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 22 Also Present:
 23 Kerry Boehm, SEC Intern
 24
 25

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1 PROCEEDINGS
 2 MS. FUCHS-SINDLER: We are on the
 3 record at 10:22 a.m. on July 24th, 2014. We are
 4 here to take the testimony of William Kelly at
 5 the SEC offices in Miami, Florida.
 6 Mr. Kelly, would please raise your
 7 right hand.
 8 Do you swear to tell the truth, the
 9 whole truth, and nothing but the truth?
 10 MR. KELLY: I do.
 11 Whereupon,
 12 WILLIAM KELLY
 13 was called as a witness and, having been first
 14 duly sworn, was examined and testified as
 15 follows:
 16 MS. FUCHS-SINDLER: Please state and
 17 spell your full name for the record.
 18 THE WITNESS: William Kelly,
 19 W-I-L-L-I-A-M, K-E-L-L-Y.
 20 MS. FUCHS-SINDLER: Have you ever been
 21 known by any other name?
 22 THE WITNESS: No.
 23 MS. FUCHS-SINDLER: Okay.
 24 My name is Trisha Sindler. I'm a
 25 senior counsel with the Division of Enforcement

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1 of the United States Securities and Exchange
 2 Commission. With me are Brian James, also senior
 3 counsel, and Michelle Lama, an accountant in the
 4 Division of Enforcement. We may be joined later
 5 by Chedly Durmonay, Assistant Regional Director
 6 with the Division of Enforcement. We are all
 7 Officers of the Commission for the purposes of
 8 this proceeding. We'd also like to thank you for
 9 agreeing to allow one of our law students, Kerry
 10 Boehm to sit in today.
 11 This is an investigation by the
 12 Commission in the matter of Jay Peak, Inc., file
 13 No. FL-3815, to determine whether there have been
 14 any violations of certain provisions of the
 15 federal securities laws; however, the facts
 16 developed in this investigation might constitute
 17 violations of other federal or state, civil or
 18 criminal laws.
 19 Let me briefly explain the procedure we
 20 will follow today. We will be asking you a
 21 series of questions. At any time if you want to
 22 take a short break, please free to tell us, and
 23 we'll be happy to accommodate you. All we ask is
 24 that if there's a question pending, if you answer
 25 that before we take a break.

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1 The Court Reporter transcribes these
 2 proceedings and will create a transcript of your
 3 testimony at the end. Please make sure to answer
 4 verbally, because the Court Reporter cannot pick
 5 up any nodding or any other gestures.
 6 Do you understand that?
 7 THE WITNESS: Yes.
 8 MS. FUCHS-SINDLER: Also, it's very
 9 frequent for a witness to anticipate what the
 10 full question will be, so we just ask if you wait
 11 for the whole question, wait for whoever's asking
 12 it to finish before you answer, and that will
 13 make it easier for the Court Reporter.
 14 Also, if we have a conversation about
 15 the case off the record, when we return, we're
 16 going to have to summarize that on the record or
 17 confirm with that you didn't have any substantive
 18 conversations.
 19 Do you understand that?
 20 THE WITNESS: Yes.
 21 MS. FUCHS-SINDLER: Okay.
 22 Are you on any medication that would
 23 affect your memory today or your ability to
 24 testify completely and accurately?
 25 THE WITNESS: No.

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1 MS. FUCHS-SINDLER: Okay.
 2 During the course of your testimony
 3 today, I'm going to ask you questions about
 4 things that happened or may have happened in the
 5 past. Obviously, time has gone by since those
 6 events, and you're likely to have a better and
 7 more complete memory of some events than others.
 8 In answering a question about these
 9 events, however, you should tell me about all
 10 your memories or recollections that are
 11 responsive to the question, not just those that
 12 are specific or perfectly clear, or those of
 13 which you're a hundred percent sure.
 14 I'm asking you also for vague memories,
 15 general memories, cloudy memories and/or memories
 16 of which you are less than a hundred percent
 17 certain. In other words, I'm asking for any
 18 responsive recollection whatsoever you may have
 19 however incomplete or uncertain or vague or
 20 nonspecific it may be. We can then sort out
 21 which memories are clear and certain and which
 22 are less clear and less certain.
 23 Do you understand this?
 24 THE WITNESS: Yes.
 25 MS. FUCHS-SINDLER: And do you agree to

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1 answer my questions with this understanding in
 2 mind?
 3 THE WITNESS: Yes.
 4 MS. FUCHS-SINDLER: Therefore, if you
 5 answer, I don't recall or I don't remember or I
 6 forget, I will assume that you have no memory or
 7 recollection whatsoever that is responsive to the
 8 questions asked, not even fuzzy or less than
 9 crystal clear memories.
 10 Do you understand that?
 11 THE WITNESS: Yes.
 12 MS. FUCHS-SINDLER: It may be that
 13 reviewing certain documents refreshes your
 14 recollection as to events you're questioned
 15 about. In such a case, I'm asking for your
 16 testimony on everything that is responsive to the
 17 question, not just clear or specific
 18 recollections.
 19 Do you understand that?
 20 THE WITNESS: Yes.
 21 MS. FUCHS-SINDLER: Prior to the
 22 opening of the record, you were provided with a
 23 copy of the Formal Order of Investigation in this
 24 matter. It will be available to you for your
 25 examination during the course of this proceeding.

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1 Mr. Kelly, have you had an opportunity
 2 to review the Formal Order?
 3 THE WITNESS: Yes.
 4 MS. FUCHS-SINDLER: Okay.
 5 Prior to the opening of the record, you
 6 were provided with a copy of the Commission's
 7 Supplemental Information Form 1662, a copy of
 8 which was previously marked as Exhibit No. 1.
 9 Have you had an opportunity to review
 10 this document?
 11 THE WITNESS: Yes.
 12 MS. FUCHS-SINDLER: Okay. Do you have
 13 any questions concerning this exhibit?
 14 THE WITNESS: No.
 15 MS. FUCHS-SINDLER: Are you represented
 16 by counsel?
 17 THE WITNESS: I am.
 18 MS. FUCHS-SINDLER: Would Counsel
 19 please identify himself for the record by stating
 20 your name, the name of your firm, your business
 21 address, and telephone number.
 22 MR. GORDON: David Gordon, Richardson &
 23 Patel, 405 Lexington Avenue, 49th Floor, New
 24 York, New York 10174. Phone number, (646)
 25 755-7315.

1 A Under this document, I have searched
2 for documents under this -- under this subpoena.

3 Q Okay.

4 And have you produced any documents
5 pursuant to the subpoena?

6 A No, I don't believe that there -- no, I
7 don't believe I have.

8 Q Okay.

9 And can you please describe the search
10 that was conducted for the documents requested in
11 Exhibit 134.

12 A Same search. I searched both my home
13 office and the offices at 111 Northeast 1st
14 Street.

15 Q Did anyone assist you in that search?

16 A No. Again, only my wife.

17 Q For both Exhibits 133 and 134, have
18 you withheld any documents we requested based on
19 any claim of privilege?

20 A No -- excuse me.

21 MR. GORDON: Well, no. I mean --

22 THE WITNESS: If there were documents

23 that I -- if there were Emails, only Emails, if
24 there were Emails that were the product of a

25 request by Mr. Gordon or by the SEC through Mr.

1 Exhibits 133 and 134 --

2 A Not that I'm aware of.

3 Q -- for any reason --

4 A I'm sorry.

5 Q It's okay -- for any reason, other
6 than privilege?

7 A Not that I'm aware of.

8 Q Okay.

9 Do you know of any documents that were
10 not provided pursuant both of these subpoenas
11 that were in your possession at a prior time or
12 that were lost, destroyed, or otherwise disposed
13 of?

14 A No. Through the normal course of
15 business, documents are disposed of, but not
16 certainly anything that I would have referenced
17 to for these subpoenas.

18 Q And you had mentioned that you
19 searched on your personal computer. Do you have
20 any other computers?

21 A No.

22 Q Okay.

23 And is that computer located in the
24 Weston address that you gave us?

25 A Yes.

1 Gordon, those I believe were privileged. Those
2 would be the only -- those would be the only
3 documents that may have been withheld.

4 BY MS. FUCHS-SINDLER:

5 Q So were there some documents withheld
6 based on privilege?

7 A I had -- I had produced documents for
8 Mr. Gordon in response to this -- these subpoenas
9 that were in two records. One set of records
10 were those that I clearly believed there were no
11 privilege.

12 And those that I asked him to review
13 for privilege, I don't know what was submitted of
14 those, but I submitted them all to Mr. Gordon.
15 Mr. Gordon would have only not submitted those he
16 believed were under privilege.

17 Q Okay.

18 MS. FUCHS-SINDLER: And, David, I
19 believe we've asked this before, but if we could
20 also get a privileged log produced.

21 MR. GORDON: Okay.

22 MS. FUCHS-SINDLER: Okay.

23 BY MS. FUCHS-SINDLER:

24 Q Were any documents not produced that
25 were requested in both of these subpoenas,

1 (SEC Exhibit No. 135 was
2 marked for identification.)

3 BY MS. FUCHS-SINDLER:

4 Q Mr. Kelly, I'm handing to you what has
5 been marked now as Exhibit No. 135, a copy of a
6 background questionnaire that you provided to the
7 staff, and we appreciate that. And on the top,
8 it's dated July 18th, 2014.

9 Can you look at that document, please.

10 And did you complete this
11 questionnaire?

12 A I did.

13 Q Okay.

14 Did anyone else assist you?

15 A No.

16 Q Okay.

17 And is all the information contained in
18 this background questionnaire complete and
19 accurate?

20 A Yes.

21 Q Okay.

22 Just a few questions. If you could
23 look at on page four, number sixteen where it
24 asks, have you ever been a manager or member of
25 any privately-held company?

1 A Yes.

2 **Q The first company that's listed is**

3 **Northeast Contract Services. Can you tell us**

4 **what that company is?**

5 A Northeast Contract Service is a Vermont

6 domiciled company that is -- was formed for the

7 purposes of managing construction supervision of

8 EB-5 projects in Vermont.

9 **Q Do you own that company?**

10 A I do.

11 **Q Okay.**

12 **Are there any other owners?**

13 A No.

14 **Q How did it come about that Northeast**

15 **-- if you don't mind if I call it Northeast --**

16 **was formed?**

17 A In 2011, Ariel Quiros asked me if I

18 would be willing to form a company and staff a

19 company that would assist in construction

20 supervision for the sponsor of EB-5 projects, and

21 I said yes.

22 **Q And when was it actually formed?**

23 A I believe the end of 2012, the

24 beginning of 2013.

25 **Q Why was there that period of a gap**

1 **between when he asked you in 2011 to form the**

2 **company for this purpose?**

3 A There was not -- there was not a need

4 for the company yet. The work that the company

5 would do would not begin until 2012.

6 **Q What is your role with Northeast?**

7 A I'm the President and the managing

8 member.

9 **Q And can you just describe for us what**

10 **Northeast does?**

11 A In every EB-5 project, under the

12 regional center programs in the United States,

13 there's a requirement, because of the diversity

14 of the investors, the limited partnerships, the

15 limited partners, there is a requirement that the

16 construction be supervised by the sponsor company

17 or a delegate of the sponsor company on behalf of

18 the limited partners. And the role of Northeast

19 Contract Services is to participate in that

20 supervision of the construction process.

21 **Q And how does Northeast participate in**

22 **that construction process?**

23 A At the beginning of every project,

24 there is a preconstruction period where much work

25 is done related to the site. Northeast

1 supervises that work.

2 At the beginning -- or shortly into

3 every project, there is a design and engineering

4 phase conducted on behalf of the limited

5 partners. Northeast Contract supervises that

6 process. That means attendance at all of the

7 meetings of all the engineers and architects.

8 That means participation to the degree necessary

9 on behalf of the limited partners in those

10 meetings.

11 Ultimately, there is a construction and

12 fit-out phase of these projects. And where there

13 is, Northeast Contract participates in the

14 supervision of that construction and fit-out

15 providing oversight and data back to the sponsor,

16 who is, ultimately, responsible to the limited

17 partners for that function. That function is

18 defined in the offering memorandums that are put

19 out to the limited partners.

20 **Q Does Northeast have any employees?**

21 A No. No, Northeast has no employees,

22 only myself as President and manager.

23 **Q Any contractors?**

24 A Yes. Northeast does have contracts.

25 Northeast contracts with Inner Circle

1 Professional Services Company.

2 **Q And what is Inner Circle?**

3 A Inner Circle is my personal company

4 here in Florida where I conduct all of my

5 business advising and consulting services for

6 whomever.

7 Northeast Contract Services does

8 contract with -- Northeast Contract Services and

9 Inner Circle Special (sic) Services both contract

10 with consultants who provide specialty services

11 -- specialty services to Northeast Contract

12 Services or to Inner Circle Professional Services

13 for that function of providing construction

14 supervision.

15 Those are either individuals or

16 companies that Northeast Contract Services or

17 Inner Circle Professional Services retains to

18 provide specialty services in the construction

19 supervision business.

20 **Q And has Northeast and Inner Circle**

21 **contracted with any of these specialties?**

22 A Yes. Yes, they have.

23 **Q Who are they?**

24 A One is a construction person by the

25 name of Andrew Stenger.

1 **Q Is he related to William Stenger?**
 2 A Yes, he is, son. A long history of
 3 construction supervision expertise.
 4 Timothy McGuire, Engineer.
 5 **Q Does Andrew Stenger work for Jay Peak?**
 6 A Andrew Stenger does work for Jay Peak,
 7 yes.
 8 **Q And does Timothy McGuire work for Jay**
 9 **Peak?**
 10 A No, he does not.
 11 **Q Do you know who he works for?**
 12 A He works for an engineering firm in
 13 Vermont.
 14 **Q What's the name?**
 15 A I don't know that.
 16 **Q Okay.**
 17 **Anyone else besides Mr. Stenger and Mr.**
 18 **McGuire?**
 19 A Deshazor Designs.
 20 **Q Can you spell that?**
 21 A D-E-S-H-A-Z-O-R Designs. Deshazor
 22 Designs is a design company.
 23 **Q Located where?**
 24 A In Florida and in South Carolina.
 25 **Q Do you have any ownership interest in**

1 **Deshazor Designs?**
 2 A No. No, I do not. No.
 3 **Q Are you an officer or director or have**
 4 **you ever been at Deshazor Designs?**
 5 A No, I have not.
 6 **Q Who's your contact there?**
 7 A Tom Deshazor or Kelly Kelly.
 8 **Q How do you know Tom Deshazor?**
 9 A Tom Deshazor is related to Kelly Kelly.
 10 That is a family business, and so I know them
 11 personally.
 12 **Q And Kelly Kelly?**
 13 A Is my wife.
 14 **Q Mr. McGuire, is he family friend or**
 15 **relative?**
 16 A No.
 17 **Q How did you meet him?**
 18 A I met him because he was employed at a
 19 resort in Vermont, and I met him through that
 20 resort.
 21 MR. JAMES: What's the name of the
 22 resort?
 23 THE WITNESS: It is Burke Mountain --
 24 Burke Mountain Operating Company. Burke, yes,
 25 B-U-R-K-E.

1 Also, SJ Services I believe is the name
 2 of the company, a company that does website
 3 design for NECS, SJ Services.
 4 **Q Where are they located?**
 5 A Vermont.
 6 **Q Who's your contact there?**
 7 A Steve Wright.
 8 **Q Who does he work for?**
 9 A He works for Jay Peak. Well, he works
 10 for SJ Services, but he also works for Jay Peak.
 11 There is -- through SJ Service, there
 12 is also a website company design company, IM,
 13 Inc. I believe is the name of the company that we
 14 retained to do website work.
 15 **Q IME?**
 16 A IM, Inc. is the name of the company.
 17 And I don't know the contacts there,
 18 because that's done through SJ Services. They
 19 provide those services.
 20 **Q Anyone else?**
 21 A Not that I can think of.
 22 **Q Okay.**
 23 **So for all these individuals you**
 24 **mentioned and the entities, Mr. Stenger, Mr.**
 25 **McGuire, Deshazor Designs, SJ Services, and IM,**

1 **Inc., are there contracts?**
 2 A There are.
 3 **Q Who are the contracts with?**
 4 A The contracts are with those
 5 individuals. They're either with Mr. McGuire,
 6 Mr. -- Mr. McGuire, there's not a contract. I'm
 7 sorry. Mr. McGuire's not a contract. He was
 8 just paid, did some ad hoc services for us.
 9 Mr. Stenger has a contract. Deshazor
 10 Designs has a contract. IM Services (sic),
 11 there's a contract through SJ Services. And I
 12 don't have a contract with IM, but SJ does, or I
 13 presume they do.
 14 **Q And are the contracts between these**
 15 **individuals, entities and Northeast?**
 16 A In some cases, we do Northeast, and
 17 some cases between Inner Circle.
 18 **Q Why is it that way?**
 19 A Simply because of relationships.
 20 Whether I contract with them directly for
 21 Northeast Contract Services or on behalf of Inner
 22 Circle Professional Services, the result is the
 23 same. They're working for me for the purposes of
 24 that construction supervision.
 25 **Q And pursuant to this contract, has Mr.**

1 **Stenger been paid anything?**
 2 A Yes, he has.
 3 **Q How much?**
 4 A I believe at this point, eight thousand
 5 dollars, maybe nine thousand dollars, eight or
 6 nine thousand dollars.
 7 **Q And during what period of time was he**
 8 **paid this?**
 9 A During this summer, June, June of 2014.
 10 **Q For what services?**
 11 A Providing supervision services on site
 12 for construction.
 13 **Q Which site?**
 14 A AnC Bio, and also at another site that
 15 he's doing some work for me.
 16 **Q What was that? What site is that?**
 17 A At Burke Mountain.
 18 **Q Do you know what percentage of this**
 19 **eight or nine thousand was for AnC Bio and what**
 20 **was for Burke Mountain?**
 21 A About 50/50.
 22 **Q And what was he supervising?**
 23 A There are -- in both cases, there is
 24 site work going on where there is excavation
 25 going on. There is borings for -- there are

1 borings being made for ledge and for unsuitable
 2 soils. There are excavation going on.
 3 And in every case, there is a very
 4 strict law in Vermont about erosion control and
 5 waste water, water management, if you will. And
 6 so it's required by statute, frankly, in Vermont
 7 to retain individuals to monitor on a daily basis
 8 erosion control and other environmental -- other
 9 environmental issues all prescribed by the Agency
 10 of Natural Resources in -- Natural Resources in
 11 Vermont. And so those are -- that is the kind of
 12 work that he's doing.
 13 **Q Has any money been paid to Mr.**
 14 **McGuire?**
 15 A Yes.
 16 **Q How much?**
 17 A Twenty thousand dollars, I believe.
 18 **Q And when was that paid to him?**
 19 A That was a year ago.
 20 **Q For what work?**
 21 A For work on -- again, on site work, and
 22 for writing plans, snow management plans, stream
 23 remediation plans, and providing services for
 24 permitting for the projects.
 25 **Q For which projects?**

1 A AnC and Burke.
 2 **Q And, again, same question, how much of**
 3 **that twenty thousand was for AnC, and how much**
 4 **was for Burke?**
 5 A I would say more was on Burke Mountain.
 6 **Q Do you know about how much?**
 7 A If I had to make a guess, I would say
 8 70/30.
 9 **Q And how about Deshazor?**
 10 A Deshazor Design is a company that's
 11 been in the design business for a number of
 12 years, and they provide services to me in terms
 13 of, for all intents and purposes, the lobby and
 14 customer acceptance area design.
 15 **Q Have they been paid anything?**
 16 A They have been.
 17 **Q How much?**
 18 A They have been paid I believe a hundred
 19 thousand dollars last year and fifty thousand
 20 dollars this year so far.
 21 **Q And for which project?**
 22 A For both.
 23 **Q Burke Mountain and AnC?**
 24 A Burke Mountain and AnC, yes.
 25 **Q And about what percentage for each?**

1 A I would say, again, 50/50.
 2 **Q Okay.**
 3 **And SJ Services?**
 4 A SJ Services has not been paid. I have
 5 payables due to them for website design. I can't
 6 tell you how much the payables are at this point.
 7 I think the payables are probably about five
 8 thousand dollars.
 9 **Q Okay.**
 10 **And IM?**
 11 A IM, I don't know. I mean, again,
 12 that's all under SJ Services.
 13 **Q Have payments been made by Northeast**
 14 **to anyone else, other than these individuals or**
 15 **entities?**
 16 A Have you included Inner Circle
 17 Professional Services? Then no.
 18 **Q Oh.**
 19 A Inner Circle Professional Services is
 20 also paid by Northeast Contract Services.
 21 **Q Has Inner Circle been paid by**
 22 **Northeast?**
 23 A Yes, they have.
 24 **Q How much?**
 25 A About one million -- it's about one

1 million, eight. I'm not exactly sure. I would
2 have to do some calculations, but I believe the
3 number is about one million, eight since the
4 beginning of its contract services.

