief executive  
8 officer, right?

9 A. I see that.

10 Q. And then you have Dean Li,  
11 Merck & Co., Inc., executive vice  
12 president, president Merck Research  
13 Laboratories, right?

14 A. I see that written.

15 Q. And are you familiar -- scratch  
16 that.

17 And then leading off the  
18 presentation, we have Robert Davis talking  
19 on the transcript, right?

20 A. Sorry. What was the question?

21 Q. You have Mr. Davis starting off  
22 talking on the first page there of that  
23 document?

24 A. It looks like Chris Schott  
25 started the conversation.

1 Q. True, actually. And then he  
2 passes it to Mr. Davis, right?

3 A. Yes.

4 Q. And Mr. Davis says, "As you  
5 reflect on where Merck is and where we've  
6 been, hopefully you see what we see. And I  
7 can tell you I feel very good about where  
8 the team is in executing on our strategic  
9 priorities.

10 "And if I think about that, most  
11 importantly, it's the progress we are  
12 making advancing the pipeline and  
13 augmenting the pipeline. And importantly,  
14 we continue to focus on scientific  
15 innovation with the patient really at the  
16 center as the core of what we deliver of  
17 long-term sustainable value both for our  
18 shareholders and for all of our  
19 stakeholders."

20 Did I read that correctly?

21 ATTORNEY HELM: Objection to  
22 form.

23 THE WITNESS: Seemed correct to  
24 me.

25 ///

1 BY ATTORNEY POWERS:

2 Q. What do you think Mr. Davis meant  
3 when he said "where the team is executing  
4 on our strategic priorities"?

5 A. I'm not sure what you mean.

6 Q. He said, "I feel very good about  
7 where the team is executing on our  
8 strategic priorities."

9 What do you think he meant by  
10 that?

11 A. So when Rob is speaking to the  
12 investing public -- and I believe I had  
13 talked about this in connection with SEC  
14 filings -- the same holds true in  
15 connection with investor conferences or  
16 earnings calls.

17 He's speaking on behalf of the  
18 global enterprise, that's Merck & Co., Inc.  
19 And that's made up of employees who work  
20 for subsidiaries conducting the business.

21 Q. And so Mr. Davis is excited  
22 about -- or feels good about where the team  
23 is executing on our strategic -- let me try  
24 that all again.

25 Mr. Davis feels good about where

1 the team is in executing on strategic  
2 priorities through its subsidiaries,  
3 correct?

4 A. It's talking -- he's talking  
5 about the global business, right? He's  
6 speaking to investors. Merck's global  
7 business is made up of business that's  
8 conducted through global subsidiaries  
9 around the world.

10 Q. And he's talking about strategies  
11 that are carried out around the world too,  
12 right?

13 A. He's talking about the business  
14 happening around the world.

15 Q. Right. Through the subsidiaries  
16 of Merck & Co., Inc., correct?

17 A. [REDACTED]  
[REDACTED]  
[REDACTED]

20 Q. Do you agree that Merck & Co.'s  
21 long-term sustainable value is important  
22 for Merck & Co. shareholders?

23 A. The long-term sustainable  
24 business of Merck & Co., Inc. as a global  
25 enterprise is important to the shareholders

1 that are investing in that public company.

2 Q. Let's go to Page 9. And this one  
3 actually has page numbers on the bottom  
4 right corner if you look.

5 A. Oh, yeah. Page 9 --

6 Q. Do you see -- yes, ma'am.

7 Now, you see that Mr. Davis is  
8 talking again there and he says -- the  
9 first time he speaks on that page, "So  
10 maybe to say it as plainly as possible, we  
11 expect to be able to see adoption of about  
12 30 percent to 40 percent of all Keytruda  
13 into subcutaneous pembrolizumab.

14 "So you should assume 30, 40 is  
15 what will be the -- what we have as the  
16 opportunity that we are going to realize in  
17 subcutaneous pembrolizumab as we go  
18 forward, which is meaningful."

19 Did I read that correctly?

20 A. I'm not sure if you read it  
21 entirely. There's sort of -- but, yeah,  
22 the gist.

23 Q. The part that I read, I read  
24 correctly?

25 A. Do you want to read it again?



1 Q. Sure. I will.

2 "So maybe to say it as plainly as  
3 possible, we expect to be able to see  
4 adoption of about 30 percent to 40 percent  
5 of all Keytruda into subcutaneous  
6 pembrolizumab. So you should assume  
7 30 percent, 40 percent is what will be  
8 the -- what we have as the opportunity that  
9 we are going to realize in subcutaneous  
10 pembrolizumab as we go forward, which is  
11 meaningful."

12 Did I read that correctly?

13 A. You did.

14 Q. Okay. And Mr. Davis is talking  
15 about subcutaneous pembrolizumab, right?  
16 That's the opportunity?

17 A. It appears that he is.

18 Q. And subcutaneous pembrolizumab is  
19 what Merck & Co., Inc. and its subsidiaries  
20 sell as Keytruda Qlex, right?

21 A. I think we need to be crystal  
22 clear here. Merck & Co., Inc. isn't  
23 selling; its subsidiaries are.

24 Q. So Merck -- so Mr. Davis, the CEO  
25 and chairman of the board of Merck & Co.,

1 Inc. is talking about the sales of Keytruda  
2 Qlex through the subsidiaries of Merck &  
3 Co., Inc., right?

4 A. Right. So I think, again, just  
5 to refer back to my declaration, Merck &  
6 Co., Inc. is the publicly traded parent  
7 company. And so it provides consolidated  
8 information on behalf of itself and its  
9 subsidiaries.

10 So when Rob Davis is speaking to  
11 investors, he's speaking as a consolidated  
12 report on behalf of Merck & Co., Inc. and  
13 its subsidiaries.

14 Q. A little further down on the  
15 page, Mr. Davis is responding to another  
16 question by Chris -- Chris Schott.

17 And he says -- Mr. Schott says,  
18 "One of the questions I get from investors  
19 is how do we think about -- let's say you  
20 get 30 percent or 40 percent converted  
21 over. What does that product look like in  
22 a post-biosimilar world for the IV  
23 product?"

24 Do you see that statement, that  
25 question?

1           A.    I see it.

2           Q.    And then Mr. Davis responds, and  
3 he says, "So our strategy has been very  
4 much to focus on how can we get maximum  
5 conversion or I should say adoption.  
6 Because it's not only -- conversion  
7 implies, it's bringing patients over. It's  
8 actually we're bringing new patients on  
9 that we'll be bringing on. So it's  
10 adoption to that 30 percent to 40 percent."

11                   Do you see that statement?

12          A.    I see it.

13          Q.    So Mr. Davis is talking about  
14 strategy there as the CEO of Merck & Co.,  
15 Inc., right?

16          A.    He's speaking on behalf of the  
17 publicly traded parent company, which is  
18 Merck & Co., Inc. and its subsidiaries.

19          Q.    And further down on that page,  
20 Mr. Davis says, "So as we -- obviously, we  
21 were launching now with Keytruda still  
22 patent-protected. But then as you think  
23 about the IRA and as you think about  
24 post-LOE, we'll make sure that the price is  
25 competitive, because our goal is to

1 maintain share.

2 "And we think that we can still  
3 do that at value -- at a value that's going  
4 to be meaningful to protect the revenue  
5 that we think we need to try to have post  
6 the LOE."

7 Do you see that statement?

8 A. I do.

9 Q. And that LOE is the loss of  
10 exclusivity of Keytruda that Mr. Davis is  
11 talking about, right?

12 A. Based on looking at this alone,  
13 it does look like it's the Keytruda IV LOE.

14 Q. And Mr. Davis is talking about  
15 the Keytruda Qlex opportunity here,  
16 correct?

17 ATTORNEY HELM: Objection to  
18 form.

19 THE WITNESS: I just need to look  
20 back at what came before. It's hard  
21 to -- I need context to review.

22 BY ATTORNEY POWERS:

23 Q. Sure. In the previous statement  
24 from Mr. Davis, he was talking about  
25 subcutaneous pembrolizumab, right?

1           A.    I'm sorry.  I'd like to be able  
2   to read it --

3           Q.    Sure.

4           A.    -- so I can answer your  
5   questions.

6           Q.    Go ahead.

7                   (Pause for reading/reviewing.)

8           THE WITNESS:  Okay.  So sorry,  
9   what were you asking about?

10   BY ATTORNEY POWERS:

11           Q.    In the statement from Mr. Davis  
12   there, he's talking about subcutaneous  
13   pembrolizumab, in other words --

14           A.    Which statement?

15           Q.    In the last one that we just read  
16   on the bottom of Page 9 where he's talking  
17   about "we'll make sure that the price is  
18   competitive because our goal is to maintain  
19   share."

20                   He's talking about the price of  
21   subcutaneous pembrolizumab, right?

22           A.    I think so, but I can't say for  
23   sure.

24           Q.    And Mr. Davis is talking about  
25   making sure "that the price is competitive

1 because our goal is to maintain share,"  
2 that's because the revenue of Keytruda and  
3 Keytruda Qlex is important to Merck & Co.'s  
4 shareholders and its share price, right?

5 A. I'm not sure why he's saying  
6 that. I can't speak to his intent.

7 Q. Do you think it has to do with  
8 the share price of Merck & Co. and the  
9 investors' concern about loss of  
10 exclusivity?

11 A. I think he's being responsive to  
12 Chris Schott.

13 Q. And Mr. Schott was asking about  
14 Keytruda Qlex, right?

15 A. It does look like that.

16 Q. Okay. We can move on. I'm going  
17 to hand you what's been previously marked  
18 as 2466.

19 (Whereupon, Previously Marked  
20 Exhibit 2466 is identified for  
21 the record.)

22 THE WITNESS: Is this something  
23 that I cite to in my declaration?

24 BY ATTORNEY POWERS:

25 Q. Just one minute.

1           Yes, you do.

2           A.    Would you mind flagging where?  
3   Or I can look through.

4           Q.    You cite it in Paragraph 29 of  
5   your declaration.

6                   And I just have a few questions  
7   about this document.  It's a Merck & Co.  
8   SEC filing, right?

9           A.    It's a Form 8-K filed by Merck &  
10   Co., Inc. with the SEC.

11          Q.    Yeah.  And if you look at the  
12   last page of the document, you might  
13   recognize the signature.

14          A.    I see that's my signature.

15          Q.    You signed this document on  
16   February 3, 2026, right?

17          A.    Correct.

18          Q.    Now, on Page 3, there's a section  
19   labeled "Item 9.01.  Financial Statement  
20   and Exhibits."

21                   Do you see that?

22          A.    I do.

23          Q.    And there are two exhibits  
24   attached to this SEC filing, right?

25          A.    So I can't say for sure, but

1 given the underlining, it looks like, yes,  
2 there --

3 Q. Okay. And they've been  
4 previously marked in this case 2467 and  
5 2468.

6 (Whereupon, Previously Marked  
7 Exhibit 2467 is identified for  
8 the record.)

9 (Whereupon, Previously Marked  
10 Exhibit 2468 is identified for  
11 the record.)

12 ATTORNEY POWERS: I'm going to  
13 hand those to you now. 2467.

14 THE WITNESS: Do I cite to these  
15 in my declaration?

16 BY ATTORNEY POWERS:

17 Q. Yes, you do.

18 A. Okay.

19 Q. And here is 2468.

20 (Whereupon, Previously Marked  
21 Exhibit 2468 is identified for  
22 the record.)

23 BY ATTORNEY POWERS:

24 Q. If we look at -- start out with  
25 2467 --



1           A.    Sorry, I just want to see where I  
2    cited to them.

3           Q.    Paragraph 30 of your declaration.

4           A.    Okay.

5           Q.    So if we look at the title of  
6    2467, it says, "Merck & Co., Inc., Rahway,  
7    New Jersey, USA Announces Fourth-Quarter  
8    and Full-Year 2025 Financial Results;  
9    Highlights Progress Advancing Broad,  
10   Diverse Pipeline," right?

11          A.    I see that.

12          Q.    And Merck & Co., Inc. stated that  
13   its full year worldwide sales were 6 --  
14   \$65 billion, right?

15          A.    This is on a consolidated basis  
16   with its subsidiaries.

17          Q.    And Merck & Co., Inc. stated that  
18   its Keytruda Qlex sales were 31.7 billion  
19   for 2025, right?

20          A.    No.   That's not what this states.

21          Q.    Give me just a minute.

22                I must have misread. Keytruda  
23   Qlex sales were 31.7 billion?

24          A.    And then if you read further on.

25          Q.    Keytruda Qlex sales of

1 40 million?

2 A. It does say that.

3 Q. Okay. So Keytruda --

4 A. And, again, just to confirm, this  
5 is on a consolidated basis, Merck & Co.,  
6 Inc. and its subsidiaries.

7 Q. Right. But Keytruda and Qlex --  
8 Keytruda and Keytruda Qlex together  
9 accounted for 31.7 billion in sales for  
10 2025, right?

11 A. So that says -- that's what that  
12 says here. And then it goes on to say that  
13 of those, Qlex was 40 million.

14 Q. Right.

15 A. Yeah.

16 Q. Okay. So it's fair to say that  
17 Keytruda and Keytruda Qlex sales accounted  
18 for nearly half of Merck & Co., Inc.'s  
19 total sales for 2025, right?

20 A. So I don't know what you mean by  
21 "fair to say."

22 Q. Is it true?

23 A. So it's true that the figure you  
24 cited included Keytruda Qlex sales of  
25 40 million, so I would read that of the

1 65 billion, 40 million were Keytruda Qlex.

2 Q. Yes. But Keytruda and Keytruda  
3 Qlex together accounted for 31.7 billion in  
4 sales, right?

5 A. This earnings release says  
6 Keytruda/Keytruda Qlex sales were  
7 31.7 billion.

8 Q. Right. And if you go to Page 5,  
9 you'll see a breakdown. That might be  
10 helpful.

11 You see Keytruda, Keytruda Qlex,  
12 31.68, right, billion?

13 (Stenographer requests  
14 clarification and colloquy will  
15 not be captured on the written  
16 record.)

17 ATTORNEY POWERS: Billion.

18 THE WITNESS: Sorry. What was  
19 the question?

20 BY ATTORNEY POWERS:

21 Q. On Page 5, you see a chart,  
22 right?

23 A. I do see a chart.

24 Q. And it says, "Full-Year Sales  
25 Performance," right? At the top above that

1 chart.

2 A. It says, "Full-Year Sales  
3 Performance."

4 Q. And then it says, "The following  
5 table reflects sales of the company's top  
6 products and significant performance  
7 drivers," right?

8 A. Yes. And, again, "company" as  
9 the consolidated enterprise of Merck & Co.,  
10 Inc., [REDACTED]  
[REDACTED]

12 Q. In the very top of that list, as  
13 far as products go, is Keytruda/Keytruda  
14 Qlex at 31.68 billion, right?

15 A. It does say that,  
16 Keytruda/Keytruda Qlex.

17 Q. And the total pharmaceutical  
18 sales for Merck & Co. are listed just above  
19 that at 58.142 billion, right?

20 A. Yes.

21 Q. So in December -- so as of the  
22 year ended December 31, 2025, Keytruda and  
23 Keytruda Qlex accounted for more than half  
24 of Merck & Co.'s pharmaceutical sales,  
25 correct?

1           A.    I mean, I'm not gonna do the  
2 math, but that seems right.

3           Q.    Is it fair to say that Keytruda  
4 is truly a blockbuster for Merck & Co.,  
5 Inc.?

6           A.    So Keytruda IV has been a  
7 blockbuster for the global enterprise that  
8 is Merck & Co., Inc.

9           Q.    And is it your understanding that  
10 Keytruda Qlex has only recently launched?

11          A.    I don't know when Keytruda Qlex  
12 launched.

13          Q.    Do you have any idea when it  
14 launched?

15          A.    I'm not sure.

16          Q.    Does it sound right that it was  
17 at the end of last year?

18          A.    That sounds right.

19          Q.    Do you agree that Keytruda is  
20 Merck & Co.'s most important product?

21                ATTORNEY HELM:  Objection to  
22 form.

23                THE WITNESS:  So for Merck & Co.,  
24 Inc., [REDACTED] that's  
25 reporting on behalf of its consolidated

1           subsidiaries, Keytruda IV has been an  
2           important product for the global  
3           enterprise.

4   BY ATTORNEY POWERS:

5           Q.    It's the largest  
6           revenue-generating product for the global  
7           enterprise, correct?

8           A.    That's my understanding.

9           Q.    That's what these numbers say,  
10          right?

11          A.    Well, so here it's saying  
12          Keytruda/Keytruda Qlex. And then on the  
13          front page, it subtracts out Keytruda Qlex  
14          as 40 million. So, yeah, I think that  
15          makes sense for the Keytruda IV.

16          Q.    Okay. If you look at  
17          Paragraph 34 of your declaration.

18                 You say that Merck & Co., Inc.'s  
19          10-Q filing with the SEC for the quarter  
20          ended September 30, 2025, states the  
21          company filed revocation actions against a  
22          bunch of patents.

23                 Do you see that?

24          A.    I do.

25          Q.    And you say that these revocation

1 actions were brought by subsidiaries of  
2 Merck & Co., Inc., right?

3 A. I do.

4 Q. And you say that in the UK, the  
5 revocation was brought by Merck Sharp &  
6 Dohme (UK) Limited, right?

7 A. I do.

8 Q. And in France, the revocation  
9 action was brought by MSD France, right?

10 A. Yes.

11 Q. In Germany, the revocation action  
12 was brought by MSD Sharp & Dohme GmbH,  
13 right?

14 A. That's what it says.

15 Q. Well, that's what you wrote,  
16 right?

17 A. Indeed.

18 Q. And in the Netherlands, the  
19 revocation action was brought by Merck  
20 Sharp & Dohme B.V., right?

21 A. Right.

22 Q. How did you learn that?

23 A. In talking to in-house counsel.

24 Q. Who?

25 A. Mark and Eric.

1 Q. Mr. Stewart?

2 A. Mr. Stewart.

3 Q. And that's because Mark Stewart  
4 is the vice president of global  
5 intellectual property litigation; is that  
6 right?

7 A. Mark Stewart is the vice  
8 president at Merck Sharp & Dohme LLC.

9 Q. Of global intellectual property  
10 litigation?

11 A. Let me just confirm.  
12 That's correct.

13 Q. Why is his title global?

14 A. I'm not sure.

15 Q. You don't have any idea why  
16 Mr. Stewart's title is vice president  
17 global intellectual property litigation?

18 A. I'm assuming because there can be  
19 global IP litigation.

20 Q. Yeah. And Mr. Stewart informed  
21 you of these litigations in the UK, France,  
22 Germany, the Netherlands, right?