5 **Q When was that?**

6 A In February of 2013, I believe, January
7 or February of 2013.

8 **Q Through when?**

9 A Through today. It has an ongoing
10 contract.

11 **Q And what was that one point eight
12 million for?**

13 A That was for the construction
14 supervision services to be provided to the
15 limited partnership for AnC Bio. And that is a
16 hundred percent AnC Bio.

17 **Q And what has Inner Circle done, what
18 services?**

19 A Provided all of the services that I
20 described previously. They are the
21 preconstruction supervision services, architect
22 and engineering supervision services.

23 And to this point, at AnC Bio, we
24 produced some -- there has been some abatement
25 and demolition of buildings services. So we were

1 actually in construction phase, if you will.

2 So preconstruction, architectural
3 engineering, and now construction phases of work.
4 That entails a great deal of time and effort and
5 meetings and travel.

6 **Q And who are the owners of Inner
7 Circle?**

8 A I am.

9 **Q Anyone else?**

10 A No.

11 Those fees are prescribed by the
12 offering memorandum to the sponsor company. And
13 then the sponsor company delegates those
14 responsibilities and those prescribed fees to the
15 entities that they have to do the work, both to
16 themselves and any contract entities.

17 **Q Are you the sole officer, director of
18 Inner Circle?**

19 A I am.

20 **Q Does Inner Circle have any employees?**

21 A Only me. I am an employee of Inner
22 Circle.

23 **Q And when you said these fees are
24 prescribed by the offering materials, which
25 offering materials are you talking about?**

1 A The AnC Bio -- Jay Peak Biomedical
2 Research Park limited partnership offering
3 memorandum provides for -- in the disclosures,
4 for the use of proceeds that there will be -- and
5 each EB-5 project does this, prescribes for
6 fifteen percent of construction -- construction
7 costs -- construction federal costs to be paid to
8 the sponsor company or their delegate for
9 construction supervision, and an additional five
10 percent for construction supervision expenses.

11 And NECS operates under a contract with
12 the sponsor company to provide certain
13 construction supervision services for a
14 percentage of that offering memorandum prescribed
15 fees.

16 **Q And who is the sponsor that you're
17 referring to?**

18 A AnC Bio Vermont, LLC.

19 **Q And who are the officers and directors
20 of that entity?**

21 A William Stenger, Ariel Quiros, and Ary
22 Quiros.

23 **Q Spelled A-R-Y?**

24 A Yes.

25 **Q Is that Mr. Quiros's son?**

1 A It is.

2 Those are the members. I don't know
3 that those are officers and directors. Those are
4 the members.

5 **Q So those fees, the fifteen percent
6 fee, that is paid as the construction progresses?**

7 A Correct.

8 **Q Has -- and to date how much has
9 Northeast, or NECS, received in connection with
10 the contract that you were talking about?**

11 A It would be the amount that I told you
12 of one point eight million, so it would be three
13 times that, because that represents a thirty-two
14 percent share. The remainder of the funds are
15 returned to or paid to or deposited with the
16 sponsor company.

17 So sixty-eight percent of the funds are
18 there. I can't tell you an exact number, but I
19 recall -- I can tell you an exact, if I can do a
20 calculation.

21 **Q When you said sixty-eight percent of
22 the funds are returned, can you tell us what
23 you're referring to?**

24 A Yes. There are --

25 MR. GORDON: You don't have to do.

1 Don't worry about it. It's just math.
 2 THE WITNESS: So there are -- there are
 3 -- there are twenty percent of the -- twenty
 4 percent of the cost of construction in fit-out is
 5 the prescribed payment to the sponsor company or
 6 their delegate for providing construction
 7 supervision services. Those fees are disclosed
 8 in the offering memorandum in the Use of Proceeds
 9 page.
 10 Of that twenty percent, NECS provides
 11 certain services to the sponsor company, and the
 12 sponsor company provides the rest of those
 13 services. The part that NECS provides to the
 14 sponsor company are thirty-two percent of the
 15 twenty percent.
 16 BY MS. FUCHS-SINDLER:
 17 **Q And the other amounts that you**
 18 **mentioned that were paid to Mr. Stenger, Mr.**
 19 **McGuire, Deshazor, SJ Services, is that part of**
 20 **that --**
 21 A Yes, part of that thirty-two percent.
 22 **Q So that's part of the -- about five**
 23 **point four million that's been received so far --**
 24 **sorry, the one point eight times three?**
 25 A Yeah. It's part of the NECS portion of

1 that.
 2 **Q Okay.**
 3 **Have any other individuals or entities**
 4 **received any part of the monies that NECS or**
 5 **Inner Circle has received?**
 6 A Not of NECS. Of Inner Circle, there
 7 are other entities that have received funds from
 8 Inner Circle. Those are the federal government
 9 for taxes. Those are retirement plans. Those
 10 are key man life insurance policies.
 11 Those are operating expenses,
 12 obviously, being paid to a number of vendors for
 13 operating expenses of Inner Circle Professional
 14 Services. Those are travel business expenses.
 15 There's a number of people that have
 16 been paid. NECS has not paid anyone else, other
 17 than the individuals or the entities that I've
 18 told you.
 19 MR. JAMES: Did you draw a salary from
 20 Inner Circle?
 21 THE WITNESS: I do.
 22 MR. JAMES: Okay.
 23 What's that amount?
 24 THE WITNESS: In 2013, it was eighty
 25 thousand dollars. And in 2014, it is one hundred

1 thousand dollars.
 2 MR. JAMES: And do you have some type
 3 of compensation agreement, or this is just based
 4 on payout --
 5 THE WITNESS: With Inner Circle -- with
 6 Inner Circle, it's paid out. I'm very specific
 7 about payouts being to me under payroll rather
 8 than other purposes, and that payroll was
 9 documented with quarterly 941s. And so the
 10 payroll too is documented through tax returns
 11 paid quarterly.
 12 BY MS. FUCHS-SINDLER:
 13 **Q Does anyone else receive a salary from**
 14 **Inner Circle?**
 15 A No, not at this time.
 16 **Q Are there any plans for anyone else to**
 17 **receiving a salary?**
 18 A Yes. There are -- excuse me, not as
 19 salary. There are plans for additional
 20 consultants that will be hired, and they may be
 21 hired by NECS or they may be hired by Inner
 22 Circle, but they are definitive plans with
 23 definitive individuals that will be hired, yes.
 24 **Q Can you tell us about that?**
 25 A Sure. In EB-5 projects, such as this,

1 we need consulting services that are for customer
 2 interface. So there is a company out of
 3 Pennsylvania that we will retain, American -- ARM
 4 is the name of the company. We will retain that
 5 company -- provided they agree to it, we will
 6 retain that company to provide customer interface
 7 services. NECS will do that as part of the
 8 construction supervision and fit-out. They
 9 provide recommendations for certain kinds of
 10 fit-out, if you will.
 11 We will retain an FF&E individual.
 12 **Q What's that?**
 13 A A furniture, fixtures, and equipment
 14 individual that NECS or ICPS will retain an
 15 individual. Discussions are underway currently
 16 for the retention of that individual for that
 17 services -- those services.
 18 We will at some -- we have -- we will
 19 -- we will retain additional people for site
 20 control, beyond what McGuire has done and beyond
 21 what Andrew Stenger is doing. There are
 22 additional people that will be hired for site
 23 control to watch over certain things that are
 24 being performed on behalf the limited
 25 partnerships -- the limited partners, excuse me.

1 We will retain -- I believe we will
 2 retain additional people for qualification and
 3 verification of equipment. Those will be 2014
 4 hires -- or contracts, not hires, contracts.
 5 **Q And this is for the AnC Bio --**
 6 A Yes.
 7 **Q -- project?**
 8 A Yes.
 9 **Q Do you have any business or personal**
 10 **relationship with anyone in that Pennsylvania**
 11 **company?**
 12 A No.
 13 **Q How about the FF&E?**
 14 A No -- I'm sorry. No. I take that
 15 back. The FF&E person is a Jay Peak employee.
 16 That is a Jay Peak FF&E employee who we will
 17 hopefully attract away from Jay Peak and put to
 18 work on AnC Bio projects.
 19 **Q We're going to take a quick break.**
 20 A You asked that we finish questions
 21 before we take breaks. There's one more. There
 22 will be probably be an IT person hired for -- to
 23 work for me, to review and supervise IT
 24 operations under AnC.
 25 **Q I appreciate it. Thank you so much.**

1 **MS. FUCHS-SINDLER: Okay. We'll go off**
 2 **the record for a quick break.**
 3 **(Whereupon, at 11:06 a.m., a short**
 4 **recess was taken.)**
 5 **MS. FUCHS-SINDLER: We're back on the**
 6 **record after a short break.**
 7 **BY MS. FUCHS-SINDLER:**
 8 **Q During that time, we had no**
 9 **substantive conversations; is that correct, Mr.**
 10 **Kelly?**
 11 A Correct.
 12 **Q Okay.**
 13 **So we were talking about companies that**
 14 **Inner Circle or NE -- Northeast was planning to**
 15 **retain. And, again, I wasn't sure, why is it in**
 16 **some instances that it's Inner Circle doing the**
 17 **contracts and why in some instances Northeast?**
 18 A Because Northeast Contract Services
 19 engages Inner Circle, me, and for the purposes --
 20 really for the purposes of tax reporting, and
 21 it's easier if I do it all under one company.
 22 **Q Does Inner Circle do any work, other**
 23 **than for Northeast Contract Services?**
 24 A Yes.
 25 **Q What does it do?**

1 A It provides business counsel services
 2 to Mr. Quiros and his companies.
 3 **Q Any --**
 4 A It also provides counsel -- business
 5 counsel services to non-Mr. Quiros companies.
 6 Primarily, Mr. Quiros companies.
 7 MR. JAMES: And before you get to Mr.
 8 Quiros's companies, what other companies,
 9 non-Quiros companies, does that entity provide
 10 services to?
 11 THE WITNESS: Burke Mountain. It has
 12 provided services to other companies, but not
 13 under contract basis, so ad hoc services or
 14 contracts every once in a while.
 15 And then it provides services to
 16 insurance companies, insurance agencies, claims
 17 management companies. Most of those are either
 18 New York or Florida based.
 19 MR. JAMES: And are those under
 20 contract, also?
 21 THE WITNESS: Yes, those are always
 22 under contract.
 23 MR. JAMES: So currently you're
 24 providing business counseling services to Burke
 25 Mountain. Are you currently providing these

1 services to any of these ad hoc?
 2 THE WITNESS: Not under contract.
 3 There have been a number of contracts, but
 4 currently not under contract; although, there are
 5 discussions with Inner Circle and those companies
 6 today.
 7 MR. JAMES: Okay.
 8 And is there any current contracts with
 9 any of the insurance agencies?
 10 THE WITNESS: No. Under discussion.
 11 They are under discussion. No contract at this
 12 point, but there have been contracts in the past.
 13 MR. JAMES: Okay.
 14 And you described Burke Mountain as a
 15 non-Quiros?
 16 THE WITNESS: No. That's a Quiros
 17 company. It is a Mr. Quiros company.
 18 MR. JAMES: Okay.
 19 **BY MS. FUCHS-SINDLER:**
 20 **Q If you could tell us the services --**
 21 **when you said provided to Mr. Quiros's companies,**
 22 **which are you referring to?**
 23 A Burke Mountain.
 24 **Q Just Burke Mountain?**
 25 A Yes. Burke mountain is the only

1 contracted company that I provide services to Mr.
2 Quiros to at this point, other than AnC Bio
3 Vermont, LLC.

4 Mr. Quiros has various business
5 interests where he will ask me -- it's not
6 necessary to have a contract. I'll provide the
7 services without a contract.

8 **Q In what instances are those?**

9 A He may need a contract done for
10 something, and I have a particular specialty in
11 creating and writing contracts, and so I will
12 write a contract for him for something, as I will
13 other non-Mr. Quiros.

14 My point is that there are contract
15 services that Inner Circle Professional Services
16 provides to clients. And then there are ad hoc
17 that are done without contracts. There have been
18 both.

19 **Q What percentage of Inner Circle's work
20 is provided to Mr. Quiros or his company?**

21 A Ninety percent.

22 MS. LAMA: When was Inner Circle formed
23 again? You may have mentioned this before.

24 THE WITNESS: Inner Circle was -- I
25 think we formed in 2009, I believe, Michelle. I

1 was operating individually before formalizing
2 that into a company in 2009.

3 I've been providing business counsel
4 services to companies since 1994, and under
5 contracts.

6 MR. JAMES: When you say business
7 counsel service, what exactly is that?

8 THE WITNESS: Advice. Advice.
9 Typically, contractual counsel -- counseling.

10 MR. JAMES: We're talking about like
11 formation? We're talking about --

12 THE WITNESS: Corporate formation in
13 some cases. More often contract drafting for
14 transactions.

15 MS. LAMA: What kinds of transactions?

16 THE WITNESS: Companies might engage me
17 to look at insurance contracts that exist between
18 an insurance company and a client, claims
19 contracts that might exist between insurance
20 companies and clients, agency services contracts
21 that would exist between an insurance company and
22 a client.

23 Claimant companies might engage me to
24 look at representative agreements between
25 insurance companies and claim companies.

1 Insurance companies might engage me to
2 look at policy formations under ISO policy,
3 Insurance Services Offices policy formations --
4 or policy protocols.

5 Those kinds of services are the types
6 of services that I've been providing since 1994.
7 And in 2008 or 2009, I formalized it into Inner
8 Circle Professional Services and began to write
9 the contracts through that company.

10 BY MS. FUCHS-SINDLER:

11 **Q Do you provide any legal services,
12 too?**

13 A No. No. I have an understanding of
14 legal principles. I do have a JD, so I have
15 understanding of legal principles, and I will
16 incorporate that into my business advice.

17 **Q And the compensation that Inner Circle
18 receives from Mr. Quiros or his company, how is
19 that paid, like through which entity?**

20 A Through the entity that engages me. So
21 for instance, Burke Mountain engages me and Burke
22 Mountain pays me -- or pays Inner Circle
23 Professional Services.

24 AnC Bio Vermont, LLC, engages NECS, who
25 they understand in full disclosure engages Inner

1 Circle, and it's paid from AnC Vermont, LLC or
2 from the limited partnership that they are
3 working on behalf of. And those are always
4 either by check or wire transfers.

5 MS. LAMA: And how much compensation or
6 fees has Inner Circle received in connection with
7 AnC Bio -- or from AnC Bio?

8 THE WITNESS: I think that number is a
9 million, eight, but, again, I would really need
10 to do a calculation. But I can tell you it's
11 thirty-two percent of the prescribed fees paid,
12 basically, on a monthly basis, because the
13 contract between the limited partnerships and the
14 construction and fit-out are a monthly basis
15 contracts.

16 Again, the fees to NECS track precisely
17 with the construction or fit-out of the project.
18 So as the project pays construction or fit-out
19 expenses, NECS is then paid a percentage of that.
20 NECS retains its earned percentage of that. It
21 returns the rest to the sponsor company, all as
22 prescribed by the offering memorandum.

23 MS. LAMA: What do you mean by retains
24 its earned percentage and returns the rest to --

25 THE WITNESS: The contract between NECS

1 and the limited partners and the AnC Bio Vermont,
2 LLC, is specific that for of the twenty percent
3 construction supervision fees to be paid, fees
4 and expenses to be paid, that NECS's portion of
5 that and NECS's work under that is limited to
6 thirty-two percent, cannot exceed thirty-two
7 percent.

8 NECS then performs those services for
9 the limited partners and for AnC, the sponsor
10 company, and returns the remainder of the twenty
11 percent fees to the sponsor company, as
12 prescribed by contract, and as prescribed by the
13 offering memorandum. So all of that is kind of
14 by protocol.

15 MS. LAMA: And so just to clarify,
16 that's the sixty-eight percent you referred to in
17 terms --

18 THE WITNESS: Yes. That is what goes
19 back to the sponsor company.

20 MS. LAMA: Which is the sixty-eight
21 percent --

22 THE WITNESS: Of the twenty percent.

23 MS. LAMA: -- of the twenty percent?

24 THE WITNESS: Yes. I'm sorry. Yes.
25 Yes, ma'am.

1 MS. LAMA: And when you say sponsor
2 company, who -- or actually when the funds are
3 returned, who are the funds returned to? What
4 entity?

5 THE WITNESS: Whoever the sponsor
6 company tells me too, frankly. I mean, they
7 delegate. They give me wire instructions, and I
8 send them to that. The sponsor company gives me
9 wire instructions to send them to.

10 MS. LAMA: Okay.

11 So in the case of AnC Bio --

12 THE WITNESS: Yes.

13 MS. LAMA: -- who or what entity are
14 the funds returned to?

15 THE WITNESS: I think I've returned
16 them to, again, whoever the AnC Bio Vermont
17 delegates, but I think they have gone back to
18 different bank accounts. I don't know who the
19 bank accounts are. I mean, I can tell that I
20 think some of them are GSI has received some of
21 the funds. But they are directed to me by AnC
22 Bio Vermont, LLC, and I remit the funds to
23 whoever that company tells me to send them to.

24 MS. LAMA: Okay. So in addition to
25 GSI, what other entities have the funds been

1 remitted to?

2 THE WITNESS: None. I think they've
3 all gone to either GSI or AnC Bio Vermont, LLC.

4 BY MS. FUCHS-SINDLER:

5 **Q And who at the sponsor company gives**
6 **you the instructions as to where to send that**
7 **money?**

8 A William Stenger and Ariel Quiros, the
9 -- the owners of the sponsor company.

10 **Q And how do they give you those**
11 **instructions?**

12 A I believe the secretary sends me the
13 wire instructions.

14 **Q Whose secretary?**

15 A Mr. Quiros's secretary sends me the
16 wire instructions.

17 **Q What's her name?**

18 A Katia. I don't know her last name, to
19 be honest with you.

20 **Q Has Mr. Stenger ever sent you**
21 **instructions?**

22 A Not that I know of.

23 **Q Or anyone act like his assistant?**

24 A Not that I know of.

25 **Q It's always come from Katia?**

1 A It's always come from Mr. Quiros.

2 **Q It's always come from Mr. Quiros.**

3 A Mr. Quiros, certainly.

4 **Q Okay. So when you said Mr. Stenger or**
5 **Quiros gives the instructions, why did you say**
6 **that?**

7 A Because they own the company, and the
8 contract is with them.

9 **Q Oh, so they have authority to give you**
10 **the instructions?**

11 A That's correct.

12 **Q But the one who's actually giving you**
13 **the instructions is always Mr. Quiros; is that**
14 **correct?**

15 A Correct. That's correct.

16 MS. LAMA: And when you say contract,
17 which contract are you referring to?

18 THE WITNESS: That is the contract that
19 exists between Northeast Contract Services and
20 AnC Bio Vermont, LLC for the provision of the
21 construction and fit-out of the site services. I
22 believe I have submitted that contract to you.

23 MR. JAMES: Regarding the instructions
24 as to where to send that sixty-eight percent,
25 what form is that in? Is it in some type of memo

1 from Mr. Quiros to yourself? Is that an Email?
 2 THE WITNESS: He's just told me where
 3 to send it, and I -- and I remit it to that
 4 company, and then I confirm that they got it.
 5 MR. JAMES: How does he tell you that?
 6 How does he communicate that information to you?
 7 THE WITNESS: I think probably
 8 verbally, frankly. I mean, I could look to see
 9 whether or not I ever have a note that he has
 10 written to me about that, but it's told to me
 11 verbally.
 12 MR. JAMES: So as far as bank account
 13 informations, so he calls you up, and he says,
 14 send it to GSI's bank account --
 15 THE WITNESS: Yes. And that's where I
 16 usually get that, either from a phone call from
 17 Katia. And I will look to see whether or not
 18 there's actually a note that's come to me for
 19 that, but it's typically for that. Once I set it
 20 up once in my wire transfer template, it doesn't
 21 come again. I just automatically do it. It's
 22 required by contract.
 23 (Ms. Lama leaves the room.)
 24 MR. JAMES: Okay.
 25 And do you retain some type of

1 recordkeeping of all the different amounts that
 2 were wired?
 3 THE WITNESS: Oh, of course. Yes, of
 4 course.
 5 MR. JAMES: And then what form is that
 6 kept in? What exactly do you have?
 7 THE WITNESS: A record of wire
 8 transfers to AnC Bio Vermont or their delegate,
 9 pursuant to the contract. I actually have a file
 10 for that, of course.
 11 BY MS. FUCHS-SINDLER:
 12 **Q And when you say you keep that, is**
 13 **that Inner Circle that keeps that or Northeast**
 14 **Contract Services?**
 15 A Northeast Contract Services.
 16 **Q Okay.**
 17 **So when Katia gives you the**
 18 **instructions, do you -- is that just confirming**
 19 **the construction -- the instructions that Mr.**
 20 **Quiros has given you?**
 21 A Yes. And, again, the instructions are
 22 given one time --
 23 **Q Sir, we have to pause one moment. We**
 24 **apologize for the intrusion.**
 25 A The instructions were given at one

1 point, and I created a wire transfer template for
 2 that in NECS's banking environment, and that's
 3 where they go every month. If there's a change
 4 to that, I would get instructions to the change.
 5 **Q And you would get those instructions**
 6 **from Mr. Quiros?**
 7 A From Mr. Quiros telling me that there
 8 will be a change in the wire instructions, and
 9 then I would typically get those from Katia, from
 10 his secretary.
 11 And that would happen -- I mean, I
 12 can't even tell you whether that has ever
 13 happened, but it may have happened once, so that
 14 the wiring -- the wire from me is a templated
 15 wire and it happens by protocol.
 16 MR. JAMES: So for the most part, the
 17 template is for the money to go to GSI of Dade
 18 County?
 19 THE WITNESS: I believe the account
 20 they have delegated is to GSI of Dade County.
 21 BY MS. FUCHS-SINDLER:
 22 **Q Do you know what GSI of Dade County**
 23 **is?**
 24 A GSI of Dade County is a company owned
 25 by Mr. Quiros.

1 **Q And how do you know this?**
 2 A Oh, because I've been around Mr. Quiros
 3 for twenty-two years.
 4 **Q I'm sorry. For how long?**
 5 A About twenty-two years.
 6 MR. JAMES: Do you have a role or a
 7 function with GSI?
 8 THE WITNESS: I do not. I never have.
 9 BY MS. FUCHS-SINDLER:
 10 **Q Do you know what GSI of Dade County**
 11 **does?**
 12 A I don't know that -- I believe it is a
 13 holding company at this point.
 14 MR. JAMES: You said at this point.
 15 Was it --
 16 THE WITNESS: It was at one point a
 17 trading company. It was -- it was a company that
 18 I think did significant amounts of work with
 19 foreign countries for trading of goods,
 20 international trade.
 21 BY MS. FUCHS-SINDLER:
 22 **Q When you say trading of goods, what do**
 23 **you mean?**
 24 A Trading for commerce, for trading of
 25 goods. I think in particular the company may

1 have worked for the country of South Korea, for
2 the government of South Korea.

3 I know they were involved in
4 international trade procuring goods and services
5 around the world typically for the country of
6 South Korea.

7 **Q And before, you mentioned there's a**
8 **contract between NECS and AnC Bio. Is there also**
9 **a separate contract between AnC Bio or its**
10 **sponsor or any related entities and Inner Circle?**

11 A There's a contract between NECS and
12 Inner Circle, but not between AnC Bio and Inner
13 Circle.

14 **Q Okay.**

15 A In that contract between NECS and Inner
16 Circle is a familiar contract in that I am the
17 signer on both sides, but I document the
18 functions that will be provided, so that there's
19 clarity.

20 MR. JAMES: Any particular reason why
21 it's structured that way?

22 THE WITNESS: No. Just because I have
23 provided services under Inner Circle Professional
24 Services for so much time. It is where I am an
25 employee. It is where I receive funds, report to

1 the Internal Revenue Service, so that -- simply
2 for convenience.

3 It is me. I am the only owner, and I'm
4 the only employee of Inner Circle. So my
5 services are provided and documented there and
6 controlled there. That's all. Control and
7 convenience.

8 MR. JAMES: And then you said that GSI
9 now functions as a holding company?

10 THE WITNESS: I believe it does.

11 MR. JAMES: And can you tell me more
12 about that as far as any assets or --

13 THE WITNESS: I have no idea. I'm not
14 related to GSI at all. I -- you know, I simply
15 -- the wire transfers go to that entity, as
16 directed by AnC Bio. I don't know anything about
17 the substance of that company.

18 MR. JAMES: Okay. But when you
19 described it as a holding company, you just based
20 on --

21 THE WITNESS: I believe -- I believe
22 it's a holding company. I don't know if it's a
23 holding company. I believe it's a holding
24 company.

25 MR. JAMES: Okay.

1 BY MS. FUCHS-SINDLER:

2 **Q And to date, how much money has gone**
3 **to GSI from what you just described?**

4 A Again, I'd have to do the calculation,
5 but I can tell you that it is probably -- it is
6 -- all of the funds that have been paid under
7 construction and supervision fees pursuant to the
8 offering memorandum to NECS minus thirty-two
9 percent. I can do that calculation, if you give
10 me time to do that, but I can do that. I mean, I
11 --

12 MR. GORDON: I don't think they're
13 asking you to do the math.

14 THE WITNESS: Okay. I can do that, but
15 okay.

16 BY MS. FUCHS-SINDLER:

17 **Q So all that has gone to --**

18 A Certainly, all of that is of record
19 that can be produced for NECS in terms of wire
20 transfers, all of those.

21 **Q It's all gone to GSI?**

22 A All gone to whatever bank account I
23 have been directed. I believe that is always
24 GSI. And, again, I say that because I'm always
25 really operating off of a template, that when the

1 time comes and the fees are paid, it is within a
2 prescribed period of time returned, and I return
3 it to that template.

4 MR. JAMES: Does NECS hold any bank
5 accounts?

6 THE WITNESS: Yes.

7 MR. JAMES: At what banks?

8 THE WITNESS: People's Bank Vermont.
9 People's United Bank, I think is the actual name
10 of the bank. People's United Bank in Vermont. I
11 believe that's disclosed here.

12 BY MS. FUCHS-SINDLER:

13 **Q You're looking at your background**
14 **questionnaire?**

15 A Yes.

16 Yes. The very last account identified
17 on my background questionnaire is, People's Bank
18 Vermont, business checking, account number, and
19 no to discretionary authority by anyone else.

20 MR. JAMES: That's the NECS --

21 THE WITNESS: That is an NECS bank
22 account, yes.

23 MR. JAMES: And just for while we're
24 into list of bank accounts, are -- I know some
25 are personal --

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1 THE WITNESS: All of the other -- all
 2 of the other business accounts are Inner Circle
 3 Professional Services.
 4 MR. JAMES: Okay. That was going to be
 5 my question.
 6 Let's just go through it just to make
 7 sure. Going back to page five. The first one is
 8 at SunTrust?
 9 THE WITNESS: Yes.
 10 MR. JAMES: A business checking ending
 11 in 9480?
 12 THE WITNESS: Yes.
 13 MR. JAMES: Please tell me who that is.
 14 THE WITNESS: Inner Circle Professional
 15 Services. Anything that says business, other
 16 than the last one, will be Inner Circle
 17 Professional Services.
 18 MR. JAMES: Okay. Including like I see
 19 this money market?
 20 THE WITNESS: All of those are Inner
 21 Circle Professional Services. They are either
 22 Inner Circle Professional Services, if it says
 23 business. They are myself and my wife, if they
 24 say personal. And they are NECS as to the last
 25 entry.

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1 MR. JAMES: Okay. Perfect. Thank you.
 2 BY MS. FUCHS-SINDLER:
 3 **Q So going back, I know we had talked**
 4 **earlier about your role with NECS, and I**
 5 **understand you, you know, told us about the --**
 6 **who it contracts out with. But what do you**
 7 **yourself do in connection with your role with**
 8 **NECS?**
 9 A Supervise those contracted individuals
 10 and supervise operations. So I personally attend
 11 all of the meetings. I personally attend every
 12 permit hearing. I personally attend every
 13 charette for design. I personally attend every
 14 construction debate. So I personally attend all
 15 of those functions and manage of all of those
 16 events and functions.
 17 There are a series, of course, of
 18 permits, state, federal, local permits. Each
 19 permit must be -- most permits go through hearing
 20 processes. Every permit goes through a
 21 preliminary process. Every permit goes through a
 22 fact-finding and data-finding process.
 23 Every design phase goes through both
 24 charettes, which are meetings with users, end
 25 users, for the design of the facilities. Those

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1 are typically all over the country depending upon
 2 where the engineers, the particular engineers
 3 are, the designers are.
 4 There are -- and, of course, then
 5 preconstruction and construction meetings. I
 6 oversee and manage all of the pay applications
 7 for the limited partners for any pay application
 8 that goes out to any preconstruction architect,
 9 engineer, construction vendor. Not every vendor,
 10 but every one in those -- in those environments,
 11 those industries.
 12 MR. JAMES: And these pay applications
 13 are from the vendors submitting for payment for
 14 the work that they've performed?
 15 THE WITNESS: In an EB-5 project, in an
 16 EB-5 project that I've ever worked with, there's
 17 a protocol for pay for any vendor, and it's quite
 18 -- it's quite thorough. There is a requirement
 19 for a vendor to submit an invoice under a
 20 prescribed set of rules.
 21 Once that vendor submits the invoice,
 22 it typically requires a second party, often times
 23 an architect or an engineer, to sign off. So if
 24 a construction company is pouring cement, it
 25 requires an architect to sign off that that is

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1 the correct cement or concrete before that
 2 concrete vendor can be paid. An architect must
 3 sign off and say it actually applies to plans.
 4 And that goes throughout the
 5 construction process. If a framer is providing
 6 services, before that framer can provide an
 7 invoice and before that invoice can be paid, it
 8 requires an architect to sign off to say that is,
 9 in fact, what was ordered.
 10 Subsequent to that architects signing
 11 off, it will come to me, and then I will review
 12 it again. If I believe the invoice is
 13 appropriate, I will submit it to a financial
 14 person. That financial person will then request
 15 the general partner of the limited partnership
 16 approve that particular invoice.
 17 The limited -- the general partner of
 18 the limited partnership will then go back to the
 19 financial person and require the movement of the
 20 money into an operating account from a holding
 21 account. The movement of the money takes place,
 22 and then the financial person comes back in to
 23 approve the actual invoice being paid, the wire
 24 transfer or check being written to that vendor.
 25 So the vendor goes through a number of

1 steps before they can be paid. And at least
2 three of four people must approve every -- every
3 invoice before it can be paid. And in the middle
4 of all that, I'm one of those people, that beyond
5 being at the meetings, you asked me, Trisha, I'm
6 also the person who reviews the pay applications
7 for vendor services in the construction and
8 fit-out part of the project.

9 (Ms. Lama enters the room.)

10 MR. JAMES: Okay.

11 Let me just walk you through that just
12 to make sure I get it. So we would go back and
13 the vendor performs whatever construction,
14 fit-out work they perform.

15 THE WITNESS: Yes.

16 MR. JAMES: And it is -- earlier you
17 mentioned, monthly payouts. Is this also on a
18 monthly basis?

19 THE WITNESS: Typically, those things
20 -- we -- those are paid on a monthly basis.
21 They're not performed on a monthly basis, but
22 they're typically paid on monthly basis. Yes, in
23 all cases.

24 MR. JAMES: So whatever work then
25 that's performed for this month, they submit an

1 don't believe he has.

2 However, for any subcontractor or
3 contractor providing services to the limited
4 partnership, those are done through that process.
5 The limited partnerships are never paying an
6 invoice without that process taking place.

7 NECS may pay an invoice without that
8 process taking place.

9 MR. JAMES: Okay.

10 THE WITNESS: If I'm -- if I'm
11 personally -- if I am contracting with a vendor
12 to do work for NECS, that's different than if we
13 are asking a payment to come from the limited
14 partnership through the chain to a vendor.

15 MR. JAMES: But that latter example, is
16 the payment going from the partnership directly
17 to the vendor, does that occur, or does all the
18 payments go through NECS?

19 THE WITNESS: No. No. No. No. No.
20 They go directly to the vendor in those cases.
21 The only thing that comes to NECS will be for
22 construction supervision fees.

23 Invoices that are -- that are submitted
24 to the limited partnership for construction are
25 paid by the limited partnership to either the

1 invoice?

2 THE WITNESS: Correct.

3 MR. JAMES: Okay.

4 And then you said then that invoice is
5 first submitted to either the architect or the
6 engineer for them to confirm that that work
7 that's being invoiced has actually occurred?

8 THE WITNESS: Reviewed by an architect,
9 an engineer, or someone who has special knowledge
10 of that particular invoice.

11 MR. JAMES: Okay.

12 THE WITNESS: But, typically, it's an
13 architect or engineer, and they must sign off on
14 it.

15 MR. JAMES: Okay.

16 And as far as what actually has
17 transpired, is that architect/engineer Mr.
18 McGuire?

19 THE WITNESS: No. No. No. That
20 architect -- well, Mr. McGuire may have been an
21 architect -- an engineer, not an architect, an
22 engineer who has signed off on an particular --
23 but he -- I don't believe Mr. McGuire has ever
24 signed off on an invoice of someone else. Mr.
25 McGuire has provided invoices himself, but I

1 general contractor or to a subcontractor, but
2 that process takes place before they can be paid.

3 MR. JAMES: Okay.

4 So the architect or engineer that's
5 signing off on that vendor's invoice directly to
6 the limited partnership, who is that entity or
7 individual?

8 THE WITNESS: Gardner Kilcoyne is the
9 actual company.

10 MR. JAMES: Can you spell that for me?

11 THE WITNESS: G-A-R-D-N-E-R, Kilcoyne,
12 K-I-L-C-O-Y-N-E. Excuse me. I'm sorry. I'm
13 sorry. That is wrong. Forgive me. The
14 architect in this case is NNE Pharma Plan. I'm
15 sorry. I apologize.

16 MR. JAMES: NNE --

17 THE WITNESS: NNE Pharmaplan,
18 P-H-A-R-M-A-P-L-A-N. They're a worldwide
19 engineering firm. Their offices -- their
20 headquarter offices are in the United States in
21 Morrisville, North Carolina.

22 MR. JAMES: Okay.

23 Where else do they have offices?

24 THE WITNESS: All over the country, but
25 the only offices that I deal with them are in

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1 western North Carolina, one in Boston. Those are
2 the two.
3 NNE, they are a subsidiary of Nova
4 (sic) Novartis. I'm sorry. I can't -- it's a
5 Danish company that I have a hard time with the
6 name. Nova Novartis is the actual company.
7 They're a very, very large pharmaceutical
8 company.
9 They own a pharmaceutical design firm,
10 NNE Pharmaplan, and that who has been -- that is
11 the retained architect and engineering firm who
12 is designing all of the AnC Bio.
13 They have not had occasion yet to pay
14 off on an invoice, because there has not been any
15 construction done yet on the building.
16 MR. JAMES: For AnC Bio?
17 THE WITNESS: For AnC Bio.
18 All that has been done to this date is
19 abatement and demolition of that building -- of
20 the existing facility. But they will be the
21 architect that will sign off on every invoice
22 being paid for construction under their plans.
23 MR. JAMES: Okay.
24 But as you sit here today, they have
25 yet to perform that function because --

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1 THE WITNESS: That's correct. That's
2 correct.
3 MR. JAMES: -- the construction invoice
4 --
5 THE WITNESS: That's correct.
6 MR. JAMES: You have to let me finish.
7 THE WITNESS: Oh, I'm sorry. I'm
8 sorry.
9 MR. JAMES: Okay. And then just for
10 completeness, you mentioned Gardner Kilcoyne --
11 THE WITNESS: Yes. That's another
12 architectural firm in Vermont. I'm sorry. I
13 apologize.
14 MR. JAMES: Okay.
15 And then have you engaged their
16 services on prior project?
17 THE WITNESS: Yes. Yes. Yes, I've
18 used them.
19 MR. JAMES: So they've done this
20 function, the architect approving work invoice,
21 for earlier projects?
22 THE WITNESS: Yes.
23 MR. JAMES: Okay.
24 And now, for AnC Bio, NNE will be
25 performing that service?

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1 THE WITNESS: Yes. NNE today is the
2 engaged architectural design firm -- architect
3 and engineer design firm for the AnC Bio project.
4 They will be -- they don't know it yet,
5 but they will be engaged as what we will refer to
6 as the construction administration piece. Each
7 architectural firm for a project, a building
8 project, includes design. It includes
9 feasibility study of designs and, ultimately,
10 construction administration.
11 The part that I'm talking about is
12 construction administration. They will be --
13 they don't know that yet, but they will be --
14 they propose to be, and they will be. So they
15 have been retained for everything up to that
16 point, but when construction begins, they will be
17 engaged as the construction administration,
18 architect, and engineer, and they will sign off
19 on every construction piece that's done.
20 MR. JAMES: Okay.
21 And are there any current contracts
22 between NNE and any of the entities you've
23 mentioned today?
24 THE WITNESS: Yes. Oh, yes. They're
25 operating under contract today. They are

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1 designing the AnC Bio facility.
2 MR. JAMES: Okay.
3 So the contract is between NNE and what
4 entity?
5 THE WITNESS: The contracts are between
6 NNE and I believe the sponsor company, AnC Bio
7 Vermont, LLC.
8 MR. JAMES: And it's just one contract?
9 THE WITNESS: One contract, yes.
10 MR. JAMES: So once -- in this
11 instance, and, obviously, it hasn't occurred yet,
12 but just whether you want to refer to NNE or
13 Gardner in the past, so once the architect
14 confirms that the work being invoiced has been
15 performed, you then do a second review of that
16 work and also approve?
17 THE WITNESS: That's correct. I look
18 at those invoices as well. In that particular
19 case, I would rely on the expertise of the
20 architect to know what they're talking about, of
21 course. In other cases, it would be my review of
22 what has been done that would create the
23 authority to pay that invoice.
24 MR. JAMES: Okay.
25 And then just -- so the actual invoice

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1 itself by the vendor, is that sent directly to
2 the sponsor, or is that sent --
3 THE WITNESS: To the limited
4 partnership company.
5 MR. JAMES: It's sent to the limit
6 partnership?
7 THE WITNESS: Yes. I only be careful,
8 because some of those invoices are sent to a
9 general contractor, who then sends them to the
10 limit partnership company.
11 MR. JAMES: Okay.
12 So once you approve the architect's
13 approval of the invoice, you said that it's
14 submitted to the financial person?
15 THE WITNESS: Once the invoice is
16 approved by the party who is approving, in this
17 case the architect, it would then go to a
18 financial person, who would then request payment
19 by the general partner of the limited
20 partnership.
21 The general partner would then review
22 offering document materials and authorize the
23 payment to be paid to the vendor. The financial
24 person would then request the deposit of the
25 funds into an operating account, into a limited

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1 partnership operating account, from a limited
2 partnership holding account into a limited
3 partnership operating account, and then the
4 invoice would be paid by that financial officer.
5 It takes at least three people for an
6 invoice to be paid by the limited partnerships.
7 MR. JAMES: Let's see if we can attach
8 some names to these roles. So the financial
9 person would be who in this instance?
10 THE WITNESS: George Gulisano.
11 MR. JAMES: So once Mr. Gulisano
12 receives the request for -- sorry. Once you
13 submit the invoice to Mr. Gulisano and made the
14 request for payment, does he do anything else, as
15 far as any additional approvals or confirmation
16 of the invoice?
17 THE WITNESS: No. No. He simply moves
18 the funds or requests for a movement of the funds
19 from a holding account to a payable account.
20 MR. JAMES: Okay.
21 And who is he making that request to?
22 You said the GP.
23 THE WITNESS: Mr. Quiros, or to the
24 general partner at that point, yes, Mr. Quiros or
25 Mr. Stenger.

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1 MR. JAMES: Is it both or one or the
2 other?
3 THE WITNESS: It could be either. It's
4 more often Mr. Stenger than Mr. Quiros.
5 MR. JAMES: Okay.
6 And then Mr. Stenger gets this request
7 for transfer of funds and --
8 THE WITNESS: Moves them into the
9 operating account, and then Mr. Gulisano comes
10 back in and makes the payment to the vendor.
11 MR. JAMES: Okay.
12 So now we just have some construction
13 that has occurred. We have an invoice submitted
14 for payment, confirmation of work being actually
15 performed, and authorization for a payment of
16 that construction.
17 Where in this process is that twenty
18 percent for construction supervision? Is that --
19 does that come out of this at all or on top of
20 this?
21 THE WITNESS: Yes. In the process, all
22 construction or fit-out invoices need to pass in
23 front of me.
24 MR. JAMES: Okay. Tell us that aspect
25 of the process.

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1 THE WITNESS: They're submitted to me
2 after the architect or -- or whatever -- whoever
3 the signing off entity is. Once that entity has
4 signed off, they will pass by me. And then when
5 they pass by me, I will typically sign them, that
6 I have also approved them to be paid.
7 MR. JAMES: Okay.
8 And then it is the request that
9 actually goes for payment. Is there a component
10 of that that's identified as supervision fee for
11 that work?
12 THE WITNESS: No. No. I mean, that's
13 just part of the larger process of overseeing the
14 construction and fit-out.
15 So the oversight of the construction
16 and fit-out is ninety percent substantive in
17 terms of being on site, looking at erosion
18 control, looking at ANR, the natural resources,
19 looking at environmental controls, looking at --
20 and reporting to authorities every day on what's
21 happening in the -- in the performance of that
22 contract. Looking at the invoices that come in
23 to the limited partnership is one small piece of
24 it, but it does go by me for that -- for those
25 services.

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1 Now, the limited partnership might be
 2 doing something entirely different that I would
 3 not have anything to do with, but that's a
 4 separate -- that's a separate function. The
 5 construction supervision is only of construction
 6 equipment and fit-out.

7 MR. JAMES: Okay.

8 So to the extent this process is
 9 happening for construction invoices, I'm trying
 10 to understanding when the fifteen and five
 11 percent of the total of twenty percent of
 12 construction supervision, when that is earned?
 13 When is that paid?