23 A. Yes.

24 Q. And these are all litigations,  
25 revocation actions, and so on that involve



1     Halozyme Inc., right?

2             A.     So I have to look at the  
3     captions. I don't know anything about  
4     the...

5             Yes. It says -- yeah, Halozyme.

6             Q.     Yeah, so all these revocation  
7     actions and different proceedings that  
8     you're talking about in Paragraph 34 are  
9     all various Merck entities against  
10    Halozyme, right?

11            A.     Yes.

12            Q.     Okay. Does Mr. Stewart  
13    coordinate with foreign subsidiaries on  
14    global IP litigation?

15            A.     I'm not sure how he performs his  
16    function, but IP is primarily run out of  
17    Merck Sharp & Dohme LLC. [REDACTED]

[REDACTED]

19            Q.     You don't have any understanding  
20    of how Mr. Stewart learned of what he told  
21    you regarding these revocation proceedings  
22    you wrote about in your declaration?

23            A.     As I said, my understanding, he  
24    has global responsibilities.

25            Q.     So what are those global

1 responsibilities, to your understanding?

2 A. With respect to intellectual  
3 property litigation.

4 Q. Global responsibilities involving  
5 coordination with subsidiaries?

6 A. That would -- that makes sense  
7 how that would work, but I don't actually  
8 know how -- how that works.

9 Q. You're not sure?

10 A. I just said I don't actually  
11 know.

12 Q. Okay. Do you know if Mark  
13 Stewa [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

6

Q. And Ms. Zachary has a dual role.

7

We established that this morning, right?

8

A. I believe I established that in

9

my declaration.

10

Q. Yeah. Was Mark Stewart involved

11

in the UK revocation action brought by

12

Mark -- let me try that again.

13

Was Mark Stewart involved in the

14

UK revocation action brought by Merck Sharp

15

& Dohme UK?

16

A. I don't know, but I think it's

17

important to point out the reason I cited

18

to these in my declaration is to provide an

19

example of the short form that is used in

20

our SEC reports to refer to the

21

consolidated business of Merck & Co., Inc.

22

and its subsidiaries.

23

It's for that purpose that I cite

24

it. And that's what I'm here to speak

25

about.

1 Q. Okay. Well, I get to ask you  
2 questions about what you cited, so I'm  
3 going to do that.

4 A. Wonderful.

5 Q. Do you know if Mark Stewart was  
6 involved in the revocation action in France  
7 brought by MSD France?

8 A. As I said before, I know what I  
9 wrote in my declaration for purposes of  
10 showing that other subsidiaries had filed  
11 different proceedings that are referred to  
12 in a particular SEC filing as being filed  
13 by the company.

14 Q. And they were really filed by  
15 subs is your point; is that correct?

16 A. My point in here was to say, yes,  
17 the 10-Q used the broad company to refer to  
18 Merck & Co., Inc. and its consolidated  
19 subsidiaries in reference to specific  
20 actions.

21 But those specific actions were  
22 brought by subsidiaries of Merck & Co.,  
23 Inc.

24 Q. Was Mr. Stewart involved in the  
25 revocation action in Germany brought by MSD



1 A. -- and look at my declaration.

2 Q. I see what the problem is. Let  
3 me ask a different question.

4 [REDACTED]  
[REDACTED]  
[REDACTED]

7 Q. Okay. Look at page -- look at  
8 Paragraph 36 of your declaration. You say  
9 there, "More specifically, in the context  
10 of the Halozyme litigation and these PGR  
11 proceedings, I understand that Merck Sharp  
12 & Dohme LLC employees, including Mark  
13 Stewart, provide information that is  
14 included in Merck & Co., Inc.'s SEC  
15 disclosures."

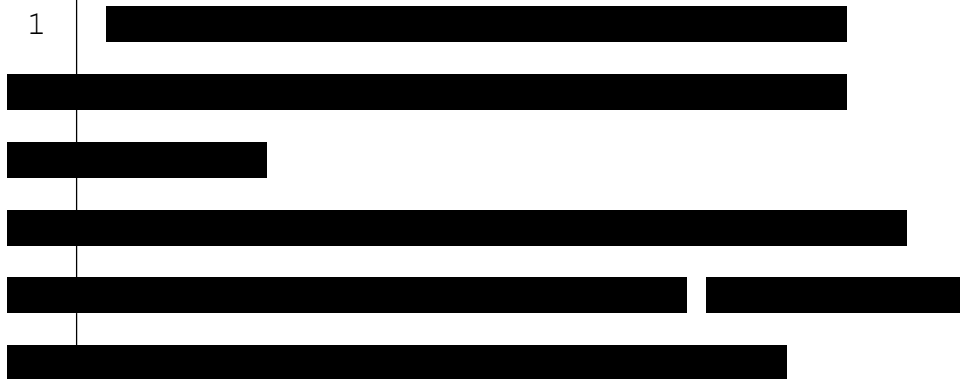
16 A. I see that.

17 Q. But just a moment ago, I asked  
18 you if Mr. Stewart provides information to  
19 anyone at Merck & Co., Inc., and you said  
20 he does not.

21 A. This is information that's  
22 included in Merck & Co., Inc.'s SEC  
23 disclosures. [REDACTED]  
[REDACTED]

25 Q. [REDACTED]

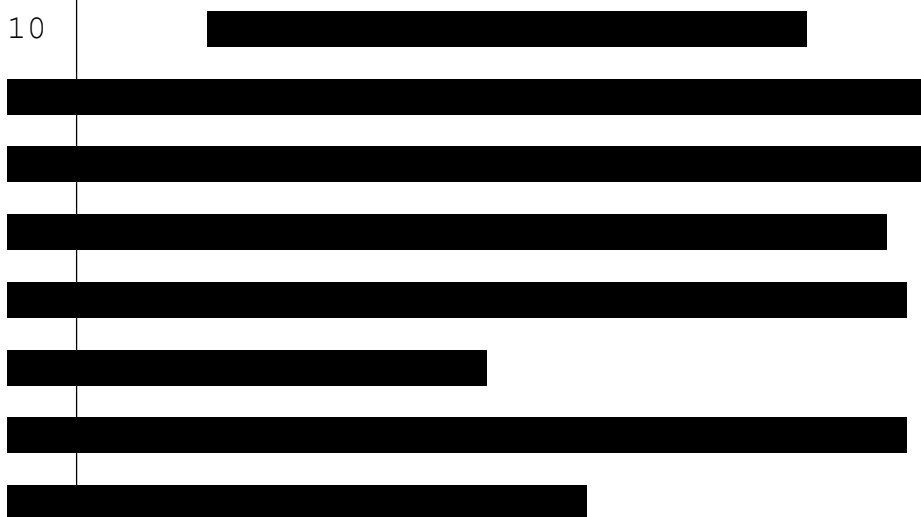
1



7



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17

BY ATTORNEY POWERS:

ATTORNEY HELM: And I'll caution  
you not to answer that if you can't do  
so without revealing privileged  
communications.



1

2 Q. Going back to Merck & Co.'s SEC  
3 filings, does Merck & Co., Inc. know the  
4 information in Merck & Co., Inc.'s SEC  
5 filings?

6 A. What does that mean?

7 Q. Well, I want to understand if  
8 there's any flow of information to Merck &  
9 Co., Inc. And I'm trying to figure out  
10 what the process is.

11 So how does Merck & Co. come to  
12 know the information about global  
13 litigations that gets in its SEC filings?

14 A. So, I mean, obviously Merck &  
15 Co., Inc. is not a person. So I just --  
16 I'm, like, trying to understand what you  
17 mean.

18 Q. Well, all action is ultimately  
19 individual action, right?

20 So I'm trying to understand the  
21 process by which the information about  
22 global litigations involving various  
23 subsidiaries around the world ends up in  
24 Merck & Co., Inc.'s SEC filings.

25 And I wonder -- I'm trying to ask

1 who's reporting that such that it ends up  
2 in Merck & Co., Inc.'s SEC filings.

3 A. So it depends on the SEC filing,  
4 but for the consolidated report --  
5 reporting, like a 10-K or a 10-Q, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

9 Ultimately, it's a consolidated  
10 report on behalf of all of the  
11 subsidiaries. And so you may be aware that  
12 the CEO of a public company as well as the  
13 CFO of a public company have to certify as  
14 to the reporting.

15 Q. Uh-huh. And so does that mean  
16 that Mr. Stewart's information ultimately  
17 makes it to the CEO and CFO in their roles  
18 as officers of Merck & Co., Inc.?

19 A. I think you're just getting this  
20 a little confused. There will be a  
21 document that will include information  
22 that's consolidated from subsidiaries  
23 around the world.

24 That's synthesized into our  
25 required reporting with the SEC. That

1 document gets reviewed by the appropriate  
2 officers of Merck & Co., Inc. since it is a  
3 Merck & Co., Inc. filing, because it's  
4 reporting whatever is happening on a  
5 consolidated basis.

6

[REDACTED]

8 Q. Right. So the officers that  
9 review the consolidated document that  
10 you're talking about reporting litigations  
11 from around the world are the CEO and the  
12 CFO; is that correct, of Merck & Co., Inc.?

13 A. I'm sorry. What's the question?

14 Q. Sorry. Who at Merck & Co., Inc.  
15 reviews the consolidated document reporting  
16 on litigations?

17 A. So they look at the document as a  
18 whole.

19 Q. Right.

20 A. So the documents, as we talked  
21 about before, I believe -- right? -- must  
22 not be material -- materially misleading.

23 Q. Uh-huh.

24 A. And so they're looking at the  
25 document across the board. I don't have --

1 do I have a 10-K in front of me? I can  
2 read you the certifications that they have  
3 to do if that would be helpful.

4 Q. No. My question was pretty  
5 simple, actually.

6 It was: What officers of Merck &  
7 Co., Inc. are reviewing the document,  
8 consolidated document before it ends up in  
9 the SEC filing?

10 A. So I've now said multiple times  
11 that both our CEO --

12 Q. Uh-huh.

13 A. -- right -- because he is  
14 responsible as CEO of Merck & Co., Inc.,  
15 that's a requirement under the SEC rules.  
16 Our CFO -- and, again, I'm speaking in --  
17 with respect to the annual reporting that  
18 goes on. If I had a 10-K in front of me, I  
19 could read you the certifications.

20 Jennifer Zachary, in her role as  
21 general counsel of Merck & Co., Inc., would  
22 review it as well.

23 Q. Okay.

24 A. And when I say "it," I should be  
25 concrete. The entire report.

1           Q.    Right.  Okay.  And if Mr. Davis  
2    had questions about the report, as his --  
3    part of his job as CEO of Merck & Co.,  
4    Inc., who would he ask?

5           A.    It would depend on the question.

6           Q.    Would he be able to ask Jennifer  
7    Zachary questions about the foreign  
8    litigations?

9           A.    I would depend on what the  
10   question was.

11          Q.    What if he wants to know what's  
12   going on with the foreign litigations?

13          A.    Well, so it would be -- yeah, I'm  
14   not sure what his process is for who he  
15   would ask.

16          Q.    But he could ask Jennifer  
17   Zachary, right?

18          A.    So he could ask Jennifer Zachary,  
19   and she'd be in her role at that point as  
20   GC of Merck Sharp & Dohme LLC, because we  
21   talked about before, intellectual property  
22   litigation is operated through Merck Sharp  
23   & Dohme LLC.

24          Q.    Do MCI -- do Merck & Co., Inc.  
25   board members review SEC filings?

1           A.    The audit committee of the  
2   Merck & Co., Inc. board of directors  
3   reviews annual reports on 10-K and the  
4   10-Qs that are filed quarterly.

5           Q.    Mr. Stewart has appeared in a  
6   foreign proceeding as a respondent for  
7   Merck & Co., Inc., correct?

8           A.    I have no idea.  And that would  
9   be odd.

10                   (Whereupon, Exhibit 6 is marked  
11                   for identification.)

12   BY ATTORNEY POWERS:

13           Q.    You've been handed what's been  
14   marked Exhibit 6.

15                   Do you have that in front of you?

16           A.    I have a document labeled  
17   Exhibit 6.

18           Q.    This is a transcript from a  
19   hearing of the German litigation involving  
20   Halozyme against Merck & Co. and its  
21   subsidiaries, right?

22           A.    Is it?

23           Q.    Yeah.  If you look at about  
24   midway throughout first page of the  
25   document, it says --

1           A.    You know what, I've never seen  
2 this before.

3           Q.    Yeah.

4           A.    I'm going to need to take a  
5 minute --

6           Q.    Take your time.

7           A.    -- and look through it.

8           Q.    And at the top of the document,  
9 it says, "Reference 7 O 12286/25." And  
10 I'll note that it's dated December 5, 2025,  
11 at top right. You can see that.

12          A.    I'm sorry. Should I -- can I  
13 read it or...

14          Q.    Please.

15          A.    Okay.

16                   (Pause for reading/reviewing.)

17 BY ATTORNEY POWERS:

18          Q.    Maybe it makes sense for me to  
19 ask you some questions as you read it.

20          A.    I mean, you may be a better  
21 multitasker than I am. It's pretty hard to  
22 read and answer questions at the same time.

23          Q.    Are you going to read the whole  
24 document?

25          A.    Are you going to ask me questions

1 about it?

2 Q. Yes.

3 A. Okay. Then I'll read the whole  
4 document.

5 Q. Go ahead.

6 A. I mean, already there's things on  
7 here that I'm not going to understand.  
8 They make reference -- references to  
9 applicants, respondents. I have no idea  
10 what any of that refers to.

11 Q. Okay. Let's go through it  
12 together.

13 So first of all, we see the front  
14 page, Regional Court Judge Dr. Schweyer.  
15 Regional Court Judge Tozser.

16 Do you see that, the front page?

17 A. Yes.

18 Q. Yes. And then it says, "In the  
19 legal dispute, Halozyne Inc. legally  
20 represented by CEO Helen Torley." And then  
21 legal representatives, attorneys from Quinn  
22 Emanuel & Sullivan -- Quinn Emanuel  
23 Urquhart & Sullivan, LLP.

24 Do you see that?

25 A. I do.



1 Q. And then it says, "versus Merck &  
2 Co., Inc."

3 Do you see that?

4 A. I see that.

5 Q. "Merck Sharp & Dohme B.V."?

6 A. Merck Sharp & Dohme B.V., I see  
7 that.

8 Q. "MSD Sharp & Dohme GmbH," right?

9 A. I see that.

10 Q. And then on the next page, it  
11 says, "Appearing when the case is called."  
12 And then there's a list of attorneys. And  
13 there's a list of people appearing via  
14 videoconference --

15 A. I see --

16 Q. -- correct?

17 A. -- that.

18 Q. And then if you go down to  
19 Point 2 on this page, it says,  
20 "Respondent."

21 Those are the Merck entities,  
22 correct? You can compare that to the  
23 previous page?

24 ATTORNEY HELM: Objection.  
25 Foundation.

1           THE WITNESS: If you'll see, it  
2           has different -- it lists different  
3           entities for the folks listed under  
4           Respondent.

5 BY ATTORNEY POWERS:

6           Q. Yes. Some of them are law firms.

7           A. It looks like someone's from  
8           Merck Sharp & Dohme UK Limited.

9           Q. Right. Then I would draw your  
10          attention to Mr. Stewart, vice president  
11          intellectual property litigation at Merck.

12                   Do you see that?

13          A. That would be shorthand for Merck  
14          Sharp & Dohme LLC.

15          Q. But if you go back to the  
16          previous page, the parties there listed are  
17          Merck & Co., Inc., Merck Sharp & Dohme  
18          B.V., MSD Sharp & Dohme GmbH, but no  
19          MSD LLC, correct?

20          A. There's no Merck Sharp & Dohme UK  
21          Limited either.

22          Q. You agree that there is no  
23          respondent here that is Merck Sharp & Dohme  
24          LLC, right?

25          A. From what I can tell in the two

1 seconds that I've been looking at this, it  
2 doesn't look like all of the entities that  
3 were represented are listed on this first  
4 page. I mean, already you can see that  
5 Merck Sharp & Dohme LLC wasn't.

6 Also Merck & Co. Merck UK Limited  
7 wasn't.

8 Q. Uh-huh. You agree that Merck  
9 Sharp & Dohme LLC was not a party to this  
10 proceeding, right?

11 A. I have no idea who was a party.

12 Q. Okay. They're not listed as  
13 respondents, though?

14 A. Neither is Merck Sharp & Dohme UK  
15 Limited, but someone's listed for them.  
16 And Mark is employed at Merck Sharp & Dohme  
17 LLC.

18 ATTORNEY POWERS: Should we take  
19 a break?

20 ATTORNEY HELM: Sure.

21 ATTORNEY POWERS: Okay.

22 THE VIDEOGRAPHER: The time right  
23 now is 2:51 p.m.

24 Off the record.

25 ///

1 (Whereupon, a recess was taken at  
2 2:51 p.m.)

3 THE VIDEOGRAPHER: The time right  
4 now is 3:30 p.m.

5 We're back on the record.

6 BY ATTORNEY POWERS:

7 Q. Welcome back, Ms. Grez.

8 A. Yes.

9 Q. Did you speak to your counsel  
10 during the break about the substance of  
11 your testimony?

12 A. I did not.

13 Q. Is it important to the global  
14 enterprise of Merck that Keytruda Qlex can  
15 be launched in Germany?

16 A. I'm not sure.

17 Q. MSD LLC doesn't sell products in  
18 Germany, correct?

19 A. I know that Merck Sharp & Dohme  
20 LLC sells products in the U.S.

21 Q. Do they sell any products in  
22 Germany?

23 A. I don't know.

24 Q. Now, we talked about how Mark  
25 Stewart was present at a German proceeding

1 before the break, right?

2 A. I'm sorry. Are you referring to  
3 a specific document?

4 Q. Yes. The document that was  
5 marked Exhibit 6, the proceeding with  
6 Halozyme Inc. versus various Merck  
7 entities.

8 Do you have that document?

9 A. I do.

10 Q. Was --

11 ATTORNEY HELM: I'd like to  
12 object to the authentication of this  
13 document and note that it says "English  
14 machine translation" on it as well.

15 BY ATTORNEY POWERS:

16 Q. Was Mark Stewart there to ensure  
17 that global legal strategy is applied?

18 A. I don't know why Mark Stewart was  
19 there. I don't know anything about this  
20 proceeding.

21 Q. Was he there as one of his  
22 responsibilities to ensure that global --  
23 global legal strategy is adhered to?

24 A. I don't know why Mark was here.

25 Q. Okay.

1           A.    I don't know why anyone was here.

2           Q.    Is ensuring global legal strategy  
3 part of his job?

4           A.    I believe in my declaration I  
5 state what his job title is. Let me go  
6 back.

7                   Yeah, Mark Stewart is vice  
8 president global intellectual property  
9 litigation at Merck Sharp & Dohme LLC.

10          Q.    So is ensuring that global legal  
11 strategy is adhered to part of his job?

12          A.    "Global legal strategy"? What do  
13 you mean by that?

14          Q.    I mean, what's your understanding  
15 of that?

16          A.    My understanding is he has a role  
17 in global intellectual property litigation.

18          Q.    So is it your understanding that  
19 part of his job is to ensure that global  
20 legal intellectual property strategy is  
21 adhered to?