14 THE WITNESS: When a construction
 15 invoice is, ultimately, paid by that process,
 16 then an invoice will be submitted by NECS for
 17 twenty percent of those funds. That wire
 18 transfer will take place by the limited
 19 partnership. NECS will then engage Inner Circle
 20 Professional Services for its role, and it will
 21 return the sixty-eight percent to the sponsor
 22 company for its role.

23 MR. JAMES: So we have a construction
 24 invoice comes in, approved by architect, comes to
 25 you. And then -- maybe I'm just not following.

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1 So at that point in time, do you then pull out
 2 your calculator and say, well, this invoice is
 3 for one million dollars for construction work,
 4 it's approved by the architect that the work
 5 actually occurred, do you now do one million
 6 dollars times twenty percent?

7 THE WITNESS: Yes. Yes. Yes, sir.

8 MR. JAMES: Okay.

9 Okay. And then -- so then you come up
 10 with the construction supervision on top of that
 11 invoice amount?

12 THE WITNESS: Not on top, of separate
 13 from, but, yes.

14 MR. JAMES: But it's based on the
 15 amount of the invoice?

16 THE WITNESS: Yes. Yes, sir.

17 MS. LAMA: In the case of AnC Bio, what
 18 kinds of invoices have been -- have gone through
 19 this chain in which NECS has applied this twenty
 20 percent?

21 THE WITNESS: The -- there's a contract
 22 between the limited partnership and the
 23 procurement company. The procurement company is
 24 a company that is designed -- that is a US-based
 25 company that is designed to be the gatekeeper, if

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1 you will. You can use a number of different
 2 terms, too.

3 The limited partnership pays that US
 4 company, that procurement company, on a monthly
 5 basis. The limited partnership, the general
 6 partner and that company came to terms early on
 7 about paying the prescribed amounts in the
 8 offering memorandum that are going to that
 9 procurement company. They determined early on
 10 that those payments would be made on a monthly
 11 installment basis rather than on a per
 12 performance basis, if you will.

13 So there is a contract that exists
 14 between the limited partnership and JCM, a
 15 Vermont-based US company, where the limited
 16 partnership pays JCM installments of one
 17 twentieth of their contract amounts every month
 18 for twenty months.

19 The procurement duties of JCM are for
 20 architectural fees, architectural services,
 21 distribution rights, technology, if you will, and
 22 equipment. So JCM is charged with procuring
 23 those things for the limited partnership, and the
 24 limited partnership pays that company one
 25 twentieth every month.

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1 MS. LAMA: And how much is that?

2 THE WITNESS: Two point six million.
 3 The total contract is fifty-two million. That is
 4 made up of forty million dollars of equipment,
 5 ten million dollars of distribution rights, and
 6 two million dollars of architectural fees,
 7 architectural engineering fees.

8 I believe fifteen payments have been
 9 made to JCM from the limited partnership. And
 10 for those portions of that that are based on
 11 construction -- for those portions of that that
 12 are applicable to construction supervision fees,
 13 NECS has submitted a bill to the limited
 14 partnership for those amounts.

15 So you could calculate, as I was about
 16 to, twenty percent of two point six million
 17 dollars, and those are the construction
 18 supervision fees in many cases, not exactly, but
 19 in many cases, not in every case, because there
 20 are other things that are being acquired or
 21 procured out of the two point six million dollars
 22 that are not necessarily applicable to
 23 construction supervision fees. And I do look at
 24 those invoices before those invoices are
 25 processed.

1 MS. LAMA: So based on your last
 2 response, if fifteen payments have been made to
 3 JCM from the LP, there have not necessarily been
 4 fifteen invoices by NECS for construction
 5 supervision, or there have been?
 6 THE WITNESS: I don't know if there's
 7 been exactly. But they're could've been fifteen
 8 invoices, but it might not be exactly for the
 9 same amount, because some of those invoices were
 10 for other than construction supervision.
 11 MS. LAMA: Yes. I'm sorry. That's
 12 what I meant. So there have been fifteen
 13 invoices --
 14 THE WITNESS: Yes.
 15 MS. LAMA: -- but not necessarily --
 16 THE WITNESS: For the same amount.
 17 MS. LAMA: -- for the amount of twenty
 18 percent times two point six?
 19 THE WITNESS: Yes, that's correct. I
 20 -- I state that without having those invoices in
 21 front of me, but I believe that is correct.
 22 BY MS. FUCHS-SINDLER:
 23 **Q When you had mentioned sometimes it's**
 24 **not always for construction supervision fees,**
 25 **what else could it be for?**

1 A Distribution rights. That's really the
 2 only the exception. In that scenario, the only
 3 exception is distribution rights. Part of that
 4 fifty-two million dollar procurement contract is
 5 for the procurement of ten million dollars of
 6 distribution rights.
 7 MS. LAMA: And how --
 8 THE WITNESS: There's not construction
 9 supervision applied there.
 10 MS. LAMA: Pardon me.
 11 And how much has been paid to date
 12 towards that ten million of distribution rights?
 13 THE WITNESS: All of it, I believe.
 14 BY MS. FUCHS-SINDLER:
 15 **Q All ten million?**
 16 A All ten million, yes. And I know that
 17 the distribution rights and the patents and
 18 technology applicable to that distribution rights
 19 are in hand at the limited partnership today. So
 20 I presume all ten million of it has been paid,
 21 since it's all been delivered.
 22 MS. LAMA: And when was that delivered?
 23 THE WITNESS: I don't know that.
 24 MS. LAMA: Was it recent?
 25 THE WITNESS: It's been over the

1 fifteen-month period. I don't -- I can't tell
 2 you -- I can't tell you what date that was
 3 delivered. That would be outside of my purview,
 4 but it was within that fifteen-month period.
 5 MS. LAMA: And I'm sorry. You just
 6 mentioned in hand. How is it in hand?
 7 THE WITNESS: Because the distribution
 8 contract is held in care, custody, and control of
 9 the limited partnership at this point. I believe
 10 that's been produced as well.
 11 Again, those parcels were disclosed and
 12 identified specifically in the offering
 13 memorandum to investors, exactly what was being
 14 paid for distribution rights.
 15 MS. LAMA: And how is it that the
 16 invoices reflect that a portion of that invoice
 17 pertains to distribution rights?
 18 THE WITNESS: It doesn't. It is simply
 19 one part of a fifty-two million dollar contract.
 20 But, presumably, the limited partnership, the
 21 general partner, and the procurement company
 22 agree on which pieces are paid under what
 23 premise.
 24 My position in that is to provide the
 25 services on construction equipment supervision.

1 And so I pay attention to that.
 2 MS. LAMA: So what's your understanding
 3 then how that was paid out?
 4 THE WITNESS: My understanding is there
 5 has been two point six million dollars paid to
 6 the procurement company each month for fifteen
 7 months. I don't know that they were always
 8 consecutive months, but for fifteen monthly
 9 payments have been made to -- I believe almost
 10 every month, have been made to the procurement
 11 company by the limited partnership.
 12 And I know that the distribution
 13 agreement and the intended documents with that
 14 distribution agreement were delivered at some
 15 point to the limited partnership. I know that
 16 architectural fees have been paid on behalf of
 17 the limited partnership through the procurement
 18 company. And I know equipment has been ordered.
 19 And I can tell you that my
 20 understanding of the distribution of those funds
 21 and those processes are ten million has been paid
 22 of distribution rights. And I believe it's
 23 because the original contract between the
 24 procurement company and the limited partnership
 25 called for an accelerated delivery of the

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1 distribution contract.
 2 And about one point five million
 3 dollars has been paid in architectural fees. And
 4 about fourteen point five or fifteen million
 5 dollars has been paid in equipment purchases, for
 6 equipment purchases.
 7 That is the breakout of what has been
 8 paid between the limited partnership and the
 9 procurement company to date that I know of.
 10 MS. LAMA: And what is your basis for
 11 understanding that breakdown?
 12 THE WITNESS: I've reviewed the
 13 procurement contract. And as part of the
 14 preconstruction architect and engineering, there
 15 is constant conversation and dialogue about the
 16 equipment and what needs to be ordered and what
 17 dates they need to be ordered.
 18 So I understand -- I have a fairly
 19 clear understanding, through my role as
 20 construction supervision, attending every
 21 engineering meeting and every architectural
 22 meeting, as to what the requirements are earlier
 23 and later for construction order -- for equipment
 24 order.
 25 MS. LAMA: Okay. I guess what we're

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1 trying to understand is, what determines what
 2 piece of the two point six million goes into each
 3 of these bucket? How is that determined?
 4 THE WITNESS: I can't tell you. I
 5 would have to -- I would have to review the
 6 contract, but I believe the contract calls for an
 7 acceleration -- an accelerated payment on the
 8 distribution rights. But I would have to look at
 9 the contract to tell you that.
 10 MR. JAMES: And you testified that the
 11 invoice itself does not delineate --
 12 THE WITNESS: No, the invoice does not.
 13 The invoice is a two point six million dollar per
 14 month invoice, and that is pursuant to a
 15 contract.
 16 MS. LAMA: So, for example, when NC --
 17 pardon me, NECS calculates its portion of the two
 18 point six million, how do you determine what
 19 piece you can apply the twenty percent to?
 20 THE WITNESS: Because I take out any
 21 portion that has been paid for the distribution
 22 agreement.
 23 MS. LAMA: And how do you determine
 24 that?
 25 THE WITNESS: Because I'm told that

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1 X-amount of money was paid for distribution.
 2 MS. LAMA: And who tells you that?
 3 THE WITNESS: At this point, Mr.
 4 Quiros.
 5 BY MS. FUCHS-SINDLER:
 6 **Q At any point, was it someone else?**
 7 A No. It's been Mr. Quiros.
 8 MS. LAMA: And in how many instances
 9 have you been told to exclude a portion from --
 10 exclude a portion because it pertains to
 11 distribution rights?
 12 THE WITNESS: There were initially ten
 13 million dollars of payments that were made that
 14 were excluded. So there was a -- there was
 15 initially I think a five point five million
 16 dollar payment made. There were no -- there were
 17 supervision fees taken on. And there were then
 18 an additional remainder up to ten million
 19 dollars, but no supervision fees were recovered
 20 on.
 21 MS. LAMA: Okay. And you said a five
 22 point five million payment --
 23 THE WITNESS: There was an initial five
 24 -- excuse me. There was an initial five point
 25 five million dollar payment made, I understand.

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1 I'm not privileged to that. But there was an
 2 initial five point five million dollar payment
 3 made to the procurement company.
 4 MS. LAMA: Did you see that invoice?
 5 THE WITNESS: I did not.
 6 BY MS. FUCHS-SINDLER:
 7 **Q And the procurement company is?**
 8 A JCM.
 9 **Q And when you said you're not**
 10 **privileged to that, so how did you know about**
 11 **that?**
 12 A I was told. I was told that the -- in
 13 fact, let me be clear about my statement. I was
 14 told that a payment was made to -- a deposit
 15 payment was made on the purchase of the -- the
 16 procurement of the distribution rights of five
 17 point five million, I believe.
 18 Again, there are purchases or
 19 procurements made that are not in the
 20 construction supervision world, and those I am --
 21 those are outside of my purview.
 22 **Q And who told you about the five point**
 23 **five million?**
 24 A Mr. Quiros.
 25 **Q When did he tell you?**

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1 A This is probably last year. I cannot
 2 tell you what date last year.
 3 Q How did he tell you?
 4 A Verbally.
 5 Q But why didn't you see a copy of any
 6 documents?
 7 A It's outside of my purview. What is
 8 paid for, things other than construction,
 9 preconstruction, architect preconstruction and
 10 construction, are outside -- or equipment -- are
 11 outside -- they're outside the purview of my
 12 contract. So he might share that with me, but he
 13 has no requirement to. That's general contractor
 14 -- or general partner business.
 15 MR. JAMES: So are you receiving
 16 invoices from the procurement company, JCM?
 17 THE WITNESS: I see those -- print
 18 those invoices from the procurement company, yes.
 19 Yes. Those invoices go directly to the limited
 20 partnership, but I review them before they do.
 21 BY MS. FUCHS-SINDLER:
 22 Q And how do you get them?
 23 A Those come directly from the financial
 24 officer who has received them, sends them to me,
 25 and then I take them -- or they may come directly

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1 from the company. They may come directly from
 2 JCM.
 3 MS. LAMA: And before we go to that,
 4 and we will, circling back to the distribution
 5 rights, you mentioned this five point five
 6 million payment.
 7 THE WITNESS: Yes.
 8 MS. LAMA: Now, the total distribution
 9 rights were ten million.
 10 THE WITNESS: Correct.
 11 MS. LAMA: So the balance of four point
 12 five million, can you tell us about the payment
 13 of that?
 14 THE WITNESS: It would be within those
 15 two point six million dollar payments.
 16 MS. LAMA: And can you tell us about
 17 how that was determined, since these -- you did
 18 review these invoices when you had to portion out
 19 that piece.
 20 THE WITNESS: Correct.
 21 MS. LAMA: So can you walk us through
 22 that, that four point five million?
 23 THE WITNESS: Without looking at the
 24 contract, I can tell -- I mean, I would've done
 25 it pursuant to the contract. But without the

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1 contract in front of me, as I stated, I believe
 2 the contract calls for an accelerated payment on
 3 the distribution rights.
 4 So although two point six million per
 5 month times twenty months is for fifty-two
 6 million dollars of services, I believe there is a
 7 clause in the contract that calls for the
 8 distribution rights to be paid first.
 9 MS. LAMA: Okay. So when you -- can
 10 you tell us about when was the first invoice you
 11 received to which a portion was allocated to
 12 distribution rights, and, therefore, you did not
 13 take your twenty percent?
 14 THE WITNESS: I believe that would've
 15 been in middle -- early 2013.
 16 MS. LAMA: So was it the first invoices
 17 that were paid pursuant to the contracts in early
 18 2013, was it the first or the initial invoices
 19 that included this carve out?
 20 THE WITNESS: Within the first
 21 invoices, I believe that would be true.
 22 MS. LAMA: So for those first invoices,
 23 you would've not billed the twenty percent times
 24 the two point --
 25 THE WITNESS: Correct.

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1 MS. LAMA: And what entity was it that
 2 was paid for the distribution rights? Was that
 3 AnC Biopharm?
 4 THE WITNESS: AnC Biopharm, I believe
 5 it was, yes.
 6 MS. LAMA: And what entity paid AnC
 7 Biopharm?
 8 THE WITNESS: I believe JCM.
 9 MS. LAMA: And so to date JCM has paid
 10 AnC Biopharm ten million for distribution rights?
 11 THE WITNESS: I believe that's correct.
 12 MS. LAMA: And has JCM received
 13 anything from AnC Biopharm showing the
 14 satisfaction of that ten million?
 15 THE WITNESS: I cannot answer that. I
 16 don't know that. I would presume they have, but
 17 I -- I don't know. I presume that they have. I
 18 know that -- I know that JCM has received and the
 19 limited partnership has received the distribution
 20 agreements and, as I suggested, the attending
 21 document with those.
 22 In terms of a receipt for the money, I
 23 believe that -- I believe that JCM has receipts
 24 for everything that they have paid, but I cannot
 25 attest to that.

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1 MS. LAMA: So, for example, for the
 2 equipment portion that has been paid to date
 3 through these two point six million invoices from
 4 JCM to AnC Biopharm, have you seen any receipts
 5 for that?
 6 THE WITNESS: No. I have only been
 7 operating under the terms of the contract.
 8 MS. LAMA: You mentioned earlier it's
 9 your understanding that fourteen point five
 10 million to fifteen million of payments have been
 11 made for equipment purchases from JCM to AnC
 12 Biopharm; is that right?
 13 THE WITNESS: Correct. My recollection
 14 is that twenty-six million dollars has been paid.
 15 MS. LAMA: For?
 16 THE WITNESS: From JCM -- or to JCM.
 17 To JCM, excuse me, to JCM by the limited
 18 partnership.
 19 MS. LAMA: For?
 20 THE WITNESS: Architectural
 21 construction -- architectural equipment,
 22 construction, distribution rights. The
 23 procurement company has been paid for the
 24 procuring of those services.
 25 MS. LAMA: And it's your understanding

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1 that the procurement company, which is JCM --
 2 THE WITNESS: Correct.
 3 MS. LAMA: -- has paid all of those
 4 funds to AnC Biopharm?
 5 THE WITNESS: Correct.
 6 MS. LAMA: And the equipment that has
 7 been purchased, where is that equipment?
 8 THE WITNESS: It is being designed and
 9 procured through AnC Biopharm. Some of it
 10 internationally, and some of it domestically.
 11 BY MS. FUCHS-SINDLER:
 12 **Q Can you give us -- can you expound on**
 13 **that, please?**
 14 A In what way would you like me to -- I
 15 can tell you the types of equipment that are --
 16 are earlier stage equipment that need to be
 17 ordered in advance or designed in advance.
 18 There's -- as I suggested, there's early-stage
 19 equipment, middle-stage equipment, and late
 20 equipment.
 21 Microscopes can be ordered at the last
 22 moment, but, you know, many of the other pieces
 23 cannot be. And the list is fifteen million
 24 dollars that I know is being designed and
 25 procured through AnC Biopharm at this point.

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1 I actually have a list of the
 2 equipment. I can recall much of it, but I can't
 3 recite it to you of, course. But they are
 4 autoclaves, for instance, that need to be
 5 designed. There's a great deal of processing
 6 equipment.
 7 This facility, the one thing that's
 8 very different about this facility than other
 9 facilities is, this facility is made up of
 10 both a construction of a building, a facility,
 11 but also the internal construction of, and
 12 processing of, functions.
 13 So there is an entire component of this
 14 particular facility that has a processing
 15 function. By that I mean, there may be pipes
 16 installed in the building during construction,
 17 but there will be specialty pipes involved in the
 18 building based on processing.
 19 This is a building where the processing
 20 of human cells takes place, and the requirements
 21 for that by CGMP and CGLP, which is good
 22 laboratory practices and good manufacturing
 23 practices standards, require certain kinds of
 24 processing equipment.
 25 So, for instance, the generators have

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1 to be of a particular type. The autoclaves, of
 2 course, are autoclaves. The -- there are a
 3 particular kind of sterile welders that need to
 4 be procured. There are different kinds of
 5 boilers that need to be procured.
 6 There are particular kinds of water
 7 vessels, pure water vessels, that must be
 8 designed and procured. There are cooling towers
 9 that must be built and designed for these process
 10 that are inside. There are environmental
 11 management systems and building management
 12 systems that must be designed particularly for
 13 this kind of a building.
 14 Those kinds of equipments -- and I'm
 15 monitoring the equipment that is being designed
 16 and acquired. Those kinds of equipment are the
 17 early-stage equipment, and there is to date a
 18 little over fifteen million dollars of that
 19 equipment that is being designed and procured.
 20 MR. JAMES: What was that amount?
 21 Sorry.
 22 THE WITNESS: A little over fifteen
 23 million.
 24 I think they have been paid for
 25 fourteen and half to fifteen million, but we are

1 just over fifteen million now and quickly moving
 2 on nineteen million dollars worth of equipment.
 3 MS. LAMA: And you mentioned you
 4 monitor the equipment design and what has been
 5 acquired. How do you --
 6 THE WITNESS: Not has been acquired,
 7 but is being acquired, that is being designed and
 8 acquired.
 9 MS. LAMA: And how do you monitor that?
 10 THE WITNESS: I attend the meetings
 11 with the architects who require the equipment be
 12 procured. So I will meet with the architects and
 13 the engineers weekly to determine what equipment
 14 is being required at that point.
 15 BY MS. FUCHS-SINDLER:
 16 **Q Is this NNE Pharma Plan?**
 17 A Yes.
 18 And, frankly, that meeting is really of
 19 NNE Pharma Plan and AnC Biopharm. AnC Biopharm
 20 is represented at every one of those weekly
 21 meetings, the acquiring company, the company that
 22 the procurement company is acquiring.
 23 **Q Where are these meetings?**
 24 A They are telephonically every Monday
 25 evening, and they take place between Korea, South

1 Korea, Morrisville, North Carolina, Boston,
 2 Massachusetts, Burlington, Vermont, and me.
 3 **Q Which individuals participate in the**
 4 **meetings?**
 5 A They are always attended by myself, by
 6 the general contractor of the building.
 7 **Q Who's that?**
 8 A Peak CM, P-E-A-K, C-M, of Burlington,
 9 Vermont.
 10 **Q And who's the individual?**
 11 A Jerry Davis. There are a number of --
 12 Jerry Davis.
 13 Then there are a number of
 14 subcontractors who are invited to those meetings
 15 periodically. We may have an HVAC subcontractor.
 16 We may have an air purification subcontractor.
 17 We may have a mechanical -- I mean, a mechanical
 18 electrical plumbing contractor.
 19 We may have a variety of subcontractors
 20 attend those telephonic meetings as well. They
 21 are attended by AnC Biopharm. That is typically
 22 by Mr. Jang, Dr. Jang, J-A-N-G, Jong Choi, Mr.
 23 Hahn. Those are the primary functionaries, if
 24 you will, from AnC Biopharm.
 25 And then there will be -- there was --

1 there will be Mike Curry, Michael Curry from AnC
 2 -- from NNE, Fred Grossfield,
 3 G-R-O-S-S-F-I-E-L-D.
 4 **Q From where?**
 5 A From NNE. There will be -- there will
 6 be any number of people from NNE. There will be
 7 ten or twelve people from NNE there, so -- and
 8 they vary depending upon what the subject matter
 9 of the evening is.
 10 And then about once a month, we meet
 11 typically in Morrisville, North Carolina or in
 12 Vermont, either in Burlington, Vermont or closer
 13 to the site in Vermont. About once a month, we
 14 meet with a much larger group, and these are
 15 substantive meetings for the design and the
 16 equipment of this building, of this facility.
 17 We are at this point seventy percent
 18 complete on design plans from that -- from that
 19 function. We will be ninety percent complete and
 20 buildable, if you will, in another thirty days.
 21 So in another thirty days, we will move
 22 from design and architectural, we'll move to
 23 construction administration by the architects.
 24 **Q Those in-person meetings once a month,**
 25 **does AnC Biopharm representatives, do they come?**

1 A Yes.
 2 **Q Those same individuals you just**
 3 **mentioned?**
 4 A More. There's often times five or six
 5 that will attend, lower-level scientists that
 6 will attend.
 7 **Q Are there ever meetings in Miami?**
 8 A Not for that purpose, no.
 9 **Q But for other purposes?**
 10 A Meetings of -- sure. We may have the
 11 general contractor come down and meet with Ariel
 12 and I and Mr. Stenger. There may be -- there may
 13 be meetings of the Korean team AnC Biopharm with
 14 Mr. Quiros.
 15 But there would not be -- there would
 16 not be architectural meetings taking place in
 17 Miami, that I can recall. Often times, if the
 18 Korean team is here in the United States, they
 19 will take the opportunity to meet with Mr.
 20 Quiros.
 21 **Q In Miami?**
 22 A In Miami. Sure. Well, in Miami or
 23 wherever is convenient for all the parties, but
 24 could be Miami.
 25 **Q So they have met here?**

1 A Oh, sure. Sure.
 2 **Q How often?**
 3 A Oh, over the last couple of years --
 4 since the inception of the AnC Bio project, four
 5 or five times, that I can recall. There may be
 6 many more that I don't know. That I can recall,
 7 four or five times.
 8 MR. JAMES: Any sense of when the last
 9 meeting occurred with the Korean team and Mr.
 10 Quiros?
 11 THE WITNESS: Sure. We were in -- wow,
 12 forgive me. I can't remember whether we were in
 13 Morrisville or we were in Vermont, but -- a month
 14 or so ago, I can recall that we had meetings in
 15 -- yes, I believe it was Morrisville. Forgive
 16 me, but I can't tell you exactly which one.
 17 There was so many. But I believe it was in
 18 Morrisville. And subsequent to that meeting, I
 19 know that some of the Korean team did come to
 20 Miami to meet with Mr. Quiros.
 21 MR. JAMES: Were you at the Morrisville
 22 meeting?
 23 THE WITNESS: I was.
 24 MR. JAMES: And then you said after
 25 that meeting, you believe some of the Korean team

1 --
 2 THE WITNESS: Korean team came to
 3 Miami. I know they did.
 4 MR. JAMES: And what about yourself,
 5 did you also join them in Miami?
 6 THE WITNESS: I joined them socially
 7 for a short time. That's it.
 8 MS. LAMA: And when was that?
 9 THE WITNESS: Michelle, I can't tell
 10 you the date. I can certainly get you the date.
 11 BY MS. FUCHS-SINDLER:
 12 **Q You just mentioned a few minutes ago**
 13 **about the seventy percent completion.**
 14 A Yes.
 15 **Q What is seventy percent complete?**
 16 A When you're designing architectural
 17 drawings for a building, they are typically
 18 managed by percentage of completion. So there
 19 are feasibility studies that are done first. And
 20 once the architects start drawing plans, they
 21 will go with levels of detail. And one level of
 22 detail may simply be floor plan, footprint. And
 23 the next level of detail may be footprint with
 24 structural walls. The next level of detail might
 25 be structural footprint, structural, and

1 mechanical and electrical and plumbing. And then
 2 the next level.
 3 Each level is agreed to by all of the
 4 parties that they have reached a level, a
 5 definable level of twenty-five percent, fifty
 6 percent. Once you reach fifty percent, you get a
 7 little bit more picky, and you're then at the
 8 sixty, seventy, eighty, ninety percent levels.
 9 And the reason for that is because all of the
 10 different parties have to rely on what they
 11 believe to be the completion level.
 12 So as we begin to select advisors for
 13 HVAC or mechanical, electrical, or plumbing, not
 14 the contractors, simply advisors that we will
 15 call in to give us advice and to review. We tell
 16 them we're not going to call them in until the
 17 plans that they are asking them to review are
 18 seventy percent complete. So we need to know
 19 that we have an agreement, a consensus that the
 20 plans are seventy percent of buildable plans as
 21 we move through that fifty to a hundred percent
 22 level.
 23 At ninety percent level, agreed-upon
 24 level, there are a series of work performances
 25 that take place all the way from scoping the

1 entire project to creating bid packages for
 2 subcontractors to bidding out the actual project.
 3 So managing the level of completion of
 4 the design plans is very, very important. Not to
 5 digress, but the lack of that is what allows for
 6 or permits change orders. Someone says, oh, I
 7 didn't think that's what we were doing, let's
 8 make a change. And that's always expensive, and
 9 we can't allow that to happen.
 10 **Q And before when Michelle had asked you**
 11 **how do you monitor the equipment being designed**
 12 **and procured, you mentioned those weekly**
 13 **telephonic meetings and then the in-person**
 14 **meetings. Any other way that you monitor the**
 15 **equipment being designed and procured?**
 16 A No. No. That's the way I -- other
 17 than my conversations with the advisors.
 18 **Q With who?**
 19 A With the advisors. As I just
 20 suggested, there are advisors that are called to
 21 these meetings. And that's why it would be a
 22 different set of parties that will be at any
 23 given meeting, in the in-person meetings and in
 24 sometimes the telephonic meetings.
 25 I will ask advisors to join those

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1 meetings to listen, to review, and to opine to me
2 the substance of what is being said at those
3 meetings. I'm not -- I'm not an architect. I'm
4 not an engineer. But I certainly can have
5 individuals that are, who provide services to me,
6 so that I can supervise that design phase, make
7 sure that we don't have a bunch of change orders
8 coming in at some point.
9 And in those processes, we are
10 constantly reviewing the equipment that is part
11 of -- because some of the equipment actually
12 becomes part of the construction. Equipment is
13 not all deliverable as in boxes. It actually
14 becomes part of construction.
15 MS. LAMA: And what documents or
16 information or report does AnC Biopharm provide
17 concerning the work that it's doing and the
18 equipment it's designing and procuring?
19 THE WITNESS: They do not. We are
20 under a contract with -- I have to be careful.
21 JCM is under agreement with AnC Biopharm for the
22 provision of that equipment. My role is to
23 review the two point six million dollar payments
24 that are made from the limited partnership.
25 Remember, I represent to the most

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1 extent the limited partnership's interest. I
2 review that the monies that are paid by the
3 limited partnerships to JCM are pursuant to a
4 procurement contract.
5 I then participate in the discussions
6 at the meetings regarding the equipment that is
7 being anticipated and the dates upon which it's
8 anticipated. JCM is procuring that equipment
9 from AnC Biopharm.
10 My understanding -- not my
11 understanding -- my understanding is that the
12 contract allows for installment payments to JCM
13 and JCM to AnC Biopharm for the distribution
14 rights and the equipment rights, equipment
15 procurement, design and procurement, not just
16 procurement.
17 BY MS. FUCHS-SINDLER:
18 **Q Where is this equipment actually being**
19 **manufactured?**
20 A Depending upon the equipment, Trisha,
21 but some equipment, for instance, could be
22 manufactured by Siemens Corporation. The lead
23 time for most of this is that the procurement
24 company and the company they're procuring from
25 actually has to design the equipment and then put

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1 the design specifications to the manufacturer,
2 and the manufacturer design -- the manufacturer
3 manufactures to those design specs.
4 So the designs specs and the ultimate
5 procurement are coming through AnC Biopharm. AnC
6 Biopharm is being paid to design, order, acquire,
7 validate, and qualify all that equipment.
8 **Q Has there been any manufacturing yet?**
9 A I do not know that. Some of it -- some
10 of it I'm sure, because it won't require a great
11 deal of customization, but I cannot answer that,
12 whether it's been -- whether we're at
13 manufacturing level or not.
14 **Q Do you know the names of**
15 **manufacturers?**
16 A Siemens. Siemens will be a provider of
17 equipment -- or Siemens will probably be a
18 provider -- I can't tell you that they will be,
19 but they will probably be a provider of
20 equipment.
21 And part of what I hope to do is to
22 direct that most of the those equipment purchases
23 are done in the US. I can think of Nova Novartis
24 may be part of the equipment manufacturing
25 companies. They are -- for all intents and

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1 purposes, they are the standard companies that
2 you would know in the biomedical equipment world,
3 but I can't tell you they all will be.
4 **Q When you mentioned these entities,**
5 **Siemens, why do you say they probably will be?**
6 **Is that --**
7 A Because they are -- they are prolific
8 in the world of those -- those products. For
9 instance, the building management systems, the
10 environmental management systems, Siemens is
11 fairly competitive in that world.
12 **Q So you're saying that because of what**
13 **you know they do, but is there any contracts or**
14 **Letters of Intent with any of these -- with Nova**
15 **Novartis or Siemens?**
16 A Not that I know of. Not that I know
17 of.
18 Earlier, I testified that I will -- at
19 some point, NECS will retain someone with more
20 specific knowledge, not contract knowledge, but
21 more specific knowledge of verification,
22 validation, and qualification of biomedical
23 equipment. At the right time, that will be done.
24 **Q And what is the status of the design**
25 **specs you mentioned that AnC Biopharm is required**

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1 to do?

2 A I cannot tell you that. I cannot tell

3 you what is being done on the design or ordering

4 of any equipment from AnC Biopharm at this point.

5 Q Because you don't know?

6 A No. Because it's not necessarily

7 important to me yet.

8 Q Who would know what the status is?

9 A Oh, it's possible that the AnC Bio

10 Vermont, LLC may know. Remember, there's another

11 sixty-eight percent of supervision going on here.

12 It's possible that they would know.

13 Q And when you say they, which

14 individuals are we talking about?

15 A Stenger and Quiros. William Stenger

16 and Ariel Quiros.

17 I mean, there is another level of

18 construction supervision here, and I've agreed --

19 NECS has agreed to provide, you know, certain of

20 those services, and we are. And, frankly, most

21 of those services being provided today are around

22 preconstruction and understanding of equipment

23 that is coming into the process.

24 Q So if we want to find out the status

25 of what you said the design specs, it would

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1 either be Mr. Quiros or Mr. Stenger?

2 A Or I could request it.

3 Q From them?

4 A Yeah. Yeah. Or from AnC Biopharm. I

5 mean, I'm sure that I could make a request of

6 them to give me a particular update of where they

7 are. I don't have a standard that they're

8 performing to, but I could certainly ask them

9 where they are.

10 Q Is it ever discussed during these

11 monthly or weekly meetings?

12 A The equipment is discussed every month.

13 It's every meeting. Where they are in the

14 design, no. We certainly discuss the requirement

15 for and the timing for those pieces of equipment

16 to be put in, and then AnC Biopharm understands

17 that they have the -- both the right and the

18 responsibility of providing that equipment.

19 MS. LAMA: And on --

20 THE WITNESS: I trust these people much

21 more than I might some other vendor, frankly.

22 I've known these individuals for quite sometime,

23 so I have a bit of a trust level with these

24 individuals that I might not have with another

25 vendor.

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1 MS. LAMA: On these calls, is there any

2 discussion by the AnC Biopharm individuals about

3 how much money has been received to date for

4 equipment and how it's been spent?

5 THE WITNESS: Never. That would be

6 inappropriate in these meetings.

7 MS. LAMA: Why would that be

8 inappropriate?

9 THE WITNESS: Well, because these

10 meetings are about design and architecture and

11 amounts of money that are transacted. I mean,

12 the architects also don't talk about how much

13 they've been paid for the work they've done. I

14 wouldn't expect those kind of conversations to be

15 taking place.

16 MS. LAMA: So, for example, AnC

17 Biopharm, it's never been discussed on a call,

18 we've dedicated a certain percentage of the

19 monies that have been received for design?

20 MR. GORDON: I'm sorry. Do you mean

21 the weekly calls he's talking about or some other

22 type of calls?

23 MS. LAMA: No. Any call. The weekly

24 calls, you mentioned the weekly calls.

25 THE WITNESS: The weekly calls have a

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1 number of unrelated parties that we have;

2 vendors, subcontractors, general contractors,

3 advisors, engineers, architects, scientists. So

4 in those meetings, we would never discuss either

5 the amounts of money that are paid to anybody.

6 We discuss the percentages of

7 completion of the architectural drawings,

8 including the definition of equipment that is

9 required or going to be required pursuant to

10 those drawings. So we talk about the particular

11 equipment, the need for that equipment, the dates

12 for that equipment, but we don't talk about the

13 payment of that equipment.

14 Now, at some point, the architect will,

15 of course, have to sign off on that equipment.

16 When we get to construction administration, as

17 that equipment is being installed, there will be

18 architectural sign-off for that equipment against

19 the validity, the verification, the qualification

20 of that equipment, because there is a significant

21 series of specifications here. This is very,

22 very -- I mean, qualified equipment. The

23 specifications are incredible.

24 They not only have to be signed off by

25 -- when we get to that stage, it will not only

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1 have to be signed off by the architect, it will
 2 also be signed off by an independent third-party
 3 qualification and verification individual that
 4 will be licensed by the FDA. In other words, the
 5 equipment that's installed must meet standards,
 6 very, very delicate standards.

7 MS. LAMA: So in any context, whether
 8 on these calls, whether in an in-person meeting,
 9 in any form of communication, has any individual
 10 from AnC Biopharm ever discussed the percentage
 11 of completion of work that they have performed in
 12 any capacity in connection with the fourteen or
 13 fifteen million that has been paid for equipment?
 14 THE WITNESS: No.

15 MS. LAMA: Do you know whether they've
 16 done anything, any such work?
 17 THE WITNESS: No. I can presume, but
 18 that's not what you're asking me. The
 19 discussions would lead you to believe they are,
 20 but I have not -- I cannot tell you exactly what
 21 they've done. They've been contracted for a
 22 performance, and I have every reason to believe
 23 they are operating under that contract and their
 24 performance requirements.
 25 BY MS. FUCHS-SINDLER:

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1 **Q Do you know if anyone has actually**
 2 **seen any designs, though, what they've done?**
 3 A They -- I mean, has anyone on this side
 4 seen what they've designed? No. No.

5 Again, the specifications for those
 6 designs are discussed at the meetings. So, for
 7 instance, when we talk about a particular chiller
 8 or a particular type of boiler or a particular
 9 type of processing piping, the design
 10 specifications are talked about at the meeting.
 11 So they are then back to the drawing board to
 12 make sure that what they are providing meets
 13 those design specifications. If they don't meet
 14 those design specifications, they would be
 15 rejected.

16 **Q And do you have any understanding as**
 17 **to how long it will take to actually manufacture**
 18 **the equipment needed for the AnC Bio project?**
 19 A Some of it, I'm told, is as much as
 20 eighteen months to design it, to design it and
 21 manufacture it and procure it.

22 **Q From the design stage through the**
 23 **manufacturing?**
 24 A Through the acquisition, all the way to
 25 acquiring it, having it ready for installation.

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1 Then there is different equipment.
 2 Some equipment comes verified, qualified. And
 3 some equipment has to be verified, qualified on
 4 site. So once we -- once the equipment is
 5 delivered and on site, some of it must be
 6 verified and qualified as it's -- as it's built
 7 into the -- built into the facility itself.

8 A microscope may be verified or
 9 qualified before it comes. A clean room box
 10 might not be qualified until it sees how it is
 11 welded to the processing pipe coming in. That
 12 processing -- that weld might need to be
 13 qualified and verified. So the equipment can be
 14 verified, but when it gets there it goes through
 15 another process.

16 The micro-cabinets, for instance, are
 17 qualified, verified before they leave the
 18 manufacturing facility. They're qualified and
 19 verified again once they are installed.

20 MS. LAMA: And who is supervising AnC
 21 Biopharm's work and work product?
 22 THE WITNESS: AnC Biopharm.
 23 MS. LAMA: Who's validating their work?
 24 THE WITNESS: I don't know that yet.
 25 We will have a validation company assigned to the

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1 facility that will -- even if it's already
 2 validated, they may have to revalidate some of
 3 their work, because it has to be validated upon
 4 installation.

5 So I can't tell you whether AnC
 6 Biopharm has a validation company today, but they
 7 will, or they will provide equipment that is
 8 validated and qualified by the manufacturer.
 9 Once it arrives here at the site and is
 10 installed, it will have to be revalidated and
 11 requalified, unless it is free standing.

12 MS. LAMA: And on behalf of the LP,
 13 who's validating the progress of their work?
 14 THE WITNESS: Who's validating the
 15 progress of the --
 16 MS. LAMA: Of AnC Biopharm.
 17 THE WITNESS: I am. I am, and the
 18 construction supervision fees are designed for
 19 that purposes. And the sponsor company has the
 20 responsibility for that, but I'm working with the
 21 sponsor company to do that.

22 MS. LAMA: So how are you validating
 23 what AnC Biopharm is doing, all this that we're
 24 talking about?
 25 THE WITNESS: Attending the meetings.

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1 Having the discussions. Talking with them about
 2 the equipment. Talking with them about what's
 3 being done. But not talking to them about the
 4 level of design or the percentage of completion
 5 of design or procurement they're in.
 6 BY MS. FUCHS-SINDLER:
 7 **Q Have you ever gone to -- their offices**
 8 **are in South Korea?**
 9 A They're offices are in South Korea.
 10 **Q Have you ever gone there to see what**
 11 **they're doing?**
 12 A Not for this purpose, no.
 13 **Q Have you ever gone there for any other**
 14 **purpose?**
 15 A Sure. I've been there a half a dozen
 16 times. Probably have seen their work product.
 17 As I suggested earlier, I have a bit of level of
 18 trust of this group because I have, in fact, at
 19 least viewed this group and what they do, the
 20 quality of what they do, but we are yet to
 21 validate and qualify their performance in the
 22 design or acquisition. We have -- I understand
 23 JCM has performed under the contract to pay them
 24 to do this.
 25 MS. LAMA: Have you seen any reports

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1 prepared by AnC Biopharm regarding the use of the
 2 funds that they've received to date?
 3 THE WITNESS: No.
 4 MS. LAMA: Have you requested such
 5 information?
 6 THE WITNESS: No.
 7 MS. LAMA: Do you know if any such
 8 information exists?
 9 THE WITNESS: No. I believe there has
 10 been a declaration somewhere that they have --
 11 they have attested to the receipt of the funds
 12 for the purposes that I've been discussing here.
 13 MR. JAMES: When you say you believe
 14 there's a declaration, what's the basis for that
 15 belief?
 16 THE WITNESS: Because Mr. Quiros has
 17 told me that there has been a declaration for the
 18 receipt of the funds.
 19 BY MS. FUCHS-SINDLER:
 20 **Q And when did he tell you that?**
 21 A A good couple of weeks ago.
 22 **Q How did it come up that you discussed**
 23 **this?**
 24 A Because we constantly discuss the
 25 payment to JCM on behalf the limited partnerships

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1 and what JCM has done with the funds in terms of
 2 moving the process along with AnC Biopharm.
 3 JCM is operating under a defined
 4 contract that I'm fairly aware of. And JCM is a
 5 US company, and so I'm, obviously, concerned with
 6 the payments from the limited partnership to JCM
 7 for the procurement of equipment, architectural,
 8 and to some degree, distribution rights. Again,
 9 just outside of my purview.
 10 So I have conversations with Mr. Quiros
 11 about those procurements. JCM then operates
 12 under different agreements with AnC Biopharm for
 13 the procurement of those services. When the
 14 distribution rights agreement was delivered, I
 15 was notified it was delivered. Frankly, I
 16 reviewed it at the time it was delivered, and the
 17 ancillary documents that came with it, and that
 18 was the end of that.
 19 On the equipment and the -- I've
 20 reviewed what's going on with the architectural
 21 processing. And in terms of the equipment, I
 22 spend my time on the supervision of the equipment
 23 that is going to be installed and why and whether
 24 it's adequate and whether it is appropriate. And
 25 I get a report from Mr. Quiros every once in a