22          A.    I'm not sure.

23          Q.    Okay. I'm going to hand you an  
24 Exhibit that we'll mark Number 7.

25        ///  
26

1                   (Whereupon, Exhibit 7 is marked  
2                   for identification.)

3 BY ATTORNEY POWERS:

4           Q.    Do you have that document in  
5           front of you?

6           A.    I have a document now labeled  
7           Exhibit 7 in front of me.

8           Q.    Okay. Do you recognize this  
9           document?

10          A.    It looks like the policies of the  
11          board of directors of Merck & Co., Inc.

12          Q.    And right at the top of the  
13          document under "Philosophy and Functions of  
14          the Board," the document states, "The  
15          primary mission of the board is to  
16          represent and protect the interests of the  
17          company's shareholders. In so doing, the  
18          board has the legal responsibility for  
19          overseeing the affairs of the company and  
20          has certain specified powers and  
21          authorities with respect to corporate  
22          action provided by the New Jersey  
23          statutes."

24                   Did I read that correctly?

25          A.    That's what it says.

1           Q.    "The board's oversight function  
2    can and should be exercised through the  
3    election and appointment of competent  
4    officers.  The board nevertheless remains  
5    responsible for oversight and thus has an  
6    obligation to keep informed in order to  
7    assist management in formulating and  
8    developing plans.

9                    "It also sets necessary criteria  
10   and serves as a body to review and advise  
11   management on the operations of the  
12   company."

13                   Did I read that correctly?

14           A.    That looks right.  Sounds right.

15           Q.    And just to finish out that  
16   paragraph.  "These duties should be  
17   discharged by the full board, the board's  
18   committees, or the independent members of  
19   the board, as appropriate in the  
20   circumstance."

21                   Did I read that correctly?

22           A.    Sounds correct.

23           Q.    Does Merck & Co., Inc.'s board  
24   know about the litigation between Halozyme  
25   and Merck?



3           Q.    The board has a duty to stay  
4   informed about litigations, though,  
5   correct?

6           A.     The board has the legal  
7     responsibility for overseeing the affairs  
8     of the company, which is the company  
9     Merck & Co., Inc., that operates through  
10    its subsidiaries.

11 Q. And the board remains responsible  
12 for oversight and, thus, has an obligation  
13 to keep informed in order to assist  
14 management in formulating and developing  
15 plans, right?

16           A.    Of what is significant from a  
17   global enterprise level.

| Response                                          | Percentage |
|---------------------------------------------------|------------|
| Yes, the current administration is responsible    | 18%        |
| No, the current administration is not responsible | 82%        |

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 ATTORNEY HELM: Objection to form

14 and foundation.

15

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. Does Robert Davis know about the  
14 litigation between -- with Halozyme?

15 A. I would imagine.

16 Q. Does Jennifer Zachary know about  
17 the litigation with Halozyme?

18 A. So are you talking about the  
19 proceedings or -- I guess what specifically  
20 are you talking about?

21 Q. The dispute with the -- the  
22 global dispute with Halozyme.

23 A. So I would imagine she's been  
24 informed in her capacity as head of Merck  
25 Sharp & Dohme LLC's legal department.

A. My guess is he would know about it.

6

A horizontal bar chart with 18 bars. The bars are black and vary in length. The first bar is the longest, followed by a shorter bar, then a long bar, a medium bar, a short bar, a medium bar, a long bar, a medium bar, a short bar, a long bar, a medium bar, a long bar, a medium bar, a long bar, a medium bar, a long bar, a medium bar, and a long bar. The bars are arranged in a descending order of length from top to bottom.

| Bar Index | Approximate Length (Relative) |
|-----------|-------------------------------|
| 1         | 100%                          |
| 2         | 85%                           |
| 3         | 95%                           |
| 4         | 45%                           |
| 5         | 60%                           |
| 6         | 100%                          |
| 7         | 90%                           |
| 8         | 85%                           |
| 9         | 55%                           |
| 10        | 100%                          |
| 11        | 80%                           |
| 12        | 98%                           |
| 13        | 75%                           |
| 14        | 95%                           |
| 15        | 70%                           |
| 16        | 100%                          |
| 17        | 95%                           |
| 18        | 65%                           |
| 19        | 100%                          |
| 20        | 85%                           |
| 21        | 90%                           |

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]:

15

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20

Q. Do the officers of Merck & Co.,

21

Inc. know about the Halozyme litigation?

22

A. So Rob Davis signs the 10-K, so

23

he would know.

24

Q. Do you know of any other officers

25

besides Robert Davis and Jennifer Zachary



1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23

Q. As part of Jennifer Zachary's

24

role as general counsel legal for Merck &

25

Co., Inc., do you have any understanding of

1 whether or not she has apprised members of  
2 the board about the Halozyme litigations?

3 A. I believe I answered that, that I  
4 don't know.

5 Q. As part of Jennifer Zachary's  
6 role as general counsel for legal for  
7 Merck & Co., Inc. --

8 A. I'm sorry. What does -- I don't  
9 understand what "general counsel for legal"  
10 means.

11 Q. I'm sorry.

12 A. Her title is vice president -- or  
13 executive vice president and general  
14 counsel of Merck & Co., Inc.

15 Q. Thank you.

16 As part of her role as general  
17 counsel for Merck & Co., Inc., do you have  
18 any understanding of whether or not  
19 Ms. Zachary has apprised any members of the  
20 board of Merck & Co., Inc. about the  
21 Halozyme litigations?

22 A. I'm confused. And I might just  
23 not be remembering correctly, but I thought  
24 you just asked me that.

25 Q. No. I was asking about executive



1 officers.

2 A. Whether any -- sorry. Can you  
3 repeat the previous question? What were  
4 you asking about?

5 ATTORNEY HELM: Objection.

6 BY ATTORNEY POWERS:

7 Q. I'm sorry. Let me -- let me --  
8 let me withdraw the question and ask a  
9 better one.

10 As part of Jennifer Zachary's  
11 role as general counsel for Merck & Co.,  
12 Inc., do you have an understanding of  
13 whether or not she has apprised any  
14 executive officers about the Halozyme  
15 litigations?

16 A. So as I stated before, if  
17 Jennifer Zachary is providing an update, it  
18 would be as head of the legal department  
19 for Merck Sharp & Dohme LLC. [REDACTED]  
[REDACTED]  
[REDACTED]

22 Q. Well, it has an officer in  
23 Jennifer Zachary, correct?

24 A. It has multiple officers.

25 Q. It has an officer in the legal

1 department as Jennifer Zachary, right?

2 A. Jennifer is the head of the legal  
3 department at Merck Sharp & Dohme LLC. She  
4 has concurrent roles, which I think we  
5 talked about this morning. One of her --  
6 and I think I talk about it in my  
7 declaration too. Let me just go back.

8 Yes. In 21, I discuss her two  
9 roles.

10 Would it be helpful to read that?

11 Q. No. Thank you. I've read it.

12 Why do you believe that the -- I  
13 think earlier you told me that you believe  
14 that the officers, executive officers of  
15 Merck & Co., Inc. know about the litigation  
16 with Halozyme, right?

17 Why do you -- why do you believe  
18 that? Is it only because they may have  
19 read about it in SEC statements?

20 A. So Jennifer Zachary, in her  
21 capacity as head of Merck Sharp & Dohme  
22 LLC's legal department, may have reported  
23 out to those that hold roles at Merck &  
24 Co., Inc. in the context of understanding  
25 what's going on at the global enterprise,

1    which is what the officers -- the  
2    Section 16 officers who file Form 4s with  
3    the SEC who are -- have roles as officers  
4    of Merck & Co., Inc.

5    [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 Q. Is it your testimony that  
12 Ms. Zachary only communicates with  
13 directors of Merck & Co., Inc. as general  
14 counsel of Merck & Co., Inc., or can she  
15 also communicate with executive officers of  
16 Merck & Co., Inc. in her capacity as  
17 general counsel for Merck & Co., Inc.?

18

A. [REDACTED]

[REDACTED]

[REDACTED] I think you read in the  
21 policies of the board, and we can go back  
22 to that. That, "The board's oversight  
23 function can and should be exercised  
24 through the election and appointment of  
25 competent officers."

1           Q.    How does the board make sure that  
2   they're kept informed of litigations for  
3   which they have oversight and an obligation  
4   to keep informed?

5           A.    I definitely don't understand  
6   your question --

7           Q.    Okay.

8           A.    -- there were multiple parts.

9           Q.    How does -- how does the board  
10   keep informed of things they have an  
11   obligation to keep informed about?

12          A.    Through meetings.

13          Q.    Are there -- okay. Meetings with  
14   who?

15          A.    Board of directors meetings --  
16   meetings of the board of directors of  
17   Merck & Co., Inc.

18          Q.    Is that the only way the board  
19   keeps informed about things they have an  
20   obligation to keep informed about?

21          A.    Sometimes there will be  
22   communications between meetings. They  
23   also -- as you may be aware, but as  
24   directors of publicly traded entities,  
25   directors oftentimes pursue director

1 education and that sort of thing as well.  
2 So they may do other things to stay, you  
3 know, up-to-date on best practices being a  
4 member of a publicly traded board of  
5 directors.

6 Q. Does Ms. Zachary communicate  
7 about patent litigations to directors of  
8 Merck & Co., Inc.?

9 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 Q. And I think we've established  
17 today that litigation with Halozyme is a  
18 global litigation.

19 Do you agree?

20 A. You --

21 ATTORNEY HELM: Objection to  
22 form.

23 THE WITNESS: I mean, I -- I know  
24 from -- that there is litigation that's  
25 happening in countries outside the U.S.

1 I don't know to what extent it's  
2 global.

3 BY ATTORNEY POWERS:

4 Q. Well, it involves one, two,  
5 three, four -- five subsidiaries of Merck &  
6 Co., Inc., right?

7 ATTORNEY HELM: Objection to  
8 foundation.

9 THE WITNESS: So as I mentioned  
10 before, I listed the various  
11 proceedings in 34 to show that Merck &  
12 Co., Inc.'s filings are filed on a  
13 consolidated basis and references to  
14 the company in those filings are to the  
15 broad global enterprise.

16 BY ATTORNEY POWERS:

17 Q. In her capacity as general  
18 counsel for Merck & Co., Inc., does  
19 Jennifer Zachary have a fiduciary duty to  
20 keep the board of Merck & Co., Inc.  
21 informed of patent litigation?

22 A. It would depend on the patent  
23 litigation.

24 Q. What about a patent litigation  
25 that is related to one of the company's

1 largest products?

2 A. If it were significant for the  
3 board to see it, then she would.

4 Q. Who makes the determination --  
5 who makes the determination about whether  
6 or not it's significant for the board to  
7 see it?

8 ATTORNEY HELM: I'll just caution  
9 you to answer if you can do so without  
10 revealing privileged communications.

11 THE WITNESS: Yeah, so to speak  
12 in generalities, it's hard to answer  
13 that question.

14 BY ATTORNEY POWERS:

15 Q. Does Ms. Zachary herself make  
16 that determination?

17 A. She would definitely be, in her  
18 role as general counsel, thinking about  
19 that.

20 Q. Deciding whether or not it makes  
21 sense to disclose to the board patent  
22 litigation involving the company's  
23 subsidiaries?

24 A. So I would say based on our  
25 global enterprise, whether it rises to the



3 Q. But you do agree that at least if  
4 it's significant -- a significant  
5 litigation, Ms. Zachary has a fiduciary  
6 duty to keep the board informed, right?

7           A.     I'm not here to speak about  
8     fiduciary duties, but I can say in her role  
9     as general counsel, she would be thinking  
10    about what rises to the level of needing to  
11    be shared with the board from a legal  
12    perspective.

| Age Group | Percentage of Respondents |
|-----------|---------------------------|
| 18-29     | 13%                       |
| 30-49     | 87%                       |
| 50-69     | 13%                       |
| 70+       | 87%                       |
| 18-29     | 13%                       |
| 30-49     | 87%                       |
| 50-69     | 13%                       |
| 70+       | 87%                       |
| 18-29     | 13%                       |
| 30-49     | 87%                       |
| 50-69     | 13%                       |
| 70+       | 87%                       |
| 18-29     | 13%                       |
| 30-49     | 87%                       |
| 50-69     | 13%                       |
| 70+       | 87%                       |
| 18-29     | 13%                       |
| 30-49     | 87%                       |
| 50-69     | 13%                       |
| 70+       | 87%                       |

1



6



1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23

[REDACTED]

[REDACTED]

[REDACTED]

1

5

14 Q. I see. So if Merck -- if  
15 Ms. Zachary informed the board about any  
16 Halozyme litigation, she would be doing it  
17 in her capacity as general counsel of  
18 Merck & Co., Inc., right?

19 A. That's not what I said. I  
20 thought I answered that.

21 Q. Well, you said she'd know about  
22 it in her capacity as head of legal  
23 department for MSD LLC.

24 A. And that she would advise, since  
25 Merck & Co., Inc. is charged with

1 overseeing the global enterprise, in her  
2 capacity as general counsel of Merck & Co.,  
3 Inc., she would advise the board of  
4 directors of Merck & Co., Inc. on the  
5 global enterprise impact.

6 Q. So in meetings with the board of  
7 Merck & Co., Inc., Ms. Zachary is acting as  
8 general counsel for Merck & Co., Inc.,  
9 right?

10 A. I wouldn't say that's right.

11 Q. You're saying that within a board  
12 meeting of Merck & Co., Inc., Ms. Zachary  
13 is also acting as general counsel of MSD  
14 LLC?

15 A. She could hold -- she holds  
16 concurrent roles, and at different times  
17 is -- I guess, as they say, wearing  
18 different hats.

19 Q. Within one board meeting of the  
20 board of directors of Merck & Co., Inc.,  
21 Ms. Zachary could wear different hats?

22 A. Yes.

23 Q. And it would depend on what she  
24 was talking about?

25 A. As general counsel of Merck &

1 Co., Inc., she's charged with advising,  
2 from a legal perspective, the board of  
3 directors of Merck & Co., Inc. Information  
4 she may know in connection with the  
5 litigation would be known by virtue of her  
6 being head of the legal department of Merck  
7 Sharp & Dohme LLC.

8 Q. So she knows information in her  
9 capacity as head of the legal department of  
10 Merck Sharp & Dohme LLC, but she can use  
11 that information as general counsel of  
12 Merck & Co., Inc. to advise members of the  
13 board, correct?

14 A. Just like any information from  
15 subsidiaries. Because that's how the  
16 business is conducted, through  
17 subsidiaries.

18 Q. Do you happen to know if Keytruda  
19 Qlex contains an antibody that's directed  
20 to a target called PD-1?

21 A. I don't know anything about that.

22 Q. To your knowledge, is anyone  
23 employed exclusively by MSD LLC authorized  
24 to execute a power of attorney related to  
25 patent matters on behalf of Merck & Co.,

1 Inc.?

2 A. Sorry. Say that again.

3 Q. Is anyone employed exclusively by  
4 MSD LLC and with a role only at MSD LLC  
5 authorized to execute a power of attorney  
6 related to patent matters on behalf of  
7 Merck & Co., Inc.?

8 ATTORNEY HELM: Objection to  
9 form.

10 THE WITNESS: So, to my  
11 knowledge, Merck & Co., Inc. doesn't  
12 hold any patents.

13 BY ATTORNEY POWERS:

14 Q. Okay. So, to your knowledge,  
15 would Merck & Co., Inc. authorize an  
16 employee solely of MSD LLC to authorize a  
17 power of attorney related to patent  
18 matters?

19 A. Sorry. Say the question again.

20 Q. Sure. To your knowledge, would  
21 Merck & Co., Inc. authorize an employee  
22 solely of MSD LLC to authorize -- to sign a  
23 power of attorney related to patent  
24 matters?

25 A. I believe the Merck board of

1 directors has a general corporate  
2 resolution with respect to patent matters.

3 Q. And that general corporate  
4 resolution authorizes employees of MSD LLC  
5 to execute powers of attorney for patent  
6 matters, right?

7 A. I'd have to look at the general  
8 corporate resolution.

9 Q. Okay.

10 ATTORNEY POWERS: This is going  
11 to be 8.

12 (Whereupon, Exhibit 8 is marked  
13 for identification.)

14 (Comments made while stenographer  
15 marked requested exhibit.)

16 BY ATTORNEY POWERS:

17 Q. Do you have Exhibit 8 in front of  
18 you, Ms. Grez?

19 A. I do. This is much bigger than a  
20 general corporate resolution would be.

21 Q. This is a prosecution history for  
22 a patent application. I'm going to take  
23 you to --

24 A. Oh, I've never seen one before.

25 Q. If you flip to Page 20 of this



1 document.

2 ATTORNEY HELM: Do you want to  
3 clarify what you're talking about?

4 BY ATTORNEY POWERS:

5 Q. Sure. Approximately 20 pages in  
6 to the --

7 A. Should I count the pages? Sorry.  
8 I wasn't --

9 Q. Yes, please.

10 A. Just by, like, page, not, like,  
11 back and front?

12 Q. Back and front --

13 A. Back and front.

14 Q. -- yes, please.

15 I think you're there. First of  
16 all, just to set the stage a little bit, if  
17 we go -- don't lose your place there, but  
18 if we go to the first page here of this  
19 document, you can see that it says,  
20 "Application Number 19346638," right?

21 A. It says that. I have no idea  
22 what that means.

23 Q. And -- well, that's a patent  
24 application number.

25 And then it says, "Document date:

1 10/1/25," right? This document?

2 A. That's the document date it says.

3 Q. And then if we go a little  
4 further into the document where I think you  
5 were, Page 20 of the document, there's a  
6 page that says, "Merck & Co., Inc." at the  
7 top, right?

8 A. The page I'm looking at says,  
9 "Power of Attorney to Prosecute  
10 Applications Before the USPTO."

11 Q. Right. And this is actually the  
12 first page of the submission that was sent  
13 to the Patent Office.

14 You can see that it was signed by  
15 Cynthia A. Francisco -- right? -- at the  
16 bottom of the page you're looking on?

17 A. And it says, "Merck Sharp & Dohme  
18 LLC."

19 Q. It does.

20 Then if you go to the next page,  
21 you'll see at the top a document I think  
22 you will recognize. It says, "Merck & Co.,  
23 Inc." at the top.

24 Do you see that?

25 A. I do.

1 Q. And then under that, it says,  
2 "Certification," right?

3 A. It does.

4 Q. And under that, it says, "I,  
5 Kelly E.W. Grez, corporate secretary of  
6 Merck & Co., Inc., a corporation duly  
7 organized and existing under the laws of  
8 the State of New Jersey, United States of  
9 America (the 'company'), do hereby certify  
10 that the attached: (1) is a true and  
11 correct copy of general corporate  
12 resolution Number 5 - Patent Matters, as  
13 amended by the board of directors at the --  
14 the board of directors of the company at a  
15 meeting thereof duly called and held on  
16 July 22, 2025; and (2) is in full force and  
17 effect as of the date hereof." Right?