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1 while that things are moving along. I don't know
 2 why he knows that or how he knows that, but I'm
 3 sure he knows that because he's in discussions
 4 with the people that are designing the equipment.
 5 MS. LAMA: And based on your
 6 discussions with Mr. Quiros, has Mr. Quiros ever
 7 informed you -- or in those discussions, that all
 8 the payments that the LP has made to JCM have
 9 been paid to AnC Biopharm?
 10 THE WITNESS: All the payments that
 11 have been paid to JCM are either at JCM or have
 12 been paid to AnC Biopharm. That's my
 13 understanding. Mr. Quiros has told me that.
 14 MS. LAMA: Okay.
 15 And can you elaborate on that? What do
 16 you mean still at JCM?
 17 THE WITNESS: Well, they may still be
 18 at JCM. They may not have been paid to AnC
 19 Biopharm yet. I'm not privileged to how JCM pays
 20 AnC Biopharm in the acquisition, JCM's a
 21 procurement company, and how they manage their
 22 relationship with their suppliers. It's outside
 23 my purview, other than to be sure at that we are
 24 meeting time requirements for the provision of
 25 equipment. Whether Mr. -- whether JCM has paid

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1 AnC Biopharm or what they paid AnC Biopharm is
 2 between JCM and AnC Biopharm.
 3 However, having said that, I just told
 4 you Mr. Quiros has told me in the recent past
 5 that AnC Biopharm has attested to the receipt of
 6 funds from JCM for all of the above. Now, again,
 7 all of the above I'm not -- I don't know as much
 8 detail as Mr. Quiros might know about that.
 9 MS. LAMA: And just to clarify, your
 10 testimony was earlier, if I'm recalling
 11 correctly, that at least twenty-six million has
 12 been paid to AnC Biopharm?
 13 THE WITNESS: I believe at least
 14 twenty-six million has been paid to AnC Biopharm,
 15 right.
 16 MS. LAMA: Ten million for the
 17 distribution rights, approximately, fifteen
 18 million for equipment, and I believe one million
 19 for architectural?
 20 THE WITNESS: For architectural,
 21 correct. That's my understanding.
 22 MS. LAMA: And the contract is for two
 23 point six million in monthly payments to AnC
 24 Biopharm under the contract?
 25 THE WITNESS: No. The contract's for

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1 two point six million from the limited
 2 partnership to JCM. There's a contract between
 3 the limited partners and JCM, the procurement
 4 company, for two point six million per month.
 5 And I have reviewed those invoices because I'm,
 6 for all intents and purposes, watching on behalf
 7 of the limited partners the money that leaves the
 8 limited partnership for those purposes.
 9 MS. LAMA: And what are the payment
 10 arrangements between JCM and AnC Biopharm?
 11 THE WITNESS: That, I don't know.
 12 BY MS. FUCHS-SINDLER:
 13 **Q Who would know?**
 14 A Mr. Quiros.
 15 **Q Anyone else?**
 16 A Financial officers may know.
 17 **Q Who's that?**
 18 A George Gulisano.
 19 **Q Anyone else?**
 20 A Mr. Stenger.
 21 **Q Anyone else?**
 22 A In fact, Mr. Stenger might not even
 23 know that. No. I think that would be Mr. Quiros
 24 and the financial.
 25 MS. LAMA: And what's your

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1 understanding as to what contracts or agreements,
 2 if they are any, outline the payment arrangements
 3 between JCM and AnC Biopharm?
 4 THE WITNESS: I don't recall. There
 5 may be -- there may be purchase orders between
 6 them, but I do not recall that. I know -- I do
 7 not recall that.
 8 MS. LAMA: That's not something that's
 9 under your purview?
 10 THE WITNESS: No. That's between the
 11 procurement company and the equipment designers
 12 and manufacturers. And, again, I make sure that
 13 the AnC Biopharm, as a designer and manufacturer
 14 or acquirer of equipment, is in concert with me
 15 at meetings, or that I'm in concert with them at
 16 meetings, in terms what is being -- what the
 17 understanding is of the needs and the time
 18 requirements for equipment to be delivered.
 19 BY MS. FUCHS-SINDLER:
 20 **Q Before, when you had mentioned that**
 21 **the declarations you talked about --**
 22 A Yes.
 23 **Q -- is it -- how many declarations?**
 24 A A declaration from AnC Biopharm that
 25 they have received X-amount of funds from JCM.

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1 **Q Okay. Have you seen this declaration?**
 2 A I have seen this declaration.
 3 **Q When did you see it?**
 4 A Possibly two weeks ago, two and a half
 5 weeks ago. Relatively shortly passed.
 6 **Q How did you come to see it?**
 7 A Mr. Quiros showed it to me.
 8 **Q When was that?**
 9 A Again, a couple of weeks ago. Again, I
 10 didn't study it, but I took a -- I looked at it.
 11 **Q Where did he show it to you?**
 12 A At the office.
 13 **Q Do you know who prepared the**
 14 **declaration?**
 15 A I believe Mr. Gordon prepared the
 16 declaration.
 17 **Q And why do you believe that?**
 18 A Because I --
 19 MR. GORDON: You can't reveal
 20 communications with Counsel or communications
 21 with Mr. Quiros for purposes of communicating
 22 with Counsel. If you can answer that question
 23 otherwise, you can answer.
 24 THE WITNESS: A couple of weeks ago, I
 25 was shown a copy of the declaration. That's what

1 -- that's when I saw it.
 2 BY MS. FUCHS-SINDLER:
 3 Q You saw an executed copy?
 4 A Yes, I believe it was. Again, I didn't
 5 study it at the time. I was really interested
 6 that Mr. Quiros was telling me that there was
 7 receipt of funds at AnC Biopharm. And that was
 8 my concern, and that's all that I really looked
 9 at it for. I believe it was executed.
 10 Q I'm sorry?
 11 A I believe it was executed. But, again,
 12 I didn't study it.
 13 Q Is that the first time that you saw
 14 the declaration?
 15 A Yes.
 16 Q Have you seen it since?
 17 A No.
 18 Q Do you have a copy?
 19 A No. No.
 20 MR. JAMES: Do you know who signed the
 21 declaration on behalf AnC Biopharm?
 22 THE WITNESS: I believe the principals
 23 of AnC Biopharm.
 24 MR. JAMES: What are their names?
 25 THE WITNESS: I believe that it was

1 signed by Dr. Jang and Lyan Kim. Those are, as I
 2 understand, principals at AnC Biopharm. Lyan
 3 Kim, L-Y-A-N Kim.
 4 I'm familiar with both of those people.
 5 Lyan Kim is someone I'm familiar with for a
 6 period of time from relationships in Korea. And
 7 Dr. Jang is an individual that I work with on the
 8 scientific team attending at these meetings
 9 telephonically and in Morrisville.
 10 BY MS. FUCHS-SINDLER:
 11 Q So you believe they both signed the
 12 declaration?
 13 A I understand they both did, yes.
 14 Q But you only saw one?
 15 A I saw -- I saw a declaration. What I
 16 saw was a piece of paper they put on the desk in
 17 front of me, and that's all that I saw. And I
 18 was -- and Mr. Quiros said we have a receipt from
 19 AnC Biopharm for all of the funds that have been
 20 paid to them.
 21 Q Why do you believe these two
 22 gentlemen, Mr. Kim and Mr. Jang, were the ones
 23 who signed the declaration?
 24 A I believe they represent the company
 25 AnC Biopharm.

1 Q Did someone tell you specifically that
 2 those were the two people who signed the
 3 declaration?
 4 A Mr. Quiros told me that we have signed
 5 declarations -- signed documents by Lyan Kim and
 6 Dr. Jang from AnC Biopharm attesting to the
 7 receipt of all of the funds that we have paid
 8 them under JCM contracts -- under JCM agreements.
 9 That's -- that's the extent of the conversation.
 10 Understanding that I meet with Mr. Quiros in
 11 Miami on a regular basis on a myriad of subjects,
 12 and during one of those meetings, I was shown
 13 this document.
 14 MR. JAMES: When was the last time you
 15 saw or met with Dr. Jang or Mr. Kim?
 16 THE WITNESS: The last time that I met
 17 with them would be on the telephone -- on the
 18 telephonic conversation with Dr. Jang, and on one
 19 of these weekly meetings. And the last time that
 20 I saw Dr. Jang or Lyan Kim was subsequent to the
 21 meeting in Morrisville or Burlington. I have to
 22 determine which one that was. I don't know what
 23 -- I don't know where that meeting was, but in
 24 about the beginning of July I believe, we met in
 25 the United States in Burlington or in

1 Morrisville, and I'm quite sure it was
 2 Morrisville. I don't believe it was Burlington.
 3 And during -- and subsequent to that
 4 meeting, there was a social meeting in Miami. I
 5 joined Lyan Kim, Dr. Jang, and at least one or
 6 two other members of the Korean scientific team
 7 in Miami with Mr. Quiros.
 8 MR. JAMES: You said this was in the
 9 beginning of July?
 10 THE WITNESS: I don't know the exact
 11 date. I'm guessing it was probably in July. I
 12 can certainly get you that answer, but I don't
 13 know that answer. I don't know the answer exact
 14 date, Brian.
 15 MR. JAMES: We're in July currently.
 16 THE WITNESS: I believe it was in July.
 17 MR. JAMES: Okay. So it's this month,
 18 in the beginning of this month?
 19 THE WITNESS: Yeah, I believe it was
 20 this month. It was earlier this month, I
 21 believe.
 22 MR. JAMES: You said there were two
 23 other individuals?
 24 THE WITNESS: There was. The
 25 individuals that were at that meeting were

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1 individuals that came down from Morrisville, and
 2 that would be I believe Sean Choi was there.
 3 Lyan Kim was there. Dr. Jang was there. I
 4 cannot recall whether Mr. Hahn was there. I
 5 don't know that he was. I think that was all of
 6 the individuals that were there.
 7 MR. JAMES: And these are all
 8 representatives of AnC Biopharm?
 9 THE WITNESS: They are -- they are
 10 representatives of either AnC Biopharm -- yeah, I
 11 guess they're all AnC Biopharm. Yeah, I would
 12 think they're all AnC Biopharm. They are
 13 scientists that work on -- with me on -- with the
 14 architects and the engineers on the design of the
 15 facility and the equipment. So I believe they
 16 probably all are AnC Biopharm. Dr. Jang and Lyan
 17 Kim are AnC Biopharm, I know that. Sean Choi I
 18 believe is also AnC Biopharm.
 19 MR. JAMES: What's Dr. Jang's role or
 20 position at AnC Biopharm?
 21 THE WITNESS: Oh, I don't know that. I
 22 presume he's a principal there. I don't know his
 23 exact role. His role for my purposes with
 24 architectural, engineering, and design is as a
 25 scientist.

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1 MR. JAMES: But with the actual entity
 2 itself, you think he's an officer?
 3 THE WITNESS: Oh, I'm sure he probably
 4 is, but I don't know his title.
 5 MR. JAMES: And Mr. Kim, what's his
 6 role, position?
 7 THE WITNESS: Executive. I don't know
 8 the -- I don't know the title.
 9 MR. JAMES: And how long have you known
 10 Mr. Kim and Dr. Jang?
 11 THE WITNESS: I've known Lyan Kim
 12 probably fifteen years. I know him marginally.
 13 I know him. I've known of him. I have visited
 14 with him in the country of Korea or in the United
 15 States probably a total of eight or ten times in
 16 my life, but I have known of him or known him,
 17 probably met him fifteen years ago.
 18 Dr. Jang, more recently. Dr. Jang, I
 19 would've met in Korea at the facility in Korea
 20 where he had responsibilities for the facility in
 21 Korea, and that would've been -- that could've
 22 been a couple of years ago. And, again, as a
 23 scientist.
 24 Lyan Kim is an executive in Korea. Dr.
 25 Jang in my role -- in my understanding, has

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1 always been as a scientist.
 2 MR. JAMES: And the meeting in Miami
 3 that followed the meeting in Vermont or whatever,
 4 Morrisville or what have you, you said that was
 5 -- you think it was July. Was there -- did you
 6 meet with them previously in Miami, the same
 7 individuals, in the last couple months?
 8 THE WITNESS: No. No. No. They came
 9 to Miami to meet with Mr. Quiros, and I was
 10 invited to come to have a bite to eat with them,
 11 and that's what I did.
 12 MR. JAMES: Do you recall where, where
 13 you guys met?
 14 THE WITNESS: At the office, at Mr.
 15 Quiros's office.
 16 MR. JAMES: Okay.
 17 And you had dinner at the office?
 18 THE WITNESS: I believe we had dinner
 19 at Ceviche 105, I believe, but I can't attest to
 20 that either. But I believe that's where we had
 21 dinner.
 22 MS. LAMA: And prior that meeting or
 23 occasion where you were with these
 24 representatives, what was the occasion prior to
 25 that?

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1 THE WITNESS: Always with -- at the
 2 engineering architectural meetings. Lyan Kim
 3 attended some of them, but not all of them. Dr.
 4 Jang would've been at every one of them.
 5 MS. LAMA: And do you have a calendar
 6 that reflects those meetings dates?
 7 THE WITNESS: Oh, I do. I mean, I also
 8 have the meetings notes from those meetings.
 9 And, unfortunately, flight itineraries.
 10 BY MS. FUCHS-SINDLER:
 11 **Q How did you come to meet Mr. Kim**
 12 **fifteen years ago?**
 13 A I was visiting the country of Korea
 14 relative to a US biotechnology company who was
 15 interested in working with the country of Korea,
 16 the government of Korea, and the government of
 17 Korea was interested in working with that biotech
 18 company. And so I visited with the president of
 19 that biotech company. I visited Korea. It was
 20 at that time that I met Mr. Kim.
 21 **Q And the declarations that you talked**
 22 **about before, do you know the purpose in having**
 23 **these declarations?**
 24 MR. GORDON: Again, you can't reveal
 25 communications with Counsel, but otherwise --

1 THE WITNESS: Okay. My understanding
2 from the comments from Mr. Quiros to me were in
3 relation to understanding amounts paid to AnC
4 Biopharm and receipt of those funds. So although
5 we have -- we are operating under a contract,
6 there will always be a continuous effort to
7 determine the degree of performance that has been
8 made in Korea by AnC Biopharm, and amounts that
9 are paid to them must be, obviously, accounted
10 for. So I understand that part of that was
11 receipt of accounts paid for.

12 **Q And before you saw this declaration**
13 **you mentioned, did you know that a declaration**
14 **was going to be prepared?**

15 A That, I think I have to -- that
16 would've only been in conversations with Counsel.

17 MR. GORDON: You can't reveal your
18 communications with Counsel or information that
19 you -- you can't reveal information that you
20 learned exclusively from Counsel.

21 THE WITNESS: Okay.

22 BY MS. FUCHS-SINDLER:

23 **Q Did you have any role in helping to**
24 **prepare the declaration?**

25 A No.

1 **Q Did you make any suggestions as to**
2 **what should be in it?**

3 MR. GORDON: You can answer that as a
4 yes or a no, but you can't reveal the substance
5 of any communications you had with Counsel.

6 THE WITNESS: Then yes. Yes.

7 BY MS. FUCHS-SINDLER:

8 **Q You did?**

9 A Yes.

10 **Q Tell us about that.**

11 MR. GORDON: Well, if they were
12 communications with Counsel, then you can't
13 answer.

14 THE WITNESS: Then I can't answer.

15 BY MS. FUCHS-SINDLER:

16 **Q Any communications with Mr. Quiros as**
17 **to suggestions --**

18 A No. No.

19 **Q -- what would be in there?**

20 A No. No.

21 MS. LAMA: Why was a declaration needed
22 regarding the receipt of funds?

23 MR. GORDON: Again, I caution you not
24 to reveal any communications with Counsel, or to
25 the extent that you have thoughts that are based

1 solely on your communications with Counsel, you
2 can't reveal those, but if you have any thoughts
3 that go beyond that, certainly feel free to
4 answer that.

5 THE WITNESS: A good business acumen
6 says that you -- you do belts and suspenders
7 kinds of things. So in business practices, I'm
8 totally content operating under terms of
9 contracts or terms of agreements, but I believe
10 it is not inappropriate to ask for additional
11 guarantees, receipts, constructions showing what
12 has been done or where they are in terms of those
13 business contracts.

14 MR. JAMES: So prior to this point in
15 time regarding the declaration, did you ever
16 consider receiving some additional proof, if you
17 will, of what has been performed under the
18 contract?

19 THE WITNESS: No.

20 MR. JAMES: So this is the first time
21 that was obtained, if you will?

22 THE WITNESS: Yes.

23 BY MS. FUCHS-SINDLER:

24 **Q Do you have any understanding as to**
25 **who provided the source of the information**

1 **contained in the declaration?**

2 A No.

3 **Q Did you look --**

4 A No, I believe I can't answer that
5 question actually. I mean --

6 **Q You can't answer because --**

7 A If I had any indication as to -- please
8 ask the question again.

9 **Q Who provided the -- do you know who**
10 **provided the information that was contained in**
11 **the declaration?**

12 A Oh, no. No, I do not. No, I do not.

13 **Q What did you think I meant? You were**
14 **a little confused. I just wanted to see --**

15 A I didn't know if you were asking me
16 whether or not one believes there should be
17 constructable evidence of following the last
18 question -- excuse me, Michelle's last question,
19 evidence of payment or of performance. I didn't
20 know you were asking me about the declaration
21 itself or something about the declaration.

22 **Q But you read through the actual**
23 **declaration; is that correct?**

24 A No, I don't believe I ever read through
25 the actual declaration. No. Including when I

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1 was shown it sometime shortly ago, no.

2 **Q You just saw it?**

3 A I saw it.

4 **Q Did you read any of it?**

5 A I mean, I glanced at it. I looked at

6 it to see that it was, in fact -- it served as a

7 receipt of funds, yes.

8 **Q How much of it did you read?**

9 A I'm a pretty quick reader. I glanced.

10 I flipped through the pages, looked for what --

11 you know, what interested me.

12 **Q Did you notice who signed it? Did you**

13 **look at that?**

14 A Again, I was told by Mr. Quiros who

15 signed it. I did not look at the signatures.

16 **Q Did you ever verify any of the**

17 **information contained in the declaration that you**

18 **saw?**

19 A No. No.

20 **Q Were you ever asked to by anyone?**

21 A No.

22 **Q Do you know who provided the**

23 **information that was contained in the**

24 **declaration?**

25 A No.

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1 **Q Do you have any understanding as to**

2 **who provided that information?**

3 A No.

4 **Q Do you have any understanding as to**

5 **who reviewed the declaration before it was**

6 **finalized?**

7 MR. GORDON: Do you need to confer

8 about a privilege issue?

9 THE WITNESS: Yes.

10 MR. GORDON: Had you gotten your full

11 question out yet? I just wasn't sure if you were

12 done and --

13 MS. FUCHS-SINDLER: Yes, I was.

14 MR. GORDON: You were?

15 Can I just hear the question? And then

16 maybe we need to step outside to talk about the

17 privilege issue.

18 (Whereupon, the question was read back

19 by the court reporter.)

20 MR. GORDON: Let's go outside and

21 confer.

22 (Whereupon, at 1:15 p.m., a short

23 recess was taken.)

24 MS. FUCHS-SINDLER: We'll have her read

25 that again.

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1 MR. GORDON: Yeah, let's hear it, and

2 then I'll give the Witness the instruction.

3 MS. FUCHS-SINDLER: Okay.

4 (Whereupon, the question was read back

5 by the court reporter.)

6 MR. GORDON: To the extent that you

7 have information that you obtained exclusively

8 through Counsel, you can't reveal what was

9 communicated to you, but if you have an

10 understanding that goes beyond that that's

11 independent of what you received through Counsel,

12 you can reveal that.

13 THE WITNESS: I should understand these

14 questions.

15 I understood that there was an

16 attestation of -- or an affirmation by AnC

17 Biopharm that payments had been made and been

18 received and accounted for, and understood that

19 there were documents that were going to be

20 prepared by AnC Biopharm evidencing that. And

21 that's all that I knew.

22 BY MS. FUCHS-SINDLER:

23 **Q Documents going to be prepared by AnC**

24 **Biopharm, what are you talking about?**

25 A Because the question was AnC Biopharm's

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1 receipt of funds. I understood that there were

2 going to be documents that were going to evidence

3 their receipt of funds.

4 **Q And do you know what kind of documents**

5 **were going to be prepared?**

6 A Well, I would understand those to be

7 declarations, but they could've been a number of

8 different kinds of documents.

9 **Q And how did you get this**

10 **understanding?**

11 A Which understanding?

12 **Q That documents were going to be**

13 **prepared by AnC.**

14 MR. GORDON: Same instruction as

15 before, don't reveal your communications with

16 Counsel.

17 BY MS. FUCHS-SINDLER:

18 **Q So you can't answer that one?**

19 A I cannot answer that.

20 **Q Because it's subject to privilege?**

21 A Correct.

22 **Q Okay.**

23 **Do you have any understanding as to who**

24 **played any role in the preparation, editing, or**

25 **review of the declarations we talked about?**

1 A I think I've already testified that I
2 understand that the declarants clearly would be
3 the ones that would be creating this declaration,
4 but I do believe that there may have been review
5 or participation by -- participation is the wrong
6 word. There may have been review by counsel here
7 in the United States.