18 A. I see that.

19 Q. And then under that, it says, "In  
20 witness whereof, I have hereunto subscribed  
21 my signature and affixed the seal of the  
22 company this 29th day of July, 2025."

23 Did I read that correctly?

24 A. It says that.

25 Q. And under that text, you see the

1 seal there?

2 A. I do.

3 Q. And what is that seal?

4 A. It says "Merck & Co., Inc.  
5 corporate seal."

6 Q. That's the corporate seal of  
7 Merck & Co., Inc.?

8 A. That's correct.

9 Q. And then right next to that seal,  
10 a little bit to the right, there's a  
11 signature.

12 Is that your signature?

13 A. That is.

14 Q. Because it says, "By: Kelly E.W.  
15 Grez," and then it says, "Title: Corporate  
16 secretary," right?

17 A. It does.

18 Q. And you were acting in your  
19 capacity as a corporate secretary of  
20 Merck & Co., Inc. when you signed this  
21 document, right?

22 A. I was acting in my capacity as  
23 the corporate secretary of Merck & Co.,  
24 Inc., that's correct.

25 Q. And then under that, this is

1     notarized by a notary, correct?

2             A.     It is.

3             Q.     Do you recall having this  
4     document notarized?

5             A.     No.

6             Q.     But it was notarized by Karen R.  
7     Ettelman, right?

8             A.     That's right.

9             Q.     And she notarized it on the 29th  
10    day of July, 2025, right?

11            A.     That's what this says.

12            Q.     And then if you go to the next  
13    page of this document, you'll see the  
14    Corporate Resolution Number 5. It says,  
15    "General Corp. Resolution Number 5, Patent  
16    Matters," right?

17            A.     That's what it says.

18            Q.     And it says "Resolved, that any  
19    of the following" -- I'm going to name the  
20    names -- "Robert M. Davis, chairman, chief  
21    executive officer and president; Jennifer  
22    Zachary, executive vice president and  
23    general counsel; Laura M. Ginkel, senior  
24    vice president and assistant general  
25    counsel; Mark Stewart, vice president,

1 global IP litigation; Anna Cocuzzo,  
2 associate vice president, group managing  
3 counsel; Alysia Finnegan, associate vice  
4 president, group managing counsel;  
5 Catherine D. Fitch, managing counsel,  
6 patents; Emily K. Sauter, managing counsel,  
7 patents; Jenny Crowsigt, managing counsel,  
8 animal health IP; John C. Todaro, managing  
9 counsel, patents; Andrew W. Custer,  
10 managing counsel, patents; Deeba Hussein,  
11 assistant managing counsel, European  
12 patents; James Horgan, director, IP  
13 litigation; and Cynthia A. Francisco,  
14 executive director, IP administration."

15           Those are all the names on the  
16 document, right?

17           A.    The names of individuals, yes.

18           Q.    Yes. And then the corporate  
19 resolution -- General Corporate Resolution  
20 Number 5 states: "Are hereby authorized to  
21 execute and to revoke on behalf of Merck &  
22 Co., Inc. and its affiliates (including  
23 subsidiaries) the following documents  
24 related to patent matters."

25           Did I read that correctly?

1           A.    That's what it says.

2           Q.    And there's a colon after that  
3 statement I just read, and then it goes on:  
4 "Powers of attorney as fully in law as may  
5 be necessary and proper in connection with  
6 the acquisition, registration, maintenance  
7 and enforcement of patents and applications  
8 for patents, including powers of attorney  
9 relating to the prosecution or defense of  
10 patent rights before courts of law or other  
11 governmental tribunals, agencies or  
12 departments; affidavits and declarations;  
13 and any other documents which are necessary  
14 and proper for the acquisition,  
15 registration, maintenance, litigation and  
16 protection of patents."

17                   Did I read that correctly?

18           A.    That sounds correct.

19           Q.    Laura Ginkel is authorized to  
20 execute or evoke a power of attorney  
21 related to patent matters on behalf of  
22 Merck & Co., Inc. by this resolution,  
23 right?

24           A.    [REDACTED]  
[REDACTED]

1

2 Q. Laura Ginkel is authorized to  
3 execute or revoke a power of attorney  
4 related to patent matters on behalf of  
5 Merck & Co., Inc., right?

6 A. Right.

7 Q. And Mark Stewart is authorized to  
8 execute or revoke a power of attorney  
9 related to patent matters on behalf of  
10 Merck & Co., Inc., right?

11 A. So, again, as I said, if there  
12 were a patent that Merck & Co., Inc. had,  
13 which to my knowledge it doesn't, someone  
14 would need to be authorized.

16 Q. And Robert Davis -- well, strike  
17 that.

18 Merck & Co., Inc. has officers,  
19 though, right?

20 A. Merck & Co., Inc. has officers.

21 Q. And one of them is Robert Davis,  
22 right?

23 A. Yes.

24 Q. And Robert Davis is authorized to  
25 execute or revoke a power of attorney



1 related to patent matters on behalf of  
2 Merck & Co., Inc. and its subsidiaries,  
3 right?

4 A. That's what this says.

5 Q. And on behalf of MSD LLC, Robert  
6 Davis is authorized to execute or revoke  
7 other documents that are necessary and  
8 proper for the litigation of patents,  
9 right?

10 A. That's not his role. There are  
11 employees at -- there are legal department  
12 employees at Merck Sharp & Dohme LLC, and  
13 it's those individuals who would do that.

14 Q. But this corporate resolution  
15 that you certified authorizes Mr. Davis to  
16 execute or revoke documents that are  
17 necessary and proper for the litigation of  
18 patents, right?

19 A. The following documents relating  
20 to patent matters. We'd have to read them  
21 again. Powers of attorney, as fully in law  
22 as may be necessary and proper in  
23 connection with acquiring, registering,  
24 maintaining.

25 What was your -- what was your

1 point?

2 Q. Documents that are necessary and  
3 proper for the acquisition, registration,  
4 maintenance, litigation and protection of  
5 patents.

6 A. And what was the question about?

7 Q. Does Mr. Davis have the  
8 authority, based on this corporate  
9 resolution, to execute documents which are  
10 necessary and proper for the litigation of  
11 patents --

12 A. Sorry. I don't see litigation.  
13 Am I missing that word?

14 Q. You must be. It's the fourth  
15 word from the end -- fifth word from the  
16 end.

17 A. Okay. So, yes, that says that  
18 he's one of the authorized people. As a  
19 practical matter, he doesn't do that.

20 Q. He's authorized to do it. And  
21 he's authorized to do it on behalf of  
22 Merck & Co. and its affiliates including  
23 subsidiaries, right?

24 A. But that's not his role, so he  
25 doesn't.

1           Q.    All of these people on the list  
2   that we went through are authorized to do  
3   it on behalf of Merck & Co. and its  
4   subsidiaries, right?

5           A.    Were Merck & Co., Inc. to have  
6   patent, they -- each person is authorized.  
7   Each of these individuals is employed by  
8   subsidiaries of Merck & Co., Inc.

9           Q.    I think we've established that  
10  they have the authorization to act this way  
11  on behalf of Merck & Co., Inc., though,  
12  correct?

13          A.    What do you mean by "act this  
14  way"?

15          Q.    To execute and revoke any other  
16  documents which are necessary and proper  
17  for the litigation of patents.

18          A.    Sorry.  Where is the revoke?

19          Q.    That's up just before the last  
20  paragraph.

21          A.    I only see one paragraph.

22          Q.    There's a portion that starts  
23  "are hereby authorized to execute and  
24  revoke."

25          A.    Okay.

1 Q. Do you see that language?

2 A. To execute and revoke the  
3 following documents relating to patent  
4 matters, and then it lists the specific  
5 documents.

6 Q. Right.

7 A. But the way it works in a global  
8 enterprise is that the people with  
9 responsibilities for those matters are the  
10 ones that do that. So Merck Sharp & Dohme  
11 LLC, Mark Stewart, vice president global IP  
12 litigation, as I discussed specifically in  
13 my declaration, he's employed by Merck  
14 Sharp & Dohme LLC.

15 Q. But this corporate resolution  
16 that we've been talking about authorizes  
17 Mr. Stewart to act on behalf of Merck &  
18 Co., Inc. to execute these documents,  
19 correct?

20 A. Were there any documents from  
21 Merck & Co., Inc., he would be authorized.

22 Q. Okay.

23

[REDACTED]

[REDACTED]

[REDACTED]

1

2 Q. Got it.

3 (Whereupon, Exhibit 9 is marked  
4 for identification.)

5 BY ATTORNEY POWERS:

6 Q. So this is another similar  
7 document. Do you see the first page of  
8 this document -- this is also from a patent  
9 prosecution history.10 A. I'll have to take your word for  
11 it.12 Q. I'll show you. And it's signed  
13 by Anna, "Cocuzzo," right?14 A. I don't recognize her signature,  
15 but it says Anna Cocuzzo --

16 Q. Cocuzzo.

17 A. -- under her name.

18 Q. And it was dated November 5,  
19 2019, right? That signature?

20 A. That's the date written there.

21 Q. Okay. And then go to the next  
22 page, you'll see a certification similar to  
23 the one we saw before?

24 A. I see a certification.

25 Q. And it's -- at the top of this

1 page, it says, "Merck & Co., Inc.," right?

2 And then certification? With then it  
3 says -- do you see that?

4 A. I do.

5 Q. Okay. And then it says, "I, Faye  
6 C. Brown, senior assistant secretary of  
7 Merck & Co., Inc. (the company) the  
8 corporation duly organized and existing  
9 under the laws of the State of New Jersey,  
10 United States of America, do hereby certify  
11 that the attached presently in full force  
12 and effect is a true and correct copy of  
13 General Corporate Resolution Number 5,  
14 patent matters as amended and readopted the  
15 board of directors of said company at the  
16 meeting thereof duly called and held on  
17 July 23, 2019, at which a quorum of  
18 directors was present."

19 Did I read that correctly?

20 A. It seems correct.

21 Q. And then first of all, do you  
22 know who Faye C. Brown is?

23 A. She used to be an employee of  
24 Merck Sharp & Dohme LLC.

25 Q. Okay. Did she have a role at

1 Merck & Co., Inc.?

2 A. I mean, based on her  
3 certification, she was saying that she did.

4 Q. She was a senior assistant  
5 secretary at Merck & Co., Inc., right?

6 A. That's what this says.

7 Q. Okay. And then it says after  
8 that, "In witness whereof, I have hereunto  
9 subscribed my signature and affixed the  
10 seal of the company on this 13th day of  
11 August, 2019."

12 Did I read that correctly?

13 A. Seems correct.

14 Q. And then there's a signature from  
15 Ms. Brown, correct?

16 A. I assume. I don't know what her  
17 signature looks like.

18 Q. Okay. And then this document is  
19 notarized here, subscribed and sworn to me  
20 -- strike that.

21 It's notarized and says,  
22 "Subscribed sworn to before me on this 13th  
23 day of August, 2019," right?

24 A. That's what I read.

25 Q. And there's a notary public that

1 signed it, Sandra Marie McFadden, right?

2 A. I see that. It looks like a  
3 stamp.

4 Q. Can you make out the seal there  
5 on the middle of the left part of the page?

6 A. I cannot.

7 Q. Okay. If you move to the next  
8 page of this document, it says, "General  
9 Corporate Resolution Number 5," right?

10 A. It does.

11 Q. And then the title is "Patent  
12 Matters" right under that?

13 A. Yes.

14 Q. And it says, "Resolved that any  
15 of the following Kenneth C. Frazier,  
16 chairman, president and chief executive  
17 officer; Jennifer Zachary, executive vice  
18 president and general counsel; William  
19 Krovatin, senior vice president and  
20 assistant general counsel; Laura M. Ginkel,  
21 associate vice president and group managing  
22 counsel; Anna Cocuzzo, managing counsel  
23 patents; Gerard M. Devlin, managing  
24 counsel, IP litigation; Catherine D. Fitch,  
25 managing counsel, patents; J.J.L. Mestrom,



1 managing counsel, animal health IP; John C.  
2 Todaro, managing counsel, patents; James  
3 Horgan -- Horgan, assistant managing  
4 counsel, European patents; Cynthia A.  
5 Francisco, director, asset management."

6 Did I get those names right?

7 A. I don't know some of them. This  
8 is before my time.

9 Q. That's who is listed, right?

10 A. That's -- seems correct.

11 Q. Those are the -- those are the  
12 names that are listed here -- right? --  
13 that I read?

14 A. Yes.

15 Q. Okay. And the document  
16 continues, "Are hereby authorized to  
17 execute and revoke on behalf of Merck &  
18 Co., Inc. and its affiliates (including  
19 subsidiaries) the following documents  
20 related to patent matters: Powers of  
21 attorney as fully in law as may be  
22 necessary and proper in connection with the  
23 acquisition, registration, maintenance and  
24 enforcement of patents and applications for  
25 patents including powers of attorney

1 relating to the prosecution or defense of  
2 patent rights before courts of law or other  
3 governmental tribunals.

4 "Agencies or departments;  
5 affidavits and declarations; and any other  
6 documents which are necessary and proper  
7 for the acquisition, registration,  
8 maintenance, litigation and protection of  
9 patents."

10 Did I read that correctly?

11 A. Sounded correct.

12 Q. Kenneth Frazier was the CEO of  
13 Merck & Co., right?

14 A. I know that Ken Frazier was C --  
15 chairman and president CEO of Merck & Co.,  
16 Inc., and this date would be in that time  
17 period, as I understand it. He also, as I  
18 understand it, was an employee of Merck  
19 Sharp & Dohme LLC.

20 Q. Did he have a title with Merck  
21 Sharp & Dohme LLC?

22 A. Not to my knowledge.

23 Q. So he's paid through Merck Sharp  
24 & Dohme LLC, but his title was with --

25 A. He's -- I'm saying it's -- that's

1 before my time in this role. He's -- would  
2 have been employed by Merck Sharp &  
3 Dohme -- oh, Corp. it would have been at  
4 the time as I think about it. The LLC --  
5 the corporation -- I believe I covered this  
6 in my declaration -- converted into --

7 Q. Right.

8 A. -- changes corporate form.

9 Q. You did mention that in your  
10 declaration.

11 A. Into a limited liability  
12 company --

13 Q. While we're --

14 A. -- I believe in 2022. I can just  
15 double-check.

16 Q. No, I don't need you to. It's  
17 not responsive to my question.

18 While we're on the subject, let's  
19 talk about Mr. Davis, the CEO of Merck &  
20 Co., Inc.

21 You mentioned before earlier that  
22 he -- Mr. Davis is an employee of MSD LLC.

23 Does he have a title at MSD LLC?

24 A. I believe the title he uses is  
25 chairman and CEO.

1 Q. Of MSD LLC?

2 A. I'm not aware that he has a  
3 separate title. He's not president of  
4 Merck Sharp & Dohme LLC.

5 Q. He's not an officer of Merck  
6 Sharp & Dohme LLC, is he?

7 A. He's not.

8 Q. Okay. So he is president and CEO  
9 of Merck & Co., Inc., right?

10 A. That is his title at Merck & Co.,  
11 Inc.

12 Q. [REDACTED]

[REDACTED]

[REDACTED]

15 [REDACTED]

[REDACTED]

[REDACTED]

18 Q. Just officers and directors,  
19 right?

20 A. Merck & Co., Inc. does have  
21 officers and directors.

22 Q. If we go to -- let's see --  
23 third-to-last page of the document before  
24 you, Exhibit 8 --

25 A. Exhibit 8?

1 Q. I think that's what we were on.

2 I'm sorry. Exhibit 9. There's a

3 document --

4 A. I'm sorry, what page did you say?

5 Q. The third-to-last page from the

6 end.

7 Okay. And do you see at the top

8 of that page "Electronic Acknowledgement

9 Receipt"?

10 ATTORNEY HELM: Objection. Form.

11 THE WITNESS: I see that the page

12 says Electronic Acknowledgement

13 Receipt.

14 BY ATTORNEY POWERS:

15 Q. Okay. And then under that, it

16 says, "Application Number," right, two

17 lines down?

18 A. Yeah, there's a number written in

19 that cell.

20 Q. Right. And would you mind

21 reading that application number, please?

22 A. It says, "16/609612."

23 Q. That's right.

24 I'm going to hand you what will

25 be Exhibit 10.

1 (Whereupon, Exhibit 10 is marked  
2 for identification.)

3 BY ATTORNEY POWERS:

4 Q. Okay. This is a United States  
5 patent, right?

6 A. I have no idea.

7 Q. It says at the top United States  
8 Patent, right?

9 A. It does say that.

10 Q. And it says, "Patent Number  
11 11,633,476," right?

12 A. It also says B2.

13 Q. That's right. It does.  
14 11,633,476 B2.

15 And then if you go down to about  
16 the middle of the first cover page there,  
17 it says, "Application Number 16/609612."

18 Do you see that?

19 A. Are you looking at where there's  
20 a parenthetical and it says, "21"?

21 Q. Yes, ma'am.

22 A. So it says, "Ap.No: 16/609,612."

23 Q. That's right. And now I just  
24 want you to compare that to the application  
25 number we saw on the previous exhibit,

1 Exhibit 9, which we just looked at there on  
2 the third-to-last page.

3 Those numbers are the same,  
4 right?

5 A. There's no slash and there's no  
6 comma in the one under Electronic  
7 Acknowledgement Receipt.

8 Q. That's fair. The integers  
9 present are the same, correct?

10 A. It's been a long time since I  
11 took a math class.

12 Q. The whole numbers?

13 A. Sure.

14 Q. Okay. And that number, for the  
15 record, is 16/609612.

16 And that relates to U.S. Patent  
17 Number 11,633,476. Okay. Right?

18 A. So am I supposed to be confirming  
19 stuff? I have no idea what the application  
20 numbers mean.

21 Q. Fair enough.

22 A. You're asking me to read points.

23 Q. Fair enough.

24 ATTORNEY HELM: Objection.

25 THE WITNESS: I tried to read the

1 whole document --

2 ATTORNEY HELM: Outside the  
3 scope.

4 THE WITNESS: -- I don't -- this  
5 is not my area.

6 BY ATTORNEY POWERS:

7 Q. Fair enough. I'm going to hand  
8 you what we will mark Exhibit 11.

9 (Whereupon, Exhibit 11 is marked  
10 for identification.)

11 BY ATTORNEY POWERS:

12 Q. Okay. You have Exhibit 11 in  
13 front of you now?

14 A. Yes. I have a document that's  
15 been labeled Exhibit 11.

16 Q. Okay. And if you look at the top  
17 of that document, it says, "Product  
18 Patents."

19 Do you see those words?

20 A. I see the words.

21 Q. And --

22 A. I've never -- I don't know what  
23 this document is, though.

24 Q. Sure.

25 A. I think I should probably take a



1 look. I haven't been able to look through  
2 the patent materials you've been providing  
3 me --

4 Q. Okay.

5 A. -- but I feel like I need to be  
6 looking through documents.

7 Q. Let me direct you to the bottom  
8 left-hand corner of this document where it  
9 says, "Merck.com/products/patents," right?

10 A. I see that written there.

11 Q. And this document says, "In  
12 accordance with Section 287(a) of Title 35  
13 of the United States Code, the following  
14 list identifies Merck's rights in U.S.  
15 patents associated with the relevant  
16 product."

17 Do you see that?

18 A. So based on my just couple  
19 seconds of looking at this document, it  
20 looks like it's purporting to be from our  
21 U.S. website --

22 Q. It is.

23 A. -- for our global enterprise --

24 Q. Yep.

25 A. -- of Merck & Co., Inc. And so

1     like in SEC filings, which I believe I  
2     discuss in my declaration, this is speaking  
3     to the general public.

4             Q.     Uh-huh.

5             A.     Okay.

6             Q.     My question was merely: Did I  
7     read that text properly? And I'll read it  
8     again. "The following list identifies  
9     Merck's rights in U.S. patents associated  
10    with the relevant product."

11            Did I read that correctly?

12            A.     Those are the correct words as  
13    long as we're acknowledging that it's the  
14    global enterprise's website.

15            And so Merck does not refer to  
16    Merck & Co., Inc. there.

17            Q.     Okay. And down about 2/3 of the  
18    way down on this page you see a heading  
19    that says, "Keytruda Qlex"?

20            A.     I do see a heading.

21            Q.     And then the last entry in that  
22    list is U.S. Patent Number 11,633,476,  
23    right?

24            A.     That's what's written here.

25            Q.     And that's the same number as the

1 U.S. Patent I showed you in Exhibit 10?

2 A. In Exhibit 10. Let me look.

3 So the numbers are the same.

4 There's a B2 up at the top of Exhibit 10.

5 I don't know what that means.

6 Q. Okay. Thank you.

7 I want to ask you some questions  
8 about what you say in your declaration at  
9 Paragraph 36. We touched on this a little  
10 bit earlier, but I just wanted to follow up  
11 on some things.

12 How does Merck & Co., Inc.  
13 contact the employees at the subsidiaries  
14 regarding patent litigation, and in PGR  
15 proceedings?

16 A. I'm sorry. I just --

17 Q. Sure --

18 A. -- a minute to read.

19 Q. -- go ahead.

20 (Pause for reading/reviewing.)

21 THE WITNESS: Okay. Sorry. What  
22 was your question?

23 BY ATTORNEY POWERS:

24 Q. How does Merck & Co., Inc.  
25 contact the employees at the subsidiaries

1 regarding patent litigation in PGR  
2 proceedings?

3 [REDACTED]

[REDACTED]

[REDACTED]

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 Q. You've mentioned that. And so  
18 it's -- I mean, you say in your  
19 declaration, "Employees of the relevant  
20 operating subsidiary are contacted for  
21 information," and I noticed your -- you  
22 used a passive voice there.

23 So I'm trying to understand who  
24 is doing the contacting.

25 A. [REDACTED]

1

4

Q.

7

Q.

10

15

ATTORNEY HELM: Objection to

16

form.

17

THE WITNESS:

24

BY ATTORNEY POWERS:

25

1

[REDACTED]

[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25

[REDACTED]

1

A.

2

4

Q.

8

A.

16

Q.

D

20

A.

1

M

7

15

|    |  |
|----|--|
| 15 |  |
|----|--|



1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9

[REDACTED]

[REDACTED]

[REDACTED]

12

A. So I believe I stated already  
13 that from the 10-K perspective, the global  
14 consolidated report of Merck & Co., Inc.  
15 and its subsidiaries is certified by Rob  
16 Davis and Caroline Litchfield.

17

Q. Does --

18

A. If I had a copy of the -- of a  
19 10-K, I could show you.

20

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18

Q. Is it true that the global

19

enterprise is reflected in the SEC filings

20

of Merck & Co., Inc.?

21

A. What do you mean?

22

Q. I think my question is clear.

23

You keep referring to global

24

enterprise, right --

25

A. Uh-huh --

1 Q. -- the global enterprise?

2 A. -- yeah.

3 Q. And is the global enterprise what  
4 is reflected in the Merck & Co., Inc. SEC  
5 filings?

6 A. So we'd have to take each SEC  
7 filing. So from a 10-K perspective, that's  
8 reporting on the consolidated financial  
9 statements of Merck & Co., Inc. and its  
10 subsidiaries.

11 [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
15 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

20 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9

(Whereupon, Exhibit 12 is marked

10

for identification.)

11

BY ATTORNEY POWERS:

12

Q. So can you answer the question

13

without looking at additional documents?

14

A. No.

15

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23

24

A. The board of directors does not

25

oversee litigation. The litigation is

1     overseen at the subsidiary.

2           Q.     There's more to Merck & Co., Inc.  
3     than the board, though, right?

4           A.     I don't know what that means.

5           Q.     It has officers, doesn't it?

6           A.     I believe we talked about that  
7     before.

8           [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20          [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 ATTORNEY POWERS: Can we take a

22 break?

23 ATTORNEY HELM: We can take a

24 break.

25 Before we take a break, I just --

1           could you tell us the time on the  
2           record?

3           THE VIDEOGRAPHER: 5 hours, 16  
4           minutes.

5           ATTORNEY POWERS: Okay.

6           ATTORNEY HELM: Okay. I'd just  
7           like to point out we started this  
8           deposition at 9:00. It's almost 5:00.  
9           Every break that we've taken you've  
10          given an indication of how long that  
11          break will be, and it's been  
12          significantly longer. So we ask that  
13          you keep this break to 10 minutes.

14          ATTORNEY POWERS: We'll try.  
15          Thank you.

16          THE VIDEOGRAPHER: The time right  
17          now is 4:52 p.m.

18          We are off the record.

19          (Whereupon, a recess was taken at  
20          4:52 p.m.)

21          THE VIDEOGRAPHER: The time is  
22          5:12 p.m.

23          We're back on the record.

24          BY ATTORNEY POWERS:

25          Q. Welcome back, Ms. Grez.



1           A.    Thanks.

2           Q.    Just a few moments ago, we  
3   discussed that Merck & Co., Inc. expects  
4   Keytruda Qlex to take about 30 to  
5   40 percent of Keytruda sales, correct?

6           ATTORNEY HELM:  Objection.  Form.

7           THE WITNESS:  If I remember  
8   correctly, we were looking at either a  
9   transcript from earnings or -- I don't  
10  remember what other documents that you  
11  showed.

12  BY ATTORNEY POWERS:

13          Q.    Yeah.  There were statements by  
14  the CEO of Merck & Co., Inc., right?

15          A.    I'm not sure.  Which document  
16  were you talking about?  I feel like there  
17  was one where I wasn't sure what he was  
18  answering.

19          Q.    He was talking about the growth  
20  of Keytruda Qlex and it was expected to  
21  take 30 to 40 percent of Keytruda sales?

22          A.    Can we look back at the document?

23          Q.    If we need to.

24          A.    It's been a long day.

25          Q.    Exhibits 2 through 6.

1           A.    I feel like in one document you  
2   showed me Rob Davis wasn't even one of the  
3   presenters.

4           Q.    I'll help you.  Let's go to  
5   Exhibit 5 on Page 9.  Robert Davis says,  
6   "So maybe to say it as plainly as possible,  
7   we expect to be able to see adoption of  
8   about 30 to 40 percent of all Keytruda into  
9   subcutaneous pembrolizumab," right?

10           ATTORNEY HELM:  We maintain our  
11   objection to this exhibit.

12   BY ATTORNEY POWERS:

13           Q.    Do you see that statement?

14           A.    I do see it.

15           Q.    And Keytruda is roughly  
16   50 percent of Merck & Co., Inc.'s global  
17   sales, right?  We talked about that  
18   earlier.

19           A.    I think you showed me an earnings  
20   release.

21           Q.    So just roughly speaking,  
22   Keytruda Qlex is expected to be between 15  
23   and 20 percent of Merck's overall sales,  
24   right?

25           A.    Do you want to -- so from a point

1 in time in the past? So sales change over  
2 time --

3 Q. Sure.

4 A. -- and Merck & Co., Inc. is in a  
5 period of transformation with many growth  
6 drivers --

7 Q. Just --

8 A. -- so I can't speak to what that  
9 percentage would be.

10 Q. Based on what the CEO of Merck &  
11 Co., Inc. said, if you have 50 percent of  
12 the sales and you take 50 percent, and then  
13 you do 30 to 40 percent of 50 percent of  
14 the sales, then we're talking about 15 to  
15 20 percent of Merck's overall sales, right?

16 A. I don't know. I would need a  
17 calculator to do that.

18 Q. Well, just based on what  
19 Mr. Davis said to investors, if Keytruda  
20 Qlex is expected to take 30 to 40 percent  
21 of Keytruda's sales, then we're talking  
22 about a very large selling drug, right?

23 A. I don't know what time period  
24 he's talking about.

25 Q. You can't say right now -- you

1 can't say whether or not Keytruda is  
2 expected to be a big seller for Merck &  
3 Co., Inc.?

4 ATTORNEY HELM: Objection. Form.

5 THE WITNESS: So are you asking  
6 about Keytruda IV? I think you showed  
7 me documents with the earnings  
8 release --

9 (Simultaneous unreportable  
10 crosstalk occurs among parties.)

11 (Stenographer requests one  
12 speaker at a time.)

13 THE WITNESS: That it shows its  
14 sales, and then it showed the sales for  
15 Keytruda Qlex. I believe it had --

16 BY ATTORNEY POWERS:

17 Q. It had both.

18 A. -- indicated that on its own, the  
19 Keytruda Qlex.

20 Q. Right.

21 A. Should we look back at that  
22 document --

23 Q. No, we don't need to.

24 Do you disagree with Mr. Davis's  
25 projections on sales of Keytruda Qlex?

1           A.    I have no capacity to weigh in on  
2   projections.

3           Q.    Okay.  So let's accept his  
4   projections that Keytruda Qlex takes 30 to  
5   40 percent of Keytruda sales.

6                    That would make Keytruda to be a  
7   very big selling, great selling drug for  
8   Merck & Co., Inc., right?

9           A.    So we've talked about Keytruda  
10  IV, and Keytruda IV --

11          Q.    Gosh, I'm sorry.  Let me -- let  
12  me get my question right.  I'm sorry.

13                   So if we accept Mr. Davis's  
14  projections that Keytruda Qlex takes 30 to  
15  40 percent of Keytruda sales, that would  
16  make Keytruda Qlex a very good selling drug  
17  for Merck & Co., Inc., right?

18          A.    I, in my role, that is not  
19  something that I'm responsible for.

20

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

[REDACTED]

7

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12

[REDACTED]

[REDACTED]

14

[REDACTED]

[REDACTED]

[REDACTED]

17

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24

[REDACTED]

[REDACTED]

1

[REDACTED]

12 Q. This litigation between  
13 Halozyme -- this litigation involving  
14 Halozyme involves Keytruda Qlex, though,  
15 right?

16 A. "This litigation" meaning the PGR  
17 proceedings?

18 Q. The global litigation against  
19 Halozyme involves Keytruda Qlex, right?

20 ATTORNEY HELM: Objection to  
21 form.

22 THE WITNESS: That's my  
23 understanding, but I didn't -- that's  
24 not my...

25 ///

1 BY ATTORNEY POWERS:

2 Q. And you can't say whether the  
3 board is aware of litigation with Halozyme  
4 excluding the Keytruda Qlex product from  
5 the German market?

6 A. I believe you asked me before,  
7 and we talked about this. The -- to the  
8 extent that's listed in one of the 10-Qs,  
9 which I believe it is, because I think I  
10 cited to it -- let's see.

11 Right. So the 10-Q that I cited  
12 to states that the company filed revocation  
13 actions against EP patent, and then it  
14 lists a patent, owned by Halozyme Inc. in  
15 the UK, France, Germany and the  
16 Netherlands.

17 Again, "company" refers to  
18 Merck & Co., Inc. and its subsidiaries,  
19 because that filing is about a consolidated  
20 basis. And I believe I already mentioned  
21 that the audit committee does review annual  
22 and quarterly SEC filings.

23 Q. Do you think that its review of  
24 the annual and quarterly SEC filings is the  
25 only way that the audit committee has



1 learned about the Halozyme litigation?

2 A. As I mentioned, I don't know what  
3 happens at the audit committee. I'm not a  
4 party -- I don't go to those meetings.

5 Q. Sitting here today, you can't say  
6 definitively that the board or a board  
7 committee of Merck & Co., Inc. has even  
8 heard about the Halozyme litigation; is  
9 that correct?

10 A. So I believe as I said before, I  
11 know the audit committee reviews the  
12 quarterly filings filed with the SEC. So  
13 to the extent that's listed there, which it  
14 looks like for the quarter ended  
15 September 30, there was a listing of a  
16 revocation action in Germany. That would  
17 be something that the audit committee would  
18 have seen.

19 Q. And you can't say whether or not  
20 the board of Merck & Co., Inc. has the  
21 authority to settle litigation with  
22 Halozyme, including these PGRs; is that  
23 correct?

24 A. So the board of directors of  
25 Merck & Co., Inc. is not involved in

1 operations.

2 Q. As part --

3 A. [REDACTED]  
[REDACTED]

5 Q. That's not my question.

6 Can you say whether or not the  
7 board of Merck & Co., Inc. has the  
8 authority to settle litigation with  
9 Halozyme, including these PGRs?

10 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

14 Q. Does it have authority to settle  
15 the litigation with Halozyme, including  
16 these PGRs?

17 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23 [REDACTED]  
[REDACTED]  
[REDACTED]

1

3

So responsibility for litigation

4

resides in the subsidiary Merck Sharp &

5

Dohme LLC.

6

18

1 [REDACTED]

7 Q. You mentioned that the board  
8 provides guidance. Who is it providing  
9 guidance to?

10 A. It's providing guidance in  
11 connection with the global business of the  
12 company.

13 Q. Who is it providing guidance to?

14 A. I believe you read out of the  
15 proxy statement the executive officers.

16 Q. The executive officers of Merck &  
17 Co., Inc.?

18 A. Correct.

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1



1 authority to effectuate settlement in any  
2 way?

3 A. No.

4 Q. The research and development  
5 committee of the MCI board is responsible  
6 for overseeing licensing, right?

7 A. Let me look back at the research  
8 committee charter. I don't believe that's  
9 what it says.

10 "Strategies" is the word,  
11 "licensing strategies." So, again, the  
12 Merck & Co., Inc. board of directors is  
13 responsible for overseeing the global  
14 business that is conducted through  
15 subsidiaries.

16 One of those, and I think you  
17 referred to it in the proxy statement from  
18 last year, is with respect to strategic  
19 matters impacting the global enterprise.

20 Q. Can the board instruct Jennifer  
21 Zachary to act?

22 A. In what regard?

23 Q. In a way to settle the litigation  
24 with Halozyme.

25 A. I believe I already answered that

1 question.

2 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. No, that doesn't really answer my  
7 question.

8 Does the board have the authority  
9 to instruct Jennifer Zachary to settle the  
10 litigation with Halozyme?

11 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 Q. So could the board instruct  
18 Jennifer Zachary, in her capacity as  
19 general counsel for Merck Sharp Dohme LLC,  
20 to settle the litigation with Halozyme?

21 A. [REDACTED]

[REDACTED]

[REDACTED]

24 Q. I'm asking you. Does the board  
25 have the authority to instruct Jennifer

1 Zachary in any capacity of hers to resolve  
2 the litigation with Halozyme?

3 A. [REDACTED]

[REDACTED]

[REDACTED] J [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 Q. So who has, within the Merck  
17 entities, the authority to settle the  
18 litigation with Halozyme?

19 A. [REDACTED]

[REDACTED]

[REDACTED]

22 Q. Could she settle that litigation  
23 globally?

24 A. I don't know what "that  
25 litigation" refers to.



1 Q. Could she settle the cases that  
2 are occurring in Europe?

3 A. I'm not familiar with the cases  
4 other than just what I have seen, like,  
5 which subsidiary is involved.

6 Q. Uh-huh.

7 A. I think from an intellectual  
8 property perspective, there may be some  
9 sort of intercompany agreement with respect  
10 to intellectual property globally, but I  
11 don't know.

12 Q. So Jennifer Zachary might be able  
13 to settle the litigation globally, but you  
14 don't know?

15 A. So each subsidiary would have to  
16 determine it for themselves.

17

21 ATTORNEY HELM: I'm going to  
22 object strenuously on the record. This  
23 is getting borderline harassing, the  
24 extent to which you've asked the  
25 identical question over a course of

1           many hours of this day.

2                   ATTORNEY POWERS: Your objections  
3           are inappropriate.

4   BY ATTORNEY POWERS:

5           Q.   Who does Jennifer Zachary report  
6   to in her role as general counsel of MSD  
7   LLC?

8           A.   She reports to Rob Davis.

9           Q.   And he is the CEO of Merck & Co.,  
10   Inc., right?

11          A.   He's also an employee of Merck  
12   Sharp & Dohme LLC.

13          Q.   He has no title or role with MSD  
14   LLC, though, right?

15          A.   He doesn't -- you asked me if he  
16   had an officer position. He does not have  
17   an officer position at Merck Sharp & Dohme  
18   LLC.

19          Q.   His role is as CEO, president and  
20   chair of Merck & Co., Inc., right?

21          A.   He has responsibility for the  
22   global business. As you read in the proxy,  
23   I believe, with the -- you know...

24          Q.   Yeah. And let's go back to the  
25   research and development committee.

1           Can you say if the research and  
2   development committee of the board of  
3   Merck & Co., Inc. has provided guidance as  
4   to the global litigation over Keytruda Qlex  
5   with Halozyme?

6           A.    I would highly doubt that they  
7   would.

8           Q.    You can't say one way or the  
9   other?

10          A.    I don't sit in the research  
11   committee meetings. I've seen minutes.

12          Q.    But you don't --

13          A.    They'd have no reason to. It's  
14   not their role. It's not their function.

15          Q.    Can you say one way or the other  
16   whether the litigation with Halozyme is  
17   material to Merck & Co.?

18          A.    I'm not responsible for making  
19   that determination. I'm not an SEC lawyer.

20          Q.    So is that a "I don't know"?

21          A.    I don't know.

22          Q.    Okay.

23          A.    Yes. But I do know, as I've  
24   shared before, that just because something  
25   is in a Merck & Co., Inc. filing with the

SEC does not mean that it's material.