8 **Q Anyone else?**

9 A No. I mean, I would not know of anyone
10 else.

11 **Q Okay.**

12 **And when you said that you thought that**
13 **AnC Bio would be preparing, why do you say that?**
14 **Do you know or is that just something that you**
15 **think would've happened?**

16 A No. In the context of what was being
17 done, I presume AnC Biopharm would be preparing
18 documents that would be their documents.

19 **Q But I'm saying, is that a presumption**
20 **or do you know for a fact that the people --**

21 A It's a presumption.

22 **Q Wait -- that the people who signed the**
23 **declarations were the ones who prepared them?**

24 A Presumption.

25 **Q Like, for instance, did you speak with**

1 testimony is that the document or declaration,
2 basically, attests to the fact that AnC Bio has
3 received all of the monies under the agreements
4 with --

5 THE WITNESS: Yes. My question to Mr.
6 Quiros was, do you have -- do we have a receipt
7 for or any indication of receipt of funds paid to
8 AnC Biopharm for, in my particular case,
9 interested in the fourteen point five to fifteen
10 million dollars of equipment that I know is being
11 designed and ordered, and he said, yes, I do.
12 And so I understand from Mr. Quiros that a
13 document exists, which I've seen, that attests to
14 a receipt of those funds.

15 MR. JAMES: Okay.

16 But just the fourteen to fifteen
17 million or the entire twenty-six million?

18 THE WITNESS: No. No. To what's been
19 paid to them.

20 MR. JAMES: What amount?

21 THE WITNESS: My understanding is
22 twenty-six million has been paid to them.

23 MR. JAMES: To AnC Biopharm?

24 THE WITNESS: At this point, I believe
25 twenty-six million has been paid to AnC Biopharm

1 **Mr. Kim or Dr. Jang about the declaration?**

2 A No. My relationship with those people
3 is as a scientist and the engineering and design
4 of the building equipment, not --

5 **Q So you have no knowledge as to whether**
6 **or not they had any role in preparing the**
7 **declaration; is that correct?**

8 A Correct. Today, because I have seen a
9 document that I believe was signed by them, I was
10 told was signed by them, today I have knowledge.
11 Prior to today, prior to that date when I was
12 shown those, no.

13 **Q But you have knowledge of what?**

14 A Of the documents.

15 **Q Of the documents.**

16 **But you don't have any knowledge as to**
17 **whether or not they had any role in preparing**
18 **those documents --**

19 A No.

20 **Q -- those declarations; is that**
21 **correct?**

22 A No, I have no knowledge one way or the
23 other of that.

24 **Q Okay.**

25 MR. JAMES: Like you said in your

1 -- excuse me. I'm sorry. I'm sorry. I take
2 that back -- I believe twenty-six million has
3 been paid.

4 MR. JAMES: To AnC Biopharm?

5 THE WITNESS: Yes. Yes.

6 BY MS. FUCHS-SINDLER:

7 **Q And what caused you to ask him that**
8 **question now, at this point?**

9 A Well, because we -- because I watched
10 the limited partnership funds being paid to JCM.
11 And some number -- I want to be careful -- I
12 should be careful. I'm not sure that that last
13 answer is correct.

14 I know that a certain amount of funds
15 have been paid by the limited partnership to the
16 procurement company, JCM, pursuant to that
17 contract. I believe that amount of money that
18 has been paid by the limited partnership to JCM
19 is twenty-six million dollars -- no. It's more
20 than that.

21 I believe that JCM has paid AnC
22 Biopharm an amount of money for services rendered
23 or being rendered. I believe the amount of money
24 that has been paid to AnC Biopharm at this point
25 is twenty-six million dollars.

1 Q Have you ever been an officer or
 2 director of AnC Biopharm?
 3 A No.
 4 Q Or part owner?
 5 A No.
 6 Q Have you ever had any role with the
 7 company?
 8 A No. There are predecessor companies to
 9 AnC Biopharm, and I can't even define a
 10 predecessor role, but I want to be not
 11 misleading, that in the 90s, late 1990s and early
 12 2000s, I had testified that I had gone with the
 13 president of a biotech company to Korea to
 14 introduce that biotech company to Korea and to
 15 introduce Korea to that biotech company.
 16 I was a member or a shareholder in a
 17 company in that early stage of time. And
 18 although there is no relationship between AnC
 19 Biopharm and any of those companies, that is how
 20 I ended up in Korea meeting those people, and I
 21 was a shareholder of one of those companies early
 22 on.
 23 Q What was the name?
 24 A Bioheart Korea was the actual name of
 25 the company, which was a company -- Bioheart USA

1 was the company in the United States, and the
 2 Bioheart Korea was the company that was created.
 3 Q Thank you.
 4 MR. JAMES: And you were a shareholder
 5 of Bioheart USA, also?
 6 THE WITNESS: Yes. Yes, unfortunately.
 7 MS. LAMA: If we could circle back for
 8 just a moment. What was the basis for your
 9 belief that twenty-six million has been paid to
 10 AnC Biopharm?
 11 THE WITNESS: Because we have --
 12 because my understanding is that JCM, who I know
 13 what they have been paid, I understand has -- is
 14 working with AnC Biopharm for the design,
 15 acquisition, and procurement of, manufacture of,
 16 equipment. And also JCM is working with AnC
 17 Biopharm in the procurement of distribution
 18 agreements for the limited partnership and in the
 19 securance of architectural and engineering fees
 20 for the limited partnership.
 21 And so I know at this point what I
 22 understand are the amounts of work we've required
 23 of AnC Biopharm. We have required them to
 24 deliver ten million dollars of distribution
 25 rights. We have required them to deliver about a

1 million and half dollars of architectural
 2 services. And we have required them to deliver
 3 about fifteen million dollars worth of work on
 4 equipment. So I think those come to about
 5 twenty-six million dollars.
 6 BY MS. FUCHS-SINDLER:
 7 Q And is there any other basis for your
 8 belief, other than you've mentioned?
 9 A No. No. And I'm told -- well, and I'm
 10 told by Mr. Quiros that he has documentation
 11 receipt for those amounts of money.
 12 Q And you've seen that?
 13 A I saw that piece -- that declaration
 14 that we just talked about.
 15 Q Other than the declaration, did you
 16 see any other documents?
 17 A No. No. No. No. No.
 18 Q Okay.
 19 A Deliverables, I mean, I've seen
 20 deliverables. I've seen the master distribution
 21 agreement. I've seen the intended documents with
 22 that. I've seen the work product of the
 23 architects and the engineers. And I've spoken
 24 with in substance about the work product by the
 25 equipment designers and manufacturers.

1 But, no, I've not seen other documents,
 2 other than that.
 3 MS. LAMA: And by work product that
 4 you've seen, can you elaborate on that? You've
 5 seen --
 6 THE WITNESS: Conversations,
 7 discussions at working sessions on design of
 8 building and equipment for this facility.
 9 MS. LAMA: But actual work product in
 10 terms of --
 11 THE WITNESS: My work product is what
 12 I'm referring to, which are the discussions, the
 13 dialogue, and the efforts made at these meetings.
 14 MS. LAMA: And just to confirm if I'm
 15 recalling correctly, your testimony was that to
 16 date you have not seen reports or physical work
 17 product prepared by AnC Biopharm, and I'm not
 18 talking about discussions and conversations --
 19 THE WITNESS: Correct.
 20 MS. LAMA: Okay.
 21 And what triggered this concern about
 22 wanting an attestation by AnC Bio that payments
 23 had been received and accounted for?
 24 THE WITNESS: Nothing triggered it. I
 25 mean, good business practice say you try to work

1 on those. And, as I suggested, I'd be very
2 comfortable with operating under a contractual
3 agreement. However, I'm a little bit of a belts
4 and suspenders kind of guy, and I just like --
5 but nothing triggered that.

6 I mean, tomorrow, I might ask another
7 question or another document that gives -- you
8 know, gives something different. Nothing
9 triggered that particular conversation.

10 BY MS. FUCHS-SINDLER:

11 **Q Do you have an understanding as to**
12 **whether or not Mr. Quiros wanted this declaration**
13 **because of any questions that we at the SEC had**
14 **asked him?**

15 A No, I do not.

16 MS. LAMA: Did you ask Mr. Quiros to
17 obtain that attestation?

18 THE WITNESS: No, I did not.

19 BY MS. FUCHS-SINDLER:

20 **Q Did he tell you about any of the**
21 **questions we asked during testimony?**

22 A No, he did not.

23 MS. LAMA: I'm sorry. I'm a little bit
24 confused. You mentioned that it's good business
25 practice to obtain such an attestation, but you

1 didn't actually request the attestation?

2 THE WITNESS: I testified that it is
3 good business practices to go as far as one can
4 go, get as much documentation as one can get. I
5 did not testify to good practice is to get an
6 attestation.

7 I believe I testified that it is good
8 business practices to have belts and suspenders
9 in terms of your business practices. And so I
10 did not -- I don't believe I testified, Michelle,
11 that it was good business practices to get
12 attestations. This happens to be, as I
13 understand it, an attestation or evidence of
14 receipt, and that's good.

15 MS. LAMA: Okay. And I guess what I
16 just want to make sure I understand is, were you
17 asking for some kind of --

18 THE WITNESS: No, I was not.

19 MS. LAMA: -- evidence of receipt in
20 whatever form? So I'm not saying you asked for
21 an attestation, but instead I'm just asking, did
22 you request some type of payment receipt?

23 THE WITNESS: No, I did not.

24 BY MS. FUCHS-SINDLER:

25 **Q Do you happen to know Mr. Kim's**

1 **passport number?**

2 A No.

3 **Q Do you know who would, other than him?**

4 A Mr. Kim's passport number?

5 **Q Yeah.**

6 A No, I do not. I have no idea. USCIS,
7 I presume. I do not.

8 **Q Same question for Dr. Jang?**

9 A No, I do not.

10 **Q Do you know if they have any**
11 **residences in the United States?**

12 A No, I do not.

13 THE WITNESS: I testified earlier,
14 Michelle, that at some point, NECS will engage
15 specialists that will be more detailed about work
16 product or work performances. That is, again, my
17 belief that good business practices suggest this,
18 this, and this.

19 We will continue to be belts and
20 suspenders type of people. I have all the
21 confidence in the world that we are spending
22 limited partnership's funds in the way they're
23 supposed to be spent, and I'm confident that
24 that's being done, but I'm going to always do
25 what I can to be more sure of that.

1 MR. JAMES: In these weekly telephone
2 calls or monthly in-person meetings, is there
3 ever a representative from the State of Vermont
4 involved or attending or present?

5 THE WITNESS: I don't believe there
6 ever has been in one of those meetings, Brian.

7 MR. JAMES: Has there been separate,
8 other meetings where representatives from the
9 State of Vermont attend or send a representative
10 or -- in connection with AnC --

11 THE WITNESS: Yes. We are -- we work
12 with a number of attorneys who represent clients
13 who are interested in participating in AnC Bio
14 projects. In our meeting with those attorneys,
15 often times a representative from the State of
16 Vermont will join those meetings to talk about
17 the State of Vermont, its economic development,
18 and its -- its intent to attract businesses and
19 capital in Vermont.

20 Those State of Vermont employees will
21 often speak about the value of one of our EB-5
22 projects, the AnC Bio project, and how it is
23 impacting the economic development of the region.
24 That happens quite frequently during the course
25 of the year, but not at one of our architectural

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1 or planning design meetings.
 2 MR. JAMES: So there's no meetings
 3 where you have representatives from the State of
 4 Vermont or and representatives of AnC Biopharm
 5 present at the same meeting? That's never
 6 occurred?
 7 THE WITNESS: No, not that I can
 8 recall.
 9 There have been -- there could have
 10 been a public meeting where there may have been
 11 representatives from AnC Biopharm at the public
 12 meeting and representatives from the State of
 13 Vermont at the public meeting, and the public
 14 meeting was for the purposes of economic
 15 development in the State of Vermont through the
 16 AnC Bio project, but they would not have been
 17 there to meet with each other. They would've
 18 been in the same room together.
 19 MR. JAMES: Okay.
 20 And nothing that we had talked about
 21 deliverables of AnC Bio project or that type of
 22 stuff?
 23 THE WITNESS: No. No. No.
 24 MR. JAMES: Okay.
 25 MS. LAMA: If I may circle back just

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1 for a moment. I just want to clarify. At any
 2 point in time, did you ever have any discussions
 3 with Mr. Quiros or anyone else about obtaining
 4 documents that evidenced receipt of funds for the
 5 performance of services by AnC Biopharm?
 6 MR. GORDON: Don't reveal any
 7 communications with Counsel or any other
 8 communications meant to facilitate or obtaining
 9 communications with Counsel.
 10 THE WITNESS: None of them would be
 11 regarding that. I've had conversations with Mr.
 12 Quiros over the course of two years or a year
 13 that we constantly must be good stewards of the
 14 limited partnership's funds. And to that end, we
 15 should always be as diligent as we can about
 16 making sure that the funds are being expended the
 17 way they're supposed to be expended. This is not
 18 an easy job.
 19 And so, yes, there have been many
 20 conversations between myself and Mr. Quiros,
 21 myself and Mr. Stenger, myself and George
 22 Gulisano about the need for fiduciary
 23 responsibility and the diligent work effort on
 24 behalf of these limited partners.
 25 To that end, of course, we talk about

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1 measuring performance and such, not just about
 2 AnC Biopharm, but about all of -- any vendor.
 3 Probably the architects and the general
 4 contractors more than anyone.
 5 MS. LAMA: Okay.
 6 But specifically in connection with AnC
 7 Biopharm, can you tell us about discussions
 8 you've had with Mr. Quiros about obtaining such
 9 documents or evidence?
 10 THE WITNESS: I -- I can only tell you
 11 that during the course of -- during the course of
 12 our relationship with AnC Biopharm, specifically
 13 in relationship to AnC Bio -- Jay Peak Biomedical
 14 Research Park and the limited partnership it
 15 represents, I have had multiple conversations
 16 with Mr. Quiros about prudent fiduciary
 17 responsibilities and management of funds being
 18 expended, including AnC Biopharm. But I have had
 19 no specific discussions with Mr. Quiros about
 20 activity with AnC Biopharm in regards to receipt
 21 or anything beyond the terms of the contract, no.
 22 General discussions about prudent
 23 management of vendors, yes, constantly.
 24 MS. LAMA: Did Mr. Quiros ever express
 25 any resistance to getting that type of

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1 information from AnC Biopharm?
 2 THE WITNESS: No. No, of course not.
 3 MS. FUCHS-SINDLER: This might be a
 4 good time for a lunch break. So let's go off the
 5 record at 1:40.
 6 (Whereupon, at 1:40 p.m., a luncheon
 7 recess was taken.)
 8 AFTERNOON SESSION
 9 MS. FUCHS-SINDLER: We are back on
 10 record at 2:45 after a lunch break.
 11 BY MS. FUCHS-SINDLER:
 12 **Q During that time, we had no**
 13 **substantive conversations; is that correct?**
 14 A Correct.
 15 **Q And right before we went on the record**
 16 **now, Mr. Kelly, you indicated you wanted to make**
 17 **a comment?**
 18 A During lunch, I thought about
 19 testimony, particularly to Michelle about the
 20 twenty percent NECS payments in synchronization
 21 with each of the JCM payments. And when you
 22 asked me the question, Michelle, I was
 23 uncomfortable with when I took the reduced
 24 amounts. And so I want to go back and look at
 25 the records to determine when I took those,

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1 rather than assume or believe that it was in the
 2 earlier -- I need to look at the NECS records to
 3 determine that, and I will.

4 MR. JAMES: And when you say the NECS
 5 records, what records are you talking about?

6 THE WITNESS: Invoices. Any invoices
 7 of NECS to the limited partnership for
 8 construction supervision fees.

9 MR. JAMES: Okay.

10 And then once you've looked at those
 11 records, you believe you will be more comfortable
 12 in your response?

13 THE WITNESS: Yes. A hundred percent,
 14 yes. Yes.

15 MR. JAMES: A quick reminder before we
 16 jump back in. Let us complete the question, and
 17 then -- I know you're anticipating the answer,
 18 but answer after that.

19 THE WITNESS: I apologize.

20 MR. JAMES: Thanks.
 21 (SEC Exhibit No. 136 was
 22 marked for identification.)

23 BY MS. FUCHS-SINDLER:
 24 **Q We've spoken about many agreements and
 25 different contracts, so we wanted to show you**

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1 some of them. And prior to the going on the
 2 record, the Court Reporter marked as Exhibit No.
 3 136 a copy of what appears to be a Technical
 4 License Agreement, and it has the date of
 5 December 1st, 2012 between AnC Bio Vermont and
 6 AnC Bio Korea.

7 Do you recognize this document?

8 A Yes, I do.

9 **Q Okay. Can you tell us what it is?**

10 A The offering memorandum for Jay Peak
 11 Biomedical Research Park limited partnership
 12 presents AnC Bio Vermont, the sponsor company,
 13 will enter into -- will identify a subsidiary of
 14 AnC Bio Vermont who will be the joint venturer
 15 with the limited partnership to create a joint
 16 venture company that will manage and operate the
 17 facility. AnC Bio Vermont will contribute to
 18 that joint venture the technology necessary to
 19 manufacture and produce the products that will be
 20 distributed by the joint venture company.

21 **Q So previously when you referenced a
 22 Technical License Agreement, this is what you
 23 were talking about?**

24 A This Technical License Agreement is
 25 specifically for the technology that is being

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1 transferred -- or that's being licensed from AnC
 2 Bio Korea to AnC Bio Vermont, LLC, the sponsor
 3 company. What I referenced prior was
 4 distribution agreements and documents that are --
 5 documents that are related to those distribution
 6 agreements, not this Technical License Agreement.

7 This is a separate Technical License
 8 Agreement, which deals only with technology. The
 9 distribution agreement that flows between the
 10 limited -- that flows between AnC Biopharm and
 11 the limited partnership has attendant documents,
 12 for instance -- attendant documents that describe
 13 the distribution rights.

14 **Q Okay.**

15 **And the items that you mentioned, the
 16 technology, is that what's referred to on the
 17 last page of this exhibit, which is Bate marked
 18 ANCBIO-004258?**

19 A Yes.

20 **Q Okay. And --**

21 A These are the technology for these
 22 products, these same products, which will be
 23 distributed under distribution rights owned by
 24 the limited partnership.

25 **Q Okay.**

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1 And those products were the Twin
 2 Pulsatile Life Support System, C-PAK, E-Liver,
 3 and Stem Cell Culturing and Factoring Processes?

4 A Yes.

5 **Q Okay.**

6 And the page immediately prior to that
 7 that's Bates stamped ANCBIO-004257, do you see
 8 where the signature for licensure AnC Bio Korea
 9 and AnC Bio Vermont? Do you see that?

10 A Yes, I do.

11 **Q Okay.**

12 **On behalf AnC Bio Korea, do you know
 13 who signed that?**

14 A I do not.

15 **Q Do you recognize the signature?**

16 A I do not.

17 **Q Okay.**

18 **And for licensee, AnC Bio Vermont, do
 19 you see where it says Ariel Quiros, Chairman?**

20 A Yes.

21 **Q And do you recognize his signature?**

22 A Yes.

23 **Q And have you had occasion to see his
 24 signature before?**

25 A Yes.

1 Q On how many occasions?
 2 A Many.
 3 Q Over a hundred?
 4 A No.
 5 Q Over fifty?
 6 A Fifty.
 7 Q Okay. So you recognize it?
 8 A Somewhere around there. Yes, I
 9 recognize it.
 10 Q Okay.
 11 (SEC Exhibit No. 137 was
 12 marked for identification.)
 13 BY MS. FUCHS-SINDLER:
 14 Q I'm handing you what's been marked as
 15 Exhibit No. 137. It says, Master Distribution
 16 Agreement, dated as of December 1st, 2012,
 17 between AnC Bio Korea, Jay Peak Biomedical
 18 Research Park, and AnC Bio Vermont GP Services,
 19 LLC.
 20 Do you recognize this document?
 21 A Yes, I recognize it.
 22 Q What is it?
 23 A This is the Master Distribution
 24 Agreement procured by the limited partnership
 25 from AnC Biopharm for the rights to distribute

1 the four products that are listed on page
 2 ANCBIO-004242.
 3 Q Okay.
 4 And this is the agreement that you were
 5 talking about before?
 6 A Yes, this is the -- yes. This is the
 7 agreement between the limited partnership for
 8 their rights to distribute the products, correct.
 9 Q And if you could look at Bates stamp
 10 ANCBIO-004240, where you see different
 11 signatures, and on behalf of Jay Peak Biomedical
 12 Research Park by its general partner, do you see
 13 where it says it's signed by -- appears to be
 14 signed by William Stenger?
 15 A Yes.
 16 Q And do you recognize his signature?
 17 A Yes.
 18 Q And on how many occasions,
 19 approximately, have you seen his signature?
 20 A A dozen or more.
 21 Q Okay.
 22 And there where it's signed for AnC Bio
 23 Korea, Inc., do you recognize that signature?
 24 A I don't.
 25 Q Do you have any idea who signed it on

1 behalf of AnC Bio Korea?
 2 A I'm looking at the initials. I don't.
 3 I don't. I'm sorry.
 4 Q It's okay.
 5 And what is the relationship between
 6 AnC Bio South Korea and AnC Biopharm?
 7 A There is no relationship I believe at
 8 this time. AnC Bio Korea -- I don't think
 9 there's any relationship. I think AnC Korea and
 10 AnC Biopharm are two different companies. AnC
 11 Biopharm may be a successor to AnC Bio Korea.
 12 Q I'm sorry. Did you say you thought it
 13 might be a successor company?
 14 A It could be a successor company of AnC
 15 Bio Korea.
 16 Q Why do you think that?
 17 A Because I believe there are a number of
 18 persons that are in AnC Biopharm that were at AnC
 19 Bio Korea.
 20 Q Who is that? Who are those people?
 21 A Dr. Jang, Sean Choi, Lyan Kim, Mr.
 22 Hahn. That's all -- those are the only names that
 23 I know.
 24 Q Is AnC Bio Korea, is that an operating
 25 company now?