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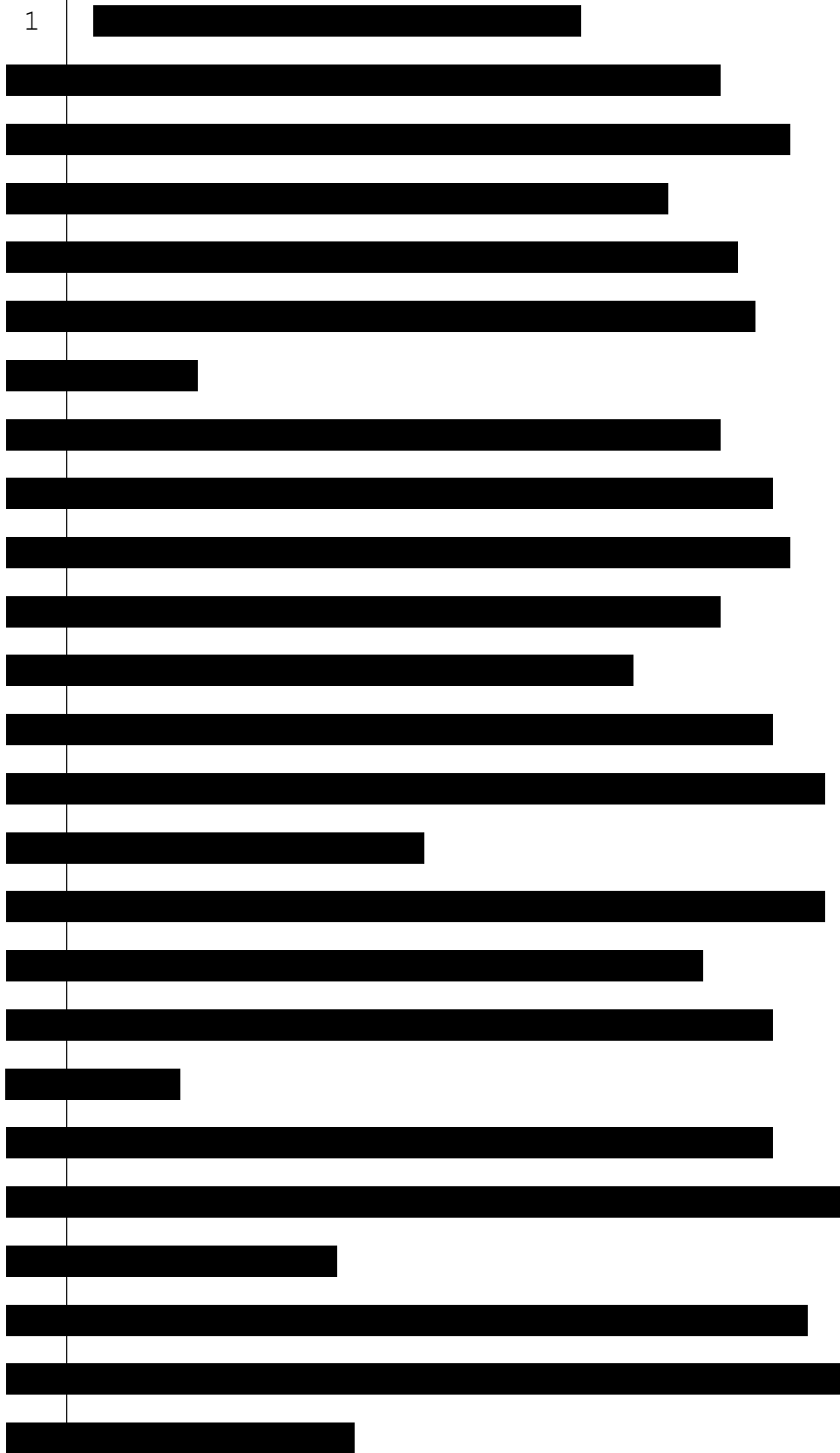
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1 Q. As a voting, could -- okay.

2 ATTORNEY HELM: We encourage you  
3 to move on. We've now counted up in  
4 the transcript, and you've asked nearly  
5 80 times some almost identical  
6 permutation of the oversight --

7 ATTORNEY POWERS: That's  
8 inappropriate.

9 (Simultaneous unreportable  
10 crosstalk occurs among parties.)

11 ATTORNEY HELM: -- question.

12 ATTORNEY POWERS: That's  
13 inappropriate for you to say that.

14 ATTORNEY HELM: You're harassing  
15 the witness. Please move on.

16 ATTORNEY POWERS: That's far from  
17 true. I'm being a gentleman, as  
18 always.

19 BY ATTORNEY POWERS:

20 Q. So could the board -- does the  
21 board have the authority to effectuate --  
22 effectuate a settlement in any way with  
23 Halozyme?

24 ATTORNEY HELM: Same objections.

25 

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BY ATTORNEY POWERS:

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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?

10

A.

12

Q. Stop the PGRs or settle the PGRs?

13

A.

21

22

23

Q. Does Ms. Zachary have the power to settle these PGRs on behalf of MSD LLC?

A.



1 for their governance structures, so I  
2 wouldn't be able to speak to that piece.

3 Q. If the board of Merck & Co., Inc.  
4 asked Ms. Zachary to settle litigation with  
5 Halozyme, can she refuse?

6 ATTORNEY HELM: Same objections.

7 Please move on.

8 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

11 BY ATTORNEY POWERS:

12 Q. If Merck & Co., Inc.'s CEO  
13 Mr. Davis told Ms. Zachary to settle the  
14 litigation with Halozyme as part of a  
15 global settlement for MCI's global  
16 business, she would do so, correct?

17 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

25 Q. If Merck & Co., Inc.'s CEO

1 Mr. Davis told Ms. Zachary to settle the  
2 litigation as part of a global settlement  
3 on behalf of -- strike that.

4 If Merck & Co., Inc.'s CEO  
5 Mr. Davis told Ms. Zachary to settle the  
6 litigation between Halozyme and MSD LLC,  
7 she would do so, correct?

8 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

12 Q. If Ms. Zachary -- so Ms. Zachary  
13 could by herself settle the litigation on  
14 behalf of Merck Sharp & Dohme LLC?

15 A. [REDACTED]

16 Q. And so she could do that by  
17 herself?

18 A. [REDACTED]  
[REDACTED]

20 Q. Would she typically request board  
21 oversight or board approval for such a  
22 move?

23 A. [REDACTED]  
[REDACTED]

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

1

2 [REDACTED]  
3 [REDACTED]  
4 Q. Does Mr. Stewart in his role at  
5 MSD LLC have the authority to settle the  
6 litigation between Halozyme and MSD LLC?

7 A. I'm not sure what his level of  
8 authority is, but I know he manages the  
9 proceedings.

10 Q. Would he need approval from  
11 anyone to settle the litigation with  
12 Halozyme on behalf of MSD LLC?

13 ATTORNEY HELM: I'll give you the  
14 privilege instruction caution not to  
15 reveal any information that would be --  
16 that is protected by legal privilege.

17 ATTORNEY POWERS: I'm not asking  
18 for any of that.

19 ATTORNEY HELM: If you can answer  
20 that without doing so, you may.

21

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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4 BY ATTORNEY POWERS:

5 Q. Could Ms. Zinkel -- Ms. Ginkel  
6 settle the PGRs with Halozyme without  
7 talking to Ms. Zachary about settling the  
8 PGRs with Halozyme?

9 A. [REDACTED]

14 Q. Would Jennifer Zachary discuss  
15 settlement with Mr. Davis before settling?

16 A. [REDACTED]

18 Q. Does Ms. Zachary in her role at  
19 MSD have the authority to settle this  
20 litigation by herself without informing  
21 anyone?

22 A. I feel like I already answered  
23 that question. So --

24 Q. Remind me.

25 A. Is there -- can we see if I

1 already answered it?

2 Q. No.

3 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 Q. She could do that without  
10 informing anybody?

11 A. [REDACTED]

12 Q. And what about the authority of  
13 settling these PGRs that we're here to talk  
14 about today? Does Ms. Zachary have  
15 authority to settle them?

16 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. [REDACTED]

[REDACTED]

[REDACTED]

23 Q. Now, Mr. Stewart could not sign a  
24 settlement agreement with Halozyme without  
25 informing MCI, right, the Merck & Co.,

|   |    |
|---|----|
| 2 | A. |
|---|----|

|   |                |
|---|----------------|
| 6 | Q. Forgive me. |
|---|----------------|

7 | Anyone at Merck & Co., Inc.

|   |    |
|---|----|
| 8 | A. |
|---|----|

10 Q. It has officers, though, right?

|    |    |
|----|----|
| 11 | A. |
|----|----|

14 Q. Mr. Stewart could not sign a  
15 settlement agreement with Halozyme without  
16 informing Merck & Co., Inc., though,  
17 correct?

|    |    |
|----|----|
| 18 | A. |
|----|----|

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Q. Mr. Stewart can't settle the  
litigation -- strike that.

4

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6

Mr. Stewart can't settle these  
PGRs with Halozyne without the MCI board  
being informed by someone, right?

7

A. [REDACTED].

8

9

Q. So is it your testimony that  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23

24

25

Q. Could Mr. Stewart settle the  
litigation without the Merck & Co., Inc.  
board being informed?

1           ATTORNEY HELM: Objection. Asked  
2           and answered. Again, move on. You're  
3           harassing the witness.

4       BY ATTORNEY POWERS:

5           Q.    Can you answer my question?

6           A.    [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

10          Q.    Could Mr. Stewart settle the  
11          litigation without the Merck & Co. --  
12          without an MCI officer being informed?

13                Let me ask that a little bit  
14          better.

15                Could Mr. Stewart settle the  
16          litigation with Halozyme without a Merck &  
17          Co., Inc. officer being informed?

18          A.    [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23          Q.    At Paragraph 22 of your  
24          declaration, you wrote that Ms. Zachary  
25          acts in her capacity at MSD LLC when she



1 makes decisions on whether to "initiate,  
2 pursue, continue or terminate patent  
3 litigation," right?

4 A. Yeah, I mean, there's a broader  
5 sentence.

6 Q. You agree that Ms. Zachary can  
7 decide to initiate patent litigation or  
8 patent proceedings, right?

9 A. [REDACTED]  
[REDACTED]

11 Q. You agree that Ms. Zachary can  
12 decide whether to pursue, continue or  
13 terminate patent litigation or patent  
14 proceedings, right?

15 A. [REDACTED]  
[REDACTED]

17 Q. If Ms. Zachary gave outside  
18 counsel an instruction, you'd expect them  
19 to follow it, right?

20 ATTORNEY HELM: Objection. Form.

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

23 BY ATTORNEY POWERS:

24 Q. If she gave them an instruction  
25 about legal strategy, you would expect

1 outside counsel to follow that instruction,  
2 right?

3 A. What if they disagreed and wanted  
4 to have a conversation about it?

5 Q. If Ms. Zachary said, it had to be  
6 this way, outside counsel would follow that  
7 instruction, right?

8 A. I can't speak for outside  
9 counsel.

10 Q. You're not sure, okay.

11 A. No. I said I can't speak for  
12 outside counsel.

13 Q. All right. If Jennifer Zachary  
14 gave outside counsel instructions regarding  
15 strategy in these proceedings, you'd expect  
16 them to follow her instructions, right?

17 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 Q. That's true that Ms. Zachary is  
22 the ultimate Merck lawyer with the power to  
23 make calls on strategy with respect to  
24 these PGRs, right?

25 A. I don't know what "ultimate Merck

1 lawyer" means.

2 Q. She's the last say at Merck?

3 A. I don't know what --

4 ATTORNEY HELM: Objection.

5 THE WITNESS: -- "last say at  
6 Merck" means.

7 BY ATTORNEY POWERS:

8 Q. She's the highest ranking  
9 attorney at Merck to make calls about  
10 strategy on these PGRs, right?

11 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24 Q. Does Jennifer Zachary need anyone  
25 else's approval before making calls related

1 to these PGRs?

2 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 Q. Do you agree that Merck & Co.,  
10 Inc.'s and MSD LLC's interests are aligned  
11 in terms of these PGRs?

12 A. I don't know what you mean by  
13 "aligned."

14 Q. Do you see any difference in the  
15 interests between Merck & Co., Inc. and --  
16 strike that.

17 Do you believe that Merck & Co.,  
18 Inc. and Merck Sharp & Dohme LLC's  
19 interests are the same in terms of these  
20 PGRs?

21 A. So Merck & Co., Inc., the board  
22 of directors of Merck & Co., Inc. in that  
23 role is looking at the global enterprise.  
24 So it's got a lot of different things that  
25 it thinks about. Merck & Co., Inc. as we

1 have discussed, is the sole owner of Merck  
2 Sharp & Dohme LLC.

3 Q. Are you aware of any divergence  
4 in the interest of Merck & Co., Inc. and  
5 MSD LLC in terms of these PGRs?

6 A. I wouldn't be aware of any.

7 Q. Now, you mentioned in your  
8 declaration at Paragraph 24 that there are

9 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

20 Q. How does she interact with the  
21 people involved in the proceedings that you  
22 mentioned in Paragraph 24?

23 A. I don't know what you mean, "how  
24 does she interact."

25 Q. Well, you mentioned interactions

1 in Paragraph 24 -- right? -- Ms. Zachary's  
2 interactions, right?

3 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

7 Q. Does she have phone calls with  
8 these people?

9 A. I don't know.

10 Q. Does she have videoconferences  
11 with these people?

12 A. I don't know how they  
13 communicate.

14 Q. Does she have in-person meetings  
15 with these people?

16 A. I don't know how they  
17 communicate.

18 Q. Do you know that they  
19 communicate?

20 A. I'm sure they communicate.

21 Q. How do you know that they  
22 communicate?

23 A. Because Ms. Zachary is general  
24 counsel of Merck Sharp & Dohme LLC.

25 Q. So that means that these four

1 people must necessarily communicate with  
2 Ms. Zachary about these PGR proceedings?

3 A. [REDACTED]  
[REDACTED]  
[REDACTED]

6 Q. So one or more of these people is  
7 necessarily communicating with Ms. Zachary  
8 about these PGR proceedings; is that right?

9 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 Q. You just -- a few minutes ago,  
14 you said I'm sure they communicate.

15 A. Indeed.

16 Q. Okay. And so are you sure that  
17 they communicate about these PGR  
18 proceedings?

19 A. [REDACTED]

20 Q. And are you sure that they --

21 A. And I believe -- yeah, I think I  
22 cite to something here, 2401. I don't have  
23 that exhibit in front of me. It would be  
24 good to understand what I was citing to.  
25 There's a lot I cited to in here.

1 Q. Do you know if Jennifer Zachary  
2 has reviewed documents related to these  
3 PGRs, like, filings?

4 A. I don't know.

5 Q. Do you know if Jennifer Zachary  
6 has requested updates on these PGRs?

7 A. I don't know.

8 Q. Do you know if Jennifer Zachary  
9 has ever met with outside counsel related  
10 to these proceedings, these PGRs?

11 A. [REDACTED]  
[REDACTED]  
[REDACTED]

14 Q. Since that time --

15 A. Sorry, am I not going to be able  
16 to see 2401, or...

17 Q. I'm -- 2401? The exhibit?

18 A. That was -- yeah, that was what I  
19 had cited from 24.

20 (Simultaneous unreportable  
21 crosstalk occurs among parties.)

22 BY ATTORNEY POWERS:

23 Q. Oh, no, we don't need to see  
24 that. I'm just asking you some questions.

25 A. We don't get to see that, okay.



|   |    |  |
|---|----|--|
| 6 | Q. |  |
|---|----|--|

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14 Q. [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

19           A.    Yeah, I recall we discussed that  
20    earlier.

22                   A.     You asked me.

24 Before you started preparing for  
25 your declaration and your deposition, did

1 you have any knowledge of how Ms. Ginkel,  
2 Mr. Stewart, Mr. Majchrzak and Ms. Su  
3 communicated with counsel from Sidley or  
4 Dechert related to these PGRs?

5 A. [REDACTED]  
[REDACTED]

7 Q. So you didn't know, right?

8 ATTORNEY HELM: Objection to  
9 form.

10 THE WITNESS: I'm sorry. Was  
11 that a question?

12 BY ATTORNEY POWERS:

13 Q. Yeah.

14 So you don't know?

15 A. Don't know whether and how they  
16 interacted?

17 Q. Right.

18 A. Correct.

19 Q. Okay. Do you know if Ms. Zachary  
20 or Mr. Davis ever joined calls with outside  
21 counsel related to these PGRs?

22 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 [REDACTED].

2 Q. Okay.

3 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. All right. Now, in Paragraph 26

8 of your declaration, you said that, "Merck

9 Sharp & Dohme LLC is the only entity that

10 [REDACTED]

[REDACTED]

[REDACTED]

13 Q. And you say that MSD LLC, "is

14 also the only entity that [REDACTED]

[REDACTED]

[REDACTED]

17 Q. And you say that, "Merck & Co.,

18 Inc. is [REDACTED]

[REDACTED]

[REDACTED] Nor does Merck &

21 Co., Inc. have [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 Q. But Merck & Co., Inc. owns all

1 rights to make and use and sell Keytruda,  
2 right?

3 A. [REDACTED]

4 Q. Okay. I'm going to hand you what  
5 has been marked Exhibit 13.

6 (Whereupon, Exhibit 13 is marked  
7 for identification.)

8 BY ATTORNEY POWERS:

9 Q. Do you have --

10 A. I do not.

11 Q. Do you have Exhibit 13 in front  
12 of you now?

13 A. I do. I don't know what this is.

14 Q. This is a letter from Merck &  
15 Co., Inc. to the SEC, right?

16 A. I've never seen this before.  
17 I'll need to read through it.

18 Q. Go ahead. It's a letter dated  
19 April 16, 2025, right?

20 A. So am I gonna be able to read  
21 through it --

22 Q. Yeah.

23 A. -- or are you going to ask me  
24 questions? Because I'm good at a lot of  
25 things, but doing two things at once is a

1 challenge.

2 Q. Go ahead.

3 A. Okay.

4 (Pause for reading/reviewing.)

5 BY ATTORNEY POWERS:

6 Q. I just have a few questions about  
7 this document, and maybe you can answer  
8 them without reading the whole thing, but  
9 if you want to read portions of this  
10 document to answer my questions, feel free.

11 ATTORNEY HELM: Just for the  
12 record, this document is one page.

13 ATTORNEY POWERS: Right.

14 ATTORNEY HELM: Front and back.  
15 So please give her the time that she  
16 asked to read the document.

17 (Simultaneous unreportable  
18 crosstalk occurs among parties.)

19 BY ATTORNEY POWERS:

20 Q. Okay.

21 (Pause for reading/reviewing.)

22 THE WITNESS: Okay.

23 BY ATTORNEY POWERS:

24 Q. All right. So this is a letter  
25 to the SEC dated April 16, 2025, right?

1           A.    That's what it appears to be.

2           Q.    And the letter went to the SEC on  
3   behalf of Merck & Co., Inc., right?

4           A.    It doesn't actually say.

5           Q.    Well, right there under the "re"  
6   line or right next to the "re" line at the  
7   top of the document, it says, "Merck & Co.,  
8   Inc.," right?

9           A.    It certainly is -- "re" to me  
10   means about.

11          Q.    Right. Okay. And then it says,  
12   "Ladies and Gentlemen, Merck & Co., Inc.  
13   ('Merck' or the 'company')," right?

14          A.    I do see that there.

15          Q.    Okay. And so --

16          A.    And as I've shared before, with  
17   respect to filings with the SEC, and this  
18   looks like a letter to the SEC, and our  
19   10-K as we've talked about before, and I  
20   think specifically this particular 10-K,  
21   it's a 10-K that reports the consolidated  
22   financial statements of Merck & Co., Inc.  
23   and its subsidiaries.

24          Q.    And the SEC asked Merck & Co. why  
25   it's not substantially dependent on

1     licensing agreements providing it with the  
2     right to sell Keytruda, right? Isn't that  
3     what the SEC asked?

4           A.     So here it says, "Please either  
5     file these agreements or explain why you  
6     believe you are not substantially dependent  
7     on licensing agreements providing you with  
8     the right to sell Keytruda."

9           Q.     Right. Because under Item 1,  
10    Business, Product Sales, Page 1, the SEC  
11    wrote to Merck & Co., "We note that  
12    Keytruda accounted for 46 percent of your  
13    revenues in 2024," and then it asks Merck &  
14    Co., Inc. to do the things that you just  
15    mentioned, right?

16          A.     Yes. Recall that the revenues  
17    that are reported are revenues of Merck &  
18    Co., Inc. and its subsidiaries. M [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22          Q.     This letter informed the SEC that  
23    the company, Merck & Co., Inc., has all  
24    rights to make and use -- to make, use and  
25    sell Keytruda, right?

1           A.    No.  That refers to the  
2 consolidated subsidiaries of Merck & Co.,  
3 Inc.

4           Q.    But this letter says the company,  
5 right?

6           A.    So once again, as I've stated  
7 before, with respect to filings with the  
8 SEC -- and I believe I shared this in my  
9 declaration as well -- it refers to the  
10 global enterprise of Merck & Co., Inc. that  
11 operates its business through subsidiaries.

12                   In fact, in the 10-K, it  
13 specifically talks about the consolidated  
14 financial statements of its subsidiaries.

15           Q.    This document states, "The  
16 company announced that it had entered into  
17 a settlement and license agreement  
18 resolving worldwide patent infringement  
19 litigation related to a third party's  
20 patent -- patents directed generally to  
21 PD-1 inhibitors but which did not  
22 specifically claim pembrolizumab."

23                   Did I read that correctly?

24           A.    It seems like it.

25           Q.    Under the settlement -- the



1 document continues, "Under the settlement  
2 and license agreements -- agreement, the  
3 company made a one-time payment of  
4 \$625 million and agreed to pay royalties on  
5 the worldwide sales of Keytruda for a  
6 nonexclusive license to market Keytruda in  
7 any market in which it is approved."

8 Did I read that correctly?

9 A. It seems correct.

10 Q. It also continues, "As discussed  
11 in the Form 10-K, the company paid a  
12 royalty of 6.5 percent on worldwide sales  
13 of Keytruda through December 2023 to that  
14 third party, but this royalty declined to  
15 2.5 percent in 2024 and terminates on  
16 December 31, 2026," right?

17 A. That's what it says. And as  
18 we've discussed before, "company" refers to  
19 Merck & Co., Inc. and its consolidated  
20 subsidiaries.

21 Q. And Merck & Co., Inc. told the  
22 SEC that it owns all rights to Keytruda,  
23 right?

24 A. So Jon Filderman it looks like  
25 signed this. And as we've talked about

1 before, he's in the legal department of  
2 Merck Sharp & Dohme LLC.

3 Q. That wasn't quite my question.  
4 Merck & Co., Inc. told the SEC that it owns  
5 all rights to Keytruda, right?

6 A. It did not.

7 ATTORNEY HELM: We object to the  
8 introduction of this document as being  
9 outside the Court's March 12th order  
10 concerning the permissibility of  
11 introducing new documents that are  
12 outside the record to aid in  
13 cross-examination. This is well  
14 outside the scope of any  
15 cross-examination that's legitimate for  
16 this witness.

17 BY ATTORNEY POWERS:

18 Q. The document states, "As a  
19 result, the company owns all rights to  
20 make, use and sell Keytruda," right?

21 A. As I've said, "company" refers to  
22 Merck & Co., Inc. and its subsidiaries.

23 Q. This document states, "the  
24 company owns all rights to make, use and  
25 sell Keytruda," correct?

2

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]

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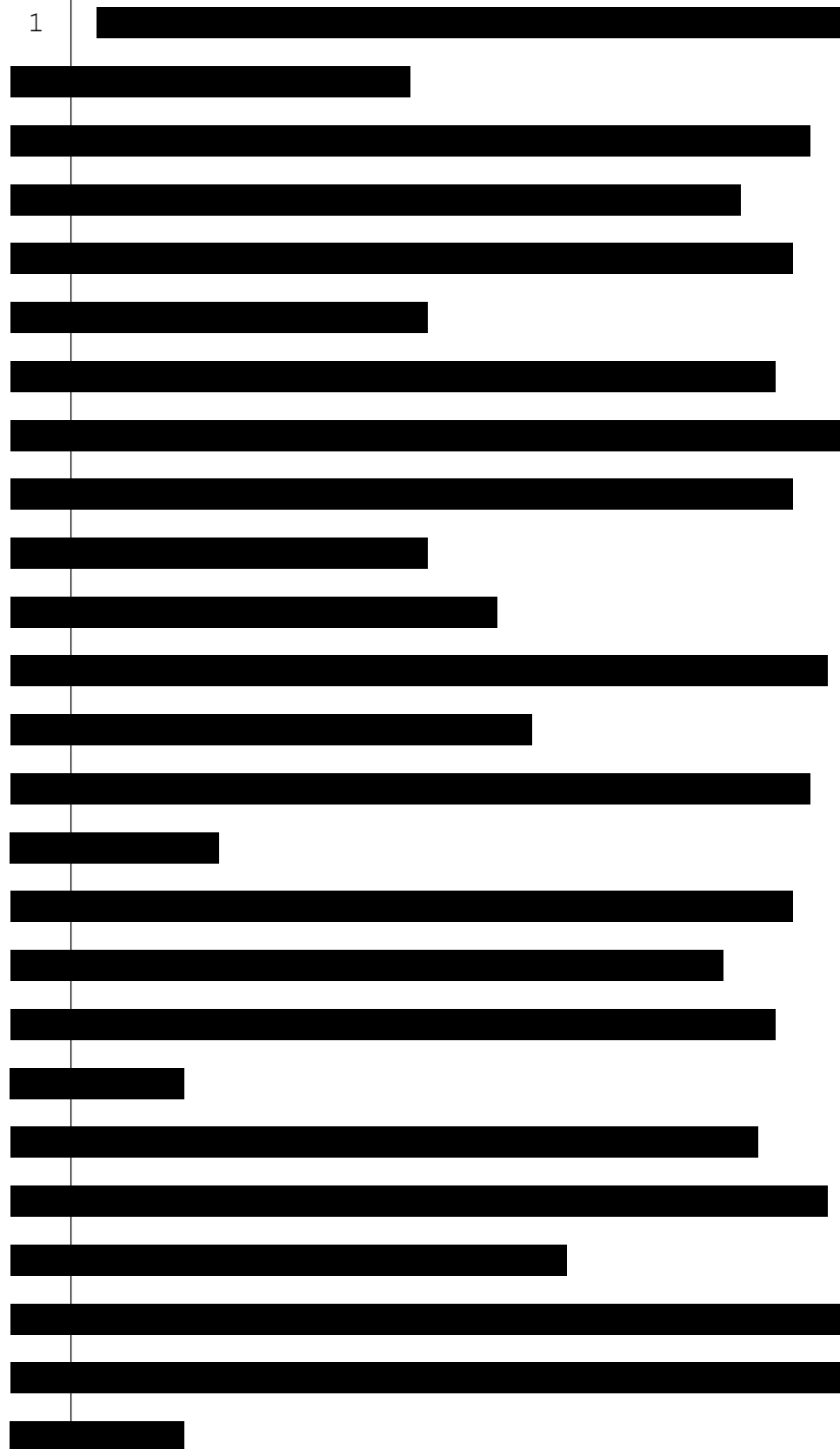
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1

A.

[REDACTED]

3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7

Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19

[REDACTED]

[REDACTED]

[REDACTED]

22

Q. Do you know if Merck & Co., Inc.

23

has job descriptions for patent attorneys

24

posted on the Merck.com website?

25

A. So the Merck.com website is a

1 website for the U.S. It's not a Merck &  
2 Co., Inc. specific website. It's for the  
3 Merck & Co., Inc. global business that's  
4 operated through subsidiaries and is  
5 accessible in the U.S. and Canada.

6 ATTORNEY POWERS: I'm going to  
7 hand you what will be marked  
8 Exhibit 14.

9 (Whereupon, Exhibit 14 is marked  
10 for identification.)

11 ATTORNEY HELM: Trey, can I get a  
12 copy?

13 ATTORNEY POWERS: Oh, of course.  
14 I'm sorry. It's getting late.

15 ATTORNEY HELM: Yes, it is.

16 BY ATTORNEY POWERS:

17 Q. Do you see -- do you have this  
18 document in front of you, Exhibit 14?

19 A. I do.

20 Q. And you can see on the right side  
21 of this document -- first of all, this  
22 document is a printout from the Merck.com  
23 website. And it is a job posting for  
24 patent counsel.

25 Do you see that?

1           A.    I see there's a label patent  
2   counsel on our website that's accessible in  
3   the U.S. and Canada.

4           Q.    And it says on the right side of  
5   this document, About Us: "We are one  
6   company, but we operate under two different  
7   corporate brand names. We are known as  
8   Merck & Co., Inc., Rahway, New Jersey, USA  
9   in the United States, Canada and Puerto  
10   Rico. We are known as MSD everywhere  
11   else."

12                   Did I read that correctly?

13           A.    That's what that says.

14           Q.    And then on the left side of this  
15   page, it says, "Job Description, Patent  
16   Attorney." Right?

17           A.    It does.

18           Q.    And then if you go to Page 5 of  
19   the document.

20           A.    Sorry. Counting starting with  
21   the first page?

22           Q.    Yes, ma'am. That's a header that  
23   says, "Search Firm Representatives Please  
24   Read Carefully."

25           A.    I think I'm on the wrong page.



1 Mine says U.S. and Puerto Rico Residents  
2 Only.

3 Q. Go -- let's see, one more page,  
4 please.

5 A. Mine starts with Effective  
6 September 5, 2023.

7 Q. Okay. One page after that.

8 It says, "Search Firm  
9 Representatives Please Read Carefully."

10 Do you see that?

11 A. (No verbal response.)

12 Q. Then the document states,  
13 "Merck & Co., Inc. Rahway, New Jersey, USA,  
14 also known as Merck Sharp & Dohme LLC,  
15 Rahway, New Jersey, USA, does not accept  
16 unsolicited assistance from search firms  
17 for employment opportunities."

18 Did I read that correctly?

19 A. You read it correctly, but that's  
20 incorrect.

21 Q. What's incorrect?

22 A. Merck & Co., Inc. is not also  
23 known as Merck Sharp & Dohme LLC.

24 Q. This is a printout from the  
25 Merck.com web page.

1           A.    Yeah, and that's unfortunate.

2   That needs to be corrected.

3           Q.    Okay.

4                   (Whereupon, Exhibit 15 is marked  
5                   for identification.)

6           ATTORNEY POWERS:  I'm going to  
7   hand you what's been marked Exhibit 15.

8           ATTORNEY HELM:  Trey, can I have  
9   a copy, please?

10          ATTORNEY POWERS:  Of course.

11          Sorry.

12   BY ATTORNEY POWERS:

13          Q.    Okay.  You have Exhibit 15 in  
14   front of you?

15          A.    I have a document labeled  
16   Exhibit 15, yes.

17          Q.    Do you know if anyone in legal  
18   reviews job postings before they're posted?

19          A.    I don't believe so.

20          Q.    Even a posting for patent  
21   counsel?

22          A.    I guess if one of the patent  
23   lawyers was seeking a patent lawyer for  
24   Merck Sharp & Dohme LLC, they would read  
25   the portion that discusses what the

1 position is about.

2 Q. Go to Page 9 of Exhibit 14,  
3 please.

4 A. Sorry.

5 Q. 15?

6 A. I thought we were looking at 15.

7 Q. 15.

8 A. And to be clear, 15 says,  
9 "Oncology Customer Team Leader (District  
10 Sales Manager) - Music City District."

11 Q. Thank you.

12 A. So this does not appear to be in  
13 a position for a patent attorney.

14 Q. The last one was, right? This is  
15 a position for oncology customer team  
16 leader, right?

17 A. That's what this says.

18 Q. Yeah. And let's go to Page 9 of  
19 this document. This is a job posting on  
20 Merck.com website:

21 A. "The successful candidate will be  
22 eligible for annual bonus."

23 Q. That's how it starts.

24 A. Okay.

25 Q. But then if I direct you to some

1 text a little further down on Page 9, it  
2 says, "Search Firm Representatives Please  
3 Read Carefully."

4 And then it says, "Merck & Co.,  
5 Inc., Rahway, New Jersey, USA, also known  
6 as Merck Sharp & Dohme LLC, Rahway,  
7 New Jersey, USA, does not accept  
8 unsolicited assistance from search firms  
9 for employment opportunities."

10 Did I read that correctly?

11 A. Yes. And as I said before,  
12 that's incorrect. My understanding is that  
13 this type of language is put together and  
14 then just used. And I don't know whether  
15 anyone has had oversight of this, but this  
16 is wrong and needs to be corrected.

17 Q. Okay.

18 ATTORNEY POWERS: Take a break.

19 ATTORNEY HELM: Okay. Can we  
20 limit the break to 10 minutes?

21 ATTORNEY POWERS: We'll try.

22 ATTORNEY HELM: How much time is  
23 left on the record?

24 THE STENOGRAPHER: Can we go off  
25 the record?

1 THE VIDEOGRAPHER: The time right  
2 now is 6:23 p.m. We're off the record.

3 (Whereupon, a recess was taken at  
4 6:23 p.m.)

5 THE VIDEOGRAPHER: The time is  
6 6:37 p.m.

7 We are back on the record.

8 BY ATTORNEY POWERS:

9 Q. Ms. Grez, at any point during the  
10 break, did you speak about the substance of  
11 your testimony with counsel?

12 A. I did not.

13 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

18 Q. What's your definition of  
19 "employee"?

20 A. I'm not sure what you mean.  
21 That's a pretty basic word.

22 Q. I'm asking you what you meant  
23 when you say "employee."

24 A. I mean employee.

25 Q. Do you mean someone that works

1 for the entity?

2 A. I mean employee.

3 Q. You mean someone on a salary?

4 A. There's plenty of people that can  
5 work for various entities. I believe our  
6 court reporter talked about being an  
7 independent contractor. I'm talking about  
8 employees.

9 Q. Can you give me your definition  
10 of "employee" as you used the term today?

11 A. I used the term "employee" to  
12 mean what the basic understanding of  
13 employee is.

14 Q. What's your basic understanding  
15 of what the word "employee" means?

16 A. Employee is what employee means.  
17 I don't...

18 Q. That's tautological.

19 A. I don't know what "tautological"  
20 means.

21 Q. That's all right.

22 A. Is it? Okay. Thanks.

23 Q. There's no reason to get testy.

24 A. Agreed.

25 Q. Do you agree that an employee is

1 a person employed for wages or salary,  
2 especially at a nonexecutive level?

3 A. I wouldn't agree that it's a  
4 nonexecutive level. I'm not sure what  
5 you're reading from.

6 Q. Can you give me a definition of  
7 "employee" that doesn't use the word  
8 "employee" in the definition?

9 ATTORNEY HELM: Objection to  
10 form.

11 THE WITNESS: I didn't realize I  
12 was here to define basic words.

13 BY ATTORNEY POWERS:

14 Q. Can you please define "employee"  
15 as you used it many times today?

16 A. I used "employee" in the basic  
17 meaning of "employee."

18 Q. Someone who is salaried and paid  
19 by the entity in question?

20 A. Well, folks can be employed by an  
21 entity and not have a salary. They could  
22 be paid on an hourly basis and still be  
23 employees.

24 Q. Basically, I think what you're  
25 saying is that you can't give me a clear

1 definition of "employee" sitting here right  
2 now; is that right?

3 ATTORNEY HELM: Objection to  
4 form.

5 THE WITNESS: What I said was  
6 there's a basic definition of  
7 "employee."

8 BY ATTORNEY POWERS:

9 Q. What's your basic definition of  
10 "employee"?

11 A. As I said, I'm using it in the  
12 context of employee.

13 Q. What does "employee" mean to you?

14 A. I don't know what you mean.

15 Q. I mean employee.

16 A. I'm not sure what else I can say.

17 Q. Okay. When you said that someone  
18 is an employee of MSD LLC and not Merck &  
19 Co., Inc., what did you mean by that?

20 A. That they're employees of Merck  
21 Sharp & Dohme LLC.

22 Q. How does someone -- how do you  
23 know what someone -- strike that.

24 How can you know if someone is an  
25 employee or not if you can't define



1 employee?

2 A. Are you -- do you know when  
3 someone is an employee?

4 Q. I'm asking you the questions  
5 today.

6 A. I know you are.

7 Q. Okay. Well, we're almost through  
8 this, so let's work together. Can you  
9 define "employee" for me?

10 A. I think we should agree we're not  
11 working together.

12 Q. Fair enough. I'm just going to  
13 ask you some questions.

14 Can you define "employee"?

15 A. As I've said before, I don't have  
16 a definition for employee other than basic  
17 usage in English.

18 Q. What's your understanding of the  
19 word "employee" as you used that term  
20 throughout today?

21 ATTORNEY HELM: Objection. Come  
22 on, you've asked and answered that same  
23 question --

24 ATTORNEY POWERS: I haven't  
25 gotten an answer. And your objections

2 BY ATTORNEY POWERS:

3           Q.    Can you please define "employee"  
4   for me as you've used that word throughout  
5   today's proceedings?

6           A.    I don't have a definition of  
7   employee.    I'm using it in the sense of  
8   employee.

9 Q. How do you know that you are an  
10 employee of MSD and not MCI?

11           A.     So I look at employment -- well,  
12     for myself, I know.  For others, I believe  
13     in my declaration I cited to employment  
14     records.

15 Q. Can you define "employee" for me?

16           A.    I said I couldn't.

| Response                                          | Percentage |
|---------------------------------------------------|------------|
| Yes, the current administration is responsible    | 17%        |
| No, the current administration is not responsible | 83%        |

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. And Ms. Zachary is a Section 16

19 officer of Merck & Co., Inc.?

20 A. She is. [REDACTED]

[REDACTED]

[REDACTED]

23 [REDACTED]

[REDACTED]

25 [REDACTED]

1

6 Q. Now, do you agree that members of  
7 the MSD LLC board of managers have  
8 positions at Merck & Co., Inc.?

9 A. I do not agree.

10 Q. Do you agree that the MSD -- do  
11 the MSD LLC board of managers have  
12 executive roles at Merck & Co., Inc.?

13 A. Dalton Smart is one of the  
14 members of the board of managers of MSD  
15 LLC. He is also the global controller of  
16 Merck & Co., Inc.

17 Q. Does anyone else on the board of  
18 managers of MSD LLC have a role at Merck &  
19 Co., Inc.?

20 A. Melissa Leonard is a member of  
21 the board of managers of MS -- Merck Sharp  
22 & Dohme LLC, and she is the treasurer for  
23 Merck & Co., Inc.

24 Q. Does anyone else on the board of  
25 managers of MSD LLC have a position at

1 Merck & Co., Inc.?

2 A. No.

3 Q. Do you agree that the MSD LLC  
4 officers have positions at Merck & Co.,  
5 Inc.?

6 A. So not all of them have dual  
7 roles at Merck & Co., Inc.

8 Q. Some of them do, right?

9 A. Yes.

10 Q. The vice president of MSD LLC is  
11 the vice president of Merck & Co., Inc.,  
12 right?

13 A. Are you talking about a specific  
14 person?

15 Q. I am.

16 A. Who?

17 Q. I'll find that.

18 And the managers of MSD LLC are  
19 also executive officers at Merck & Co.,  
20 Inc., right?

21 A. So I just answered that there are  
22 two members of the board of managers of MSD  
23 LLC who hold roles at Merck & Co., Inc.

24 Q. Do you agree that Jon Filderman  
25 is the manager and vice president of MSD

1 LLC and also serves as the vice president  
2 of Merck & Co., Inc.?

3 A. I do not agree.

4 Q. Okay.

5 ATTORNEY POWERS: Mark this,  
6 please.

7 (Whereupon, Exhibit 16 is marked  
8 for identification.)

9 BY ATTORNEY POWERS:

10 Q. You've just been handed what's  
11 been marked Exhibit 16.

12 Do you recognize this document?

13 A. I do not.

14 Q. This is a filing with the U.S.  
15 Securities and Exchange Commission.

16 Do you see that, top of the page?

17 A. I do.

18 Q. If you go to the last --

19 A. Yeah, I was going to say, can I  
20 have a minute to look at what it is?

21 Q. Sure. If you go to the last  
22 page, I think you'll notice your signature  
23 on it.

24 A. Well, if my signature is on it, I  
25 definitely want to look at it.

1 (Pause for reading/reviewing.)

2 THE WITNESS: Okay.

3 BY ATTORNEY POWERS:

4 Q. Do you see that your signature is  
5 on the last page of this document?

6 A. I do.

7 Q. And just above your signature, it  
8 says, "After due inquiry and to the best of  
9 my knowledge and belief" -- sorry.

10 "After due inquiry and to the  
11 best of my knowledge and belief of the  
12 undersigned" -- sorry. Strike that.  
13 Getting late.

14 "After due inquiry and to the  
15 best knowledge and belief of the  
16 undersigned, each of the undersigned  
17 certify that the information set forth in  
18 this statement is true, complete and  
19 correct."

20 Did I read that correctly?

21 A. You did.

22 Q. And then you signed it on behalf  
23 of Caymus Purchaser, Inc., right?

24 A. I did.

25 Q. And under your name, Sunit --

1 Sunil A. Patel signed, right?

2 A. I see Sunil's signed.

3 Q. Sunil signed on behalf of Merck &  
4 Co., Inc., right?

5 A. It looks like he did.

6 Q. And then right under that, Merck  
7 Sharp & Dohme LLC, Sunit -- Sunil A. Patel  
8 signed on behalf of Merck Sharp & Dohme  
9 LLC, right?

10 A. I see that.

11 Q. And then --

12 A. Now, this is a -- this was an  
13 acquisition --

14 Q. Right.

15 A. -- of Cidara Therapeutics, Inc.  
16 Okay.

17 Q. Yep. And on Page 2 of this  
18 document, there's a list of exhibits to the  
19 Cidara tender offer, right?

20 A. It looks like it.

21 Q. And the first exhibit is  
22 (a)(1)(i), "Offer to purchase dated as of  
23 December 5, 2025," right?

24 A. That's what it says.

25 Q. When Sunil signed this document,



1 he had on two hats at the same time, right?

2 A. I don't know. Honestly, I don't  
3 know why he would have signed for Merck &  
4 Co., Inc. He doesn't have any role at  
5 Merck & Co., Inc.

6 Q. Okay. Well, he signed this  
7 document on behalf of Merck & Co., Inc. as  
8 well as MSD LLC, and I want to go to the  
9 exhibits here. One of the exhibits is  
10 Cidara tender offer Exhibit 99(a)(1)(i).

11 I'm going to hand you what that -- exhibit.

12 (Whereupon, Exhibit 17 is marked  
13 for identification.)

14 ATTORNEY POWERS: Which will be  
15 marked Exhibit 18 -- 17.

16 BY ATTORNEY POWERS:

17 Q. You have that document in front  
18 of you, Exhibit 17.

19 A. I have the document labeled  
20 Exhibit 17.

21 Q. Now, on Page 4 of table of  
22 contents, it has Schedule I, right? If you  
23 look at Page 4, there's a table of contents  
24 that says Schedule I?

25 A. I can't tell if that says I or 1.

1           Is it right above, like, sort of  
2 towards the bottom?

3           Q.    It's towards the bottom.

4           A.    Yeah.

5           Q.    It says Schedule 1 or -- it's  
6 Schedule I, I think, Roman 1.

7           A.    Okay. I'll take your word for  
8 it.

9           Q.    And then it says, "Directors and  
10 Executive Officers of Merck & Co., Inc.,"  
11 right?

12          A.    It does say that.

13          Q.    And below that is a section for  
14 "Managers and Executive Officers of  
15 Parent."

16                Do you see that?

17          A.    I do. I'd have to look at who  
18 the parent refers to.

19          Q.    Let's do that. On Page 5 of the  
20 Cidara tender off of Exhibit 17, it  
21 states -- the first line of that paragraph  
22 there says, "Merck Sharp & Dohme LLC  
23 parent," right?

24          A.    It does say that.

25          Q.    So Merck Sharp & Dohme LLC is

1 defined as parent in this document, right?

2 A. Based on looking at that page,  
3 that would seem correct.

4 Q. And in Schedule I-2.

5 If we go to Section 1  
6 Schedule I-2 for the "Managers and  
7 Executive Officers of Parent," those would  
8 be the managers and executive officers of  
9 MSD LLC, right?

10 A. I'm assuming based on what it  
11 says, but should we just go look?

12 Q. Yes. And that's on Page 68. So  
13 here we have the managers and executive  
14 officers of parent on Page 68 of this  
15 document, right?

16 A. Yes.

17 Q. And Dalton Smart is the manager  
18 and president of parent MSD LLC, right?

19 A. That's what it says.

20 Q. And this document is accurate to  
21 the best of your knowledge?

22 A. So I have not reviewed this  
23 document.

24 Q. You signed this document?

25 A. On behalf of Caymus Purchaser, I

1 believe.

2 Q. Correct. And you also said  
3 before you signed it, there's a little  
4 section we went over and said that it was  
5 accurate, right?

6 A. You're signing on behalf of the  
7 entity that's making the particular  
8 statements. I was on behalf of Caymus  
9 Purchaser, I believe.

10 Q. Do you think that made it so you  
11 didn't have to certify that it was  
12 accurate?

13 A. You asked whether I signed, and I  
14 did, on behalf of Caymus Purchaser.

15 Q. Right. But you also said right  
16 above your signature, we went over this, it  
17 says, "After due inquiry and to the best of  
18 my knowledge and belief, the undersigned,  
19 each of the undersigned certify that the  
20 information set forth in this statement is  
21 true, complete and correct," right?

22 A. It says with respect to the  
23 statement.

24 Q. Okay. And if we go to the next  
25 page, you see that Dalton Smart is listed

1 as an executive officer of purchaser,  
2 right?

3 ATTORNEY HELM: I'm sorry. Are  
4 you back to the Exhibit 17 now?

5 ATTORNEY POWERS: Yes. On  
6 page -- Exhibit 17.

7 THE WITNESS: I see that.

8 BY ATTORNEY POWERS:

9 Q. If -- Dalton Smart it says  
10 director and president of parent. "He has  
11 also served as senior vice president  
12 finance, global controller since  
13 December 2023 and vice president, internal  
14 audit from 2015 to 2023 at Merck & Co.,  
15 Inc.," right?

16 ATTORNEY HELM: Objection to  
17 form.

18 THE WITNESS: That's what it says  
19 here. But he became global controller  
20 in December 2023, and at that point, he  
21 would have had a role at Merck & Co.,  
22 Inc.

23 BY ATTORNEY POWERS:

24 Q. I see. So he has a role at MSD  
25 LLC and Merck & Co., Inc., right, Dalton

1 Smart?

2 A. I believe we talked about him  
3 being on the board of managers of Merck  
4 Sharp & Dohme LLC. He also serves as  
5 president of Merck Sharp & Dohme LLC.

6 Q. Okay. And let's go --

7 A. And he -- sorry. And he serves  
8 as our global -- as Merck & Co., Inc.'s  
9 global controller.

10 Q. Okay. Let's go back to Page 68  
11 and look at Melissa Leonard. She's listed  
12 as "Manager, senior vice president and  
13 treasurer of parent," right?

14 A. I see that here.

15 Q. And parent is MSD LLC?

16 A. One thing that is important to  
17 note, this is an SEC filing. And as we've  
18 discussed, in SEC filings referenced to  
19 Merck & Co., Inc. refer to the consolidated  
20 reporting of Merck & Co., Inc. and its  
21 subsidiaries.

22 Q. Right. You've mentioned that  
23 before.

24 Melissa Leonard is listed on this  
25 page as director, senior vice president and

1 treasurer of purchaser, one --

2 A. I'm sorry. What page are you on?

3 Q. I'm sorry. My fault.

4 ATTORNEY HELM: Yeah, objection  
5 to form.

6 BY ATTORNEY POWERS:

7 Q. Okay. On Page 68, Melissa  
8 Leonard is listed as, "Manager, senior vice  
9 president and treasurer of parent." And  
10 then it says, "She has served as senior  
11 vice president and treasurer since 2024, VP  
12 finance manufacturing from 2021 to 2024,  
13 and AVP Organon transition management lead  
14 from 2020 to 2021 at Merck & Co., Inc.,"  
15 right?

16 A. That's what it says.

17 Q. And Melissa Leonard, you agree,  
18 has a role at both MSD LLC and Merck & Co.,  
19 Inc., right?

20 A. Only since becoming treasurer in  
21 2024.

22 Q. So she currently has a dual role,  
23 right?

24 A. She does.

25 Q. Okay. And let's go to Jon

1 Filderman.

2 A. And I'm not understanding why  
3 Merck & Co., Inc. was used here. So my  
4 best understanding is because it -- it  
5 sometimes refers to her correctly as being  
6 senior vice president and treasurer since  
7 2024. That is a role at Merck & Co., Inc.

8 The remaining roles that are  
9 listed here are not roles at Merck & Co.,  
10 Inc.

11 Q. So you think this is an error in  
12 the document?

13 A. I -- my best guess is that they  
14 are meaning Merck & Co., Inc. on a global  
15 basis with its subsidiaries, but I don't  
16 know.

17 Q. Let's go to Jon Filderman. It  
18 says, "He's manager and vice president of  
19 parent."

20 That's MSD LLC, right?

21 A. And that's true.

22 Q. And it continues -- it continues,  
23 "Jon Filderman has served as vice president  
24 of Merck & Co., Inc. since 2020."

25 Did I read that correctly?



1           A.    You did, but that's not accurate.

2           Q.    That's a mistake in this document  
3 to the SEC?

4           A.    So, again, my guess is that  
5 Merck & Co., Inc. is referring to the  
6 Merck & Co., Inc. and its consolidated  
7 subsidiaries.

8           Q.    I see. Let's go to Gary  
9 Henningsen.

10          A.    And, again, facing the SEC,  
11 that's a typical phraseology.

12          Q.    Okay. Let's go to Gary  
13 Henningsen. It says he's "senior vice  
14 president tax of parent," right?

15          A.    It does.

16          Q.    And parent is MSD LLC, right?

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

19          Q.    And then --

20          A.    Not one of the other pages.

21          Q.    -- it continues, "Gary A.  
22 Henningsen, Jr. has served as senior vice  
23 president, corporate tax of Merck & Co.,  
24 Inc. from 2022 to present," right?

25          A.    It does say that, but, again,

1 Gary, like Jon, does not have a role at  
2 Merck & Co., Inc. And I've shared with you  
3 my best speculation as to why that was  
4 written.

5 Q. I see.

6 Timothy Dillane is listed here on  
7 this document to the SEC as, "assistant  
8 treasurer of parent," right?

9 A. Yes.

10 Q. And then Timothy G. Dillane, it's  
11 list -- it says, "Timothy G. Dillane has  
12 served as assistant treasurer of Merck &  
13 Co., Inc. from 2018 to present," right?

14 A. And he does serve in that role.  
15 He has a dual role.

16 Q. So he's a dual-role person?

17 A. He is.

18 Q. And then there's Mark Walker.

19 You see that?

20 A. I do.

21 Q. And then it says, "Assistant  
22 treasurer of parent," right?

23 A. I do.

24 Q. That's MSD LLC.

25 And Mark Walter -- then it

1 continues, "Mark Walker has served as  
2 assistant treasurer of Merck & Co., Inc.  
3 since 2025," right?

4 A. That's correct. He has a dual  
5 role.

6 Q. He's a dual-role person as well,  
7 okay.

8 And then there's Robert  
9 Smartwood -- Swartwood, right?

10 A. That says that.

11 Q. Okay. And the document states,  
12 "Assistant treasurer of parent," right?

13 A. Yes.

14 Q. And then it says, "Robert V.  
15 Swartwood has served as assistant treasurer  
16 of Merck & Co., Inc. since January 2022,"  
17 right?

18 A. That's correct. He has a dual  
19 role.

20 Q. So he's a dual role person as  
21 well.

22 Then there's Ms. Grez. We've  
23 been talking about her today.

24 A. Actually it's Grez like PEZ.

25 Q. Thank you for correcting me.

1 Sorry about that.

2 Ms. Grez, you've told us about  
3 your dual role.

4 Are your roles reflected  
5 accurately in this document?

6 A. Yes.

7 Q. Okay. "Secretary of parent and  
8 corporate secretary of Merck & Co., Inc."

9 Then there's Karen --

10 A. Prior to that, I was deputy  
11 corporate secretary of Merck & Co., Inc.

12 Q. Okay. Thank you.

13 And then there's Karen R.  
14 Ettelman.

15 Do you see that?

16 A. I do.

17 Q. And it says, she's "assistant  
18 secretary of parent," correct?

19 A. That's correct.

20 Q. Then it says, "Karen Ettelman has  
21 served as senior specialist legal at  
22 Merck & Co., Inc. since 2021."

23 A. That's not correct.

24 Q. So that's another error in this  
25 document you certified to the SEC; is that

1 correct?

2 A. So there is an error in this  
3 document.

4 Q. So you're saying that Karen  
5 Ettelman does not have a dual role?

6 A. She does not.

7 Q. And then there's Anthony  
8 Wildasin.

9 Do you see that?

10 A. I do.

11 Q. It says, "Assistant secretary of  
12 parent," correct?

13 A. That's correct.

14 Q. And that's MSD LLC. And then it  
15 continues in this document, "Anthony  
16 Wildasin has served as associate director,  
17 legal at Merck & Co., Inc. since  
18 October 2021" --

19 A. He --

20 Q. -- is that correct?

21 A. -- no longer works at Merck Sharp  
22 & Dohme LLC, but when he was employed by  
23 Merck Sharp & Dohme LLC, he served in a  
24 dual role as assistant corporate secretary  
25 of Merck & Co., Inc.

1           Q.    Was he an attorney on behalf --  
2   at Merck & Co., Inc.?

3           A.    He was not.

4           Q.    Did he function as an attorney at  
5   Merck & Co., Inc.?

6           A.    He did not.

7           Q.    But he was dual role, right?

8           A.    He had a dual role.

9           Q.    Okay.  So let's count them.  One,  
10   two, three, four, five -- six dual role  
11   people that we agree are dual role?

12          A.    Seven.

13          Q.    Seven, thank you.

14          A.    One, two, three, four, five, six,  
15   seven.

16                ATTORNEY HELM:  Can we get the  
17   remaining time on the record, please?

18                THE VIDEOGRAPHER:  We've been on  
19   the record for 6 hours and 55 minutes.

20                ATTORNEY POWERS:  Okay.  We'll  
21   take a break.  It will be a quick one.

22                THE VIDEOGRAPHER:  Off the  
23   record?

24                ATTORNEY HELM:  Okay.  Five  
25   minutes?

1           ATTORNEY POWERS: Five minutes.

2       Let's go off the record.

3           THE VIDEOGRAPHER: The time is

4       7:05 p.m.

5           We are off the record.

6           (Whereupon, a recess was taken at

7       7:05 p.m.)

8           THE VIDEOGRAPHER: The time right

9       now is 7:09 p.m.

10          We're back on the record.

11          ATTORNEY POWERS: Thank you,

12       Ms. Grez. We have no further questions

13       for you. We'll pass the witness.

14          ATTORNEY HELM: We have no

15       questions for you. Thank you very

16       much.

17          I just want to put on the record

18       that we've made our objections to the

19       introduction of new documents as being

20       contrary to the board's order that they

21       did not aid in your cross-examination.

22          As you know also from the order,

23       you are not authorized to file those

24       documents as exhibits in the proceeding

25       as an expressed authorization pursuant

1 to a particularized showing of good  
2 cause. We request immediately if you  
3 intend to seek particularized showing  
4 of good cause for any of the new  
5 exhibits introduced today.

6 Given the brevity of the time for  
7 the remaining briefing in this case, we  
8 may need to go to the Board.

9 ATTORNEY POWERS: Counsel, your  
10 arguments on the record are improper.  
11 We're well aware of the Board's order,  
12 and that's all we have to say on it.

13 ATTORNEY HELM: We have nothing  
14 further on the record.

15 THE VIDEOGRAPHER: The time is  
16 7:09 p.m.

17 We are off the record.

18 (Time noted: 7:09 p.m.)  
19  
20  
21  
22  
23  
24  
25



## 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.

A handwritten signature in black ink, appearing to read 'Jessica R. Waack', is written over a horizontal line.

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