1 A I don't know that. I honestly don't
 2 know that.
 3 Q Do you have any understanding? Do you
 4 have any understanding as to whether it is?
 5 A No, I don't.
 6 Q Okay.
 7 A I have no reason to believe it's not.
 8 I don't have any reason to believe it is. I have
 9 no knowledge.
 10 Q Okay.
 11 (SEC Exhibit No. 138 was
 12 marked for identification.)
 13 BY MS. FUCHS-SINDLER:
 14 Q The Court Reporter's just marked as
 15 Exhibit No. 138, which I'm handing to you. It
 16 appears to be a copy of what says, Memorandum of
 17 Understanding for AnC Bio Inc. and AnC Biopharm.
 18 And it pertains to the construction of AnC Bio
 19 Vermont, LLC facility in Newport owned by Jay
 20 Peak Biomedical Research Park. And then it -- do
 21 you recognize this document?
 22 A I do.
 23 Q Can you tell us what it is?
 24 A When the government of Vermont
 25 initially asked for a facility to be built in

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1 Newport that would accommodate jobs, and the
 2 result of that request was AnC Bio and Jay Peak
 3 Biomedical Research Park and this facility, there
 4 was a fair amount of effort made to determine the
 5 likelihood of use of the building.
 6 In determining how the space would be
 7 allocated, AnC Biopharm in Korea wanted a
 8 particular amount of use of the building. And so
 9 at the time, the sponsor company asked AnC
 10 Biopharm to --
 11 **Q The sponsor company being?**
 12 A AnC Bio Vermont, LLC, who was the
 13 developer and sponsor of the facility, asked a
 14 number of entities to express their interest in
 15 using the building, in using the facility. AnC
 16 Biopharm was one of them.
 17 And this is an understanding from AnC
 18 Biopharm, and I presume the sponsor company --
 19 yes, and the sponsor company indicating their
 20 intent to use the building, to utilize the
 21 building for operations. So a particular tenant,
 22 a likely tenant.
 23 **Q Okay.**
 24 **And if you look at the second page of**
 25 **this document, you'll see some signatures. It**

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1 says, AnC Bio, Inc., slash, AnC Biopharm, Inc.
 2 It says, Alex J.W. Choi, Chairman and CEO.
 3 Do you recognize that to be his
 4 signature?
 5 A I do.
 6 **Q Do you know why it says AnC Bio, Inc.,**
 7 **slash, AnC Biopharm?**
 8 A I do not. I do not. It suggests there
 9 was a relationship between those two and possibly
 10 a successor company. I do not know.
 11 **Q Do you know if Mr. Choi is still**
 12 **Chairman and CEO of these entities?**
 13 A He is Chairman and CEO -- yes, he is
 14 Chairman and CEO of AnC Bio, Inc. I don't know
 15 whether -- I don't believe he is of AnC Biopharm,
 16 but he is of AnC Bio, Inc., yes.
 17 **Q How do you know that?**
 18 A How do I know that he was --
 19 **Q How do you know that he is the**
 20 **Chairman and CEO of AnC Bio, Inc.?**
 21 A My last knowledge was that he was the
 22 Chairman and CEO of AnC Bio, Inc. I know that
 23 because I'm familiar with the company and Mr.
 24 Choi and his role in that company.
 25 **Q But you don't know what his role is --**

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1 A Today?
 2 **Q -- with AnC Biopharm?**
 3 A No, I do not.
 4 **Q Do you know what it was in the past?**
 5 A I don't know that it was any, because I
 6 don't know what his relationship with AnC -- I
 7 don't know what AnC Biopharm's relationship is
 8 with AnC Bio Korea -- AnC Bio, Inc. But I do
 9 know that Mr. Choi was and, for all intents and
 10 purposes, still is Chairman of AnC Bio, Inc. I
 11 don't know the relationship between AnC Bio, Inc.
 12 and AnC Bio Vermont.
 13 **Q Is Alex Choi related to Sean Choi?**
 14 A No, he's not.
 15 **Q Okay.**
 16 A Not that know of. I believe he is not.
 17 **Q Do you know Mr. Choi's relationship**
 18 **with -- Alex Choi's relationship with Mr. Quiros?**
 19 A They have been business partners and
 20 business associates for a number of several
 21 years.
 22 **Q Do they have a family relationship,**
 23 **too?**
 24 A Not that I know of.
 25 **Q Okay.**

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1 **And then you see where it says, AnC**
 2 **Vermont, LLC, signed by Ariel Quiros, Chairman**
 3 **and CEO?**
 4 A Yes.
 5 **Q Do you know if Mr. Quiros is still**
 6 **Chairman and CEO of AnC Bio Vermont?**
 7 A Yes. Yes. Yes.
 8 **Q What is AnC Bio, Inc.?**
 9 A AnC Bio, Inc. is a company that -- is a
 10 Korean -- South Korean-based company that --
 11 again, I have to be careful because I don't know
 12 the technical side of this as much as I do -- I
 13 referred earlier to Bioheart Korea. Bioheart
 14 Korea was a company that was in business to work
 15 with a US biomedical company.
 16 That company at some point was -- went
 17 public. Then went private. Then was disbanded.
 18 And many of the individuals that were with
 19 Bioheart Korea became involved with AnC Bio, Inc.
 20 And AnC Bio, Inc. is the company that continued
 21 operations in South Korea in the AnC Bio, Inc.
 22 biomedical facility in South Korea to perform
 23 research and development of medical devices and
 24 medical therapies.
 25 AnC Biopharm is a company that is

1 providing scientific services and goods and
2 services to Jay Peak Biomedical Research Park. I
3 cannot tell you the legal physical relation
4 between the two.

5 **Q Do you know if AnC Biopharm provides**
6 **services to -- anyone -- any entity, other than**
7 **Jay Peak Biomedical Research Park?**

8 A I believe they do.

9 **Q Why do you believe that?**

10 A Because I believe there are -- there's
11 work going on between AnC Biopharm and other
12 companies currently. I believe there are other
13 business relationships.

14 **Q Did someone tell you that?**

15 A I'm led to believe that. No, I'm not
16 sure if someone ever told me that, but I know
17 that individuals that are at AnC Biopharm I
18 believe are working on projects and products with
19 other companies around the world related to the
20 same thing that we are at Jay Peak Biomedical
21 Research Park.

22 **Q Do you know what the relationship is**
23 **between AnC Bio, Inc. and AnC Bio Korea?**

24 A No. And I don't know that there is a
25 relationship. As I suggested, I think these are

1 somehow successor companies. And the only reason
2 that I indicate that there may be a relationship
3 is because of the individuals that have worked
4 for the different companies, and I find those
5 individuals had worked for one company, and then
6 they are working for another of these mentioned
7 companies.

8 **Q Have you ever been an officer,**
9 **director, or played any other role with AnC Bio,**
10 **Inc.?**

11 A No.

12 **Q And how about with AnC Bio Korea?**

13 A No.

14 **Q Have you ever served as counsel to any**
15 **of these entities?**

16 MR. GORDON: Do you mean a lawyer or --

17 MS. FUCHS-SINDLER: A lawyer.

18 MR. GORDON: A lawyer.

19 THE WITNESS: Oh, no. No. No. No.

20 No.

21 BY MS. FUCHS-SINDLER:

22 **Q Or to AnC Biopharm?**

23 A No. No.

24 MS. LAMA: AnC Bio, Inc., how large is
25 that operation? Or can you just describe the

1 size?

2 THE WITNESS: AnC Bio, Inc. -- AnC Bio,
3 Inc. was -- again, I don't have technical
4 knowledge of this, Michelle, but my
5 understanding, having been in the industry, if
6 you will, I would suggest that AnC Bio, Inc. was
7 twenty to twenty-five individual people, and that
8 was the operational company for the biomedical
9 research and development facility in Seoul. My
10 knowledge of that comes as my -- from my visits
11 to that facility and meeting and greeting people
12 in the facility.

13 BY MS. FUCHS-SINDLER:

14 **Q When were you there?**

15 A Let me think the last time I was there.
16 I think it's a year ago, a year ago.

17 **Q Did AnC Bio, Inc., was it ever traded**
18 **on the South Korean stock exchange, to your**
19 **knowledge?**

20 A I don't believe so.

21 **Q How about --**

22 A Bioheart Korea I think was, but AnC
23 Bio, Inc., I don't believe was, no.

24 **Q How about AnC Bio Korea?**

25 A I don't think so, no.

1 Bioheart Korea, which --

2 **Q Bioheart Korea.**

3 A Bioheart Korea was a private company
4 that went public, and then went back private
5 again. It went to public. And then it went back
6 private. And Bioheart Korea was traded publicly
7 on the exchange in Korea.

8 **Q And how about AnC Biopharm, was that**
9 **ever traded publicly?**

10 A Not that I know of, no.

11 **Q What was that?**

12 A Not that I know of, no.

13 **Q Okay.**

14 **And you said you had a role in Bioheart**
15 **Korea?**

16 A In Bioheart Korea, I introduced the
17 President of Bioheart USA to the President of
18 Bioheart Korea.

19 **Q What was your relationship between**
20 **those two entities?**

21 A Bioheart USA was a research and
22 development company in the business of taking a
23 MyoCell product, a product called MyoCell,
24 through commercialization with the FDA in the
25 United States.

1 In doing that, they had relationships
2 with companies around the world, primarily in the
3 Netherlands, Australia, Germany, and now South
4 Korea, to do human clinical work that would
5 support their efforts to get FDA
6 commercialization approval in the United States.

7 Bioheart Korea operated as an entity
8 doing just those human clinical trials in the
9 country of South Korea and getting Korean FDA
10 approval for the processes in support of Bioheart
11 USA.

12 **Q Well, were you ever an officer,
13 director of Bioheart Korea --**

14 A No.

15 **Q -- when it was publicly traded?**

16 A No. Or when it wasn't publicly traded.

17 **Q Okay.**

18 **Let me show you what was previously
19 marked as Exhibit No. 89, a copy of a proforma
20 invoice. And tell me if you recognize this
21 document.**

22 A I do recognize this document.

23 **Q What is it?**

24 A This is the agreement -- this is an
25 agreement evidencing the relationship --

1 evidencing the terms that exist between AnC
2 Biopharm and JCM --

3 **Q Okay.**

4 A -- for the procurement of -- for the
5 provision of the fifty-two million dollars of
6 goods and services I spoke about earlier. This
7 is the forty million dollars of equipment, ten
8 million dollars of distribution, and two point
9 one million dollars of architectural fees.

10 **Q And you see at the very top where it
11 says, AnC Bio, in large print, and then in small
12 print under that, AnC Biopharm?**

13 A I do.

14 **Q Seeing this now, does this jog your
15 memory or understanding as to the relationship
16 between these two entities?**

17 A No. I don't have an understanding of a
18 relationship between those two entities.

19 **Q Okay.**

20 **Do you know why it says AnC Biopharm
21 directly under AnC Bio?**

22 A No. I can -- conjecture would tell me
23 that as I see here before AnC Bio, Inc., slash,
24 AnC Biopharm, that they may be related companies,
25 but I have no knowledge of that.

1 **Q Okay.**

2 **When you go to the second page of this
3 exhibit, do you see where it says under AnC
4 Biopharm, it's signed by -- it's spelled
5 W-O-N-G-Y-U, and then Jang, J-A-N-G, President?**

6 A Yes.

7 **Q That's Mr. Jang that we've been
8 talking about?**

9 A I believe that is Mr. Jang, yes.

10 **Q And do you recognize his signature
11 here?**

12 A I do not.

13 **Q Have you had occasion to see his
14 signature?**

15 A No.

16 **Q Okay.**

17 **And then do you see where it says,
18 accepted by Jay Construction Management, and then
19 it looks to be signed by -- I'll spell it out,
20 J-O-N-G, next word W-E-O-N, and then Choi,
21 C-H-O-I, as CEO?**

22 A Yes.

23 **Q Do you recognize that signature?**

24 A I do.

25 **Q And is that Alex Choi?**

1 A Yes.

2 **Q And you've seen his signature in the
3 past?**

4 A Yes.

5 **Q About how many times?**

6 A A dozen.

7 **Q So at a certain point, he was CEO of
8 Jay Construction Management?**

9 A Yes.

10 **Q Okay.**

11 **During what period of time was that?**

12 A 2011, 2012, and possibly 2013. 2011,
13 '12, and '13.

14 **Q And what is his role now with Jay
15 Construction Management?**

16 A None. He has no role with Jay
17 Construction Management at this point.

18 **Q So his relationship ended -- his role
19 with JCM ended in 2013?**

20 A Yes, I believe in 2013. It may have
21 been the end of 2013.

22 **Q And why was that, that his role
23 stopped?**

24 A Because JCM was changing its role as a
25 Jay Construction Management, where it was the

1 general contractor of construction for five EB-5
2 projects at Jay Peak, and it became the role of
3 JCM to be the procurement company for products
4 procured from AnC Biopharm.

5 And I believe it was in the best
6 interest of no conflict of interest of the
7 parties to have Mr. Choi taken out of JCM,
8 because it's no longer a construction company,
9 and it is now a procurement company.

10 And so the company I believe was -- the
11 company was transacted, and the company was
12 changed from under the leadership of Mr. Choi to
13 under the leadership of Mr. Quiros.

14 **Q Do you know whose decision that was to
15 change -- to move Mr. Choi as CEO and bring in
16 Mr. Quiros into leadership?**

17 A Well, not move Mr. Choi as CEO, but the
18 actual company was purchased by one of Mr.
19 Quiros's companies, because at that date, it was
20 changing its role from a construction company to
21 a US-based, Vermont-based procurement company. It
22 would be Mr. Quiros's decision, Mr. Quiros and
23 Mr. Choi's, I'm sure.

24 **Q Whose decision was it to change the
25 role of JCM?**

1 A I think both. Mr. Quiros and Mr. Choi
2 probably would have agreed that in the interest
3 of no conflict of interest that it would be wiser
4 for that to be a company owned not by the
5 supplier, AnC Biopharm, or any relation to them.

6 **Q And do you know if it was Mr. Quiros's
7 decision with Mr. Choi?**

8 A No. I presume it was Mr. Quiros and
9 Mr. Choi would've agreed on that together. But,
10 no, I don't have that knowledge. No.

11 **Q Do you know if Mr. Jang is still
12 President of AnC Biopharm?**

13 A I don't. I -- I don't. I know he's an
14 executive of AnC Biopharm, but I don't know what
15 his exact title is.

16 MS. LAMA: And you mentioned that Mr.
17 Quiros procured -- I'm sorry, purchased JCM?

18 THE WITNESS: Yes. Yes. The assets of
19 JCM were purchased by Q Resorts actually. That's
20 my understanding.

21 BY MS. FUCHS-SINDLER:

22 **Q And how do you have that
23 understanding?**

24 A I spoke with the CFO at the time, and I
25 believe it was important to have a US-based,

1 Vermont-based company as the procurement company.
2 I was -- I was supportive of the concept of
3 having a US-based company in between the
4 procurement process, so that when the limited
5 partners were procuring goods, they were
6 procuring them from a US-based, Vermont-based
7 company in JCM, which would've otherwise been
8 administratively dissolved possibly at that time
9 because it did not have a role any longer or much
10 of a role left as a construction management
11 company.

12 I supported the concept that we leave
13 that company in place as a US, Vermont-based
14 company where the funds from the limited
15 partnerships would be deposited and the fiduciary
16 relationship would be between JCM and the limited
17 partnership in terms of the fifty-two million
18 dollars worth of goods and services that were
19 going to be procured.

20 **Q When you mentioned the CFO, are you
21 talking about Mr. Gulisano?**

22 A Yes. Yes.

23 MS. LAMA: And how much did Q Resorts
24 purchase JCM for?

25 THE WITNESS: I don't know that,

1 Michelle.

2 MS. LAMA: And you mentioned that was
3 at the end of 2013?

4 THE WITNESS: At the end of 2013,
5 beginning of 2014. I believe it was probably the
6 beginning of 2014 actually, or early in 2014. I
7 don't know that date.

8 MS. LAMA: Did you have any discussions
9 with anyone concerning the purchase price paid by
10 Q Resorts to purchase JCM?

11 THE WITNESS: The purchase price? No.

12 BY MS. FUCHS-SINDLER:

13 **Q Do you know how the purchase price was
14 arrived at?**

15 A No. I'm sure there was an asset -- it
16 was an asset -- I'm sure they -- I don't know.

17 MS. LAMA: And what's your
18 understanding of what JCM's assets are?

19 MR. GORDON: Today?

20 MS. LAMA: Sure.

21 THE WITNESS: I don't know that.

22 BY MS. FUCHS-SINDLER:

23 **Q Were you ever aware of the assets of
24 JCM?**

25 A No.

1 **Q Who would be aware of that?**
 2 A Mr. Gulisano. George would. George
 3 would understand the assets of JCM.
 4 **Q Anyone else?**
 5 A Mr. Quiros, Mr. Choi, I'm sure. But,
 6 again, I'm speculating.
 7 **Q And why do you say that Mr. Gulisano**
 8 **would know the assets of JCM?**
 9 A Because Mr. Gulisano is the CFO for Q
 10 Resorts, and if Q Resorts purchased JCM, I would
 11 suspect Mr. Gulisano would have knowledge of the
 12 value of that transaction.
 13 MS. LAMA: Your understanding is Mr.
 14 Gulisano is the CFO of Q Resorts?
 15 THE WITNESS: He acts in a financial
 16 advisory position. I cannot say he's the CFO.
 17 Let me retract that. He acts in a financial
 18 advisory position to Mr. Quiros. I don't know
 19 whether he's actually a CFO title of Q Resorts,
 20 no.
 21 MS. LAMA: As construction supervisor,
 22 do you ever see financial information for JCM?
 23 THE WITNESS: No.
 24 BY MS. FUCHS-SINDLER:
 25 **Q Have you ever?**

1 A No.
 2 MS. LAMA: Have you ever requested any
 3 bank statements, bank records?
 4 THE WITNESS: Never, no.
 5 MS. LAMA: Financial reports?
 6 THE WITNESS: No.
 7 BY MS. FUCHS-SINDLER:
 8 **Q I'm going to show you what was**
 9 **previously marked as Exhibit No. 90. It's a Jay**
 10 **Peak Biomedical Research Park, LP purchase order**
 11 **between owner and supplier. It's dated March**
 12 **1st, 2013.**
 13 A Yes, I'm familiar with this document.
 14 (Mr. James leaves the room.)
 15 BY MS. FUCHS-SINDLER:
 16 **Q Can you tell us what it is?**
 17 A This is the fifty-two million dollar
 18 contract that I referred to earlier, and this is
 19 an invoice under this, Exhibit 89 --
 20 **Q Okay.**
 21 A -- is an invoice under or related to
 22 this contract. This is the fifty-two million
 23 dollar contract that exists between JCM as a
 24 procurement company and Jay Peak Biomedical
 25 Research Park, LP as a purchaser of these goods

1 and services.
 2 **Q Okay.**
 3 A These are the same fifty-two million
 4 dollars worth of services, goods and services.
 5 **Q Okay.**
 6 **And when you go to the last page where**
 7 **it says supplier, JCM, do you recognize that**
 8 **signature?**
 9 A I believe that's Mr. Choi, Alex Choi,
 10 yes.
 11 **Q Okay.**
 12 **And signing on behalf of Jay Peak**
 13 **Biomedical Research Park, it appears to be Bill**
 14 **Stenger. Do you recognize his signature?**
 15 A Yes, I do.
 16 **Q These exhibits I put before you today**
 17 **-- you know, since we've come back from lunch,**
 18 **did you have any role in drafting any of these**
 19 **documents?**
 20 MR. GORDON: Can we just be clear about
 21 which exhibit?
 22 MS. FUCHS-SINDLER: Yeah. We'll go one
 23 by one. Let's go one by one.
 24 BY MS. FUCHS-SINDLER:
 25 **Q Okay. So the first one we talked**

1 **about, we showed you the Technical License**
 2 **Agreement --**
 3 A No.
 4 **Q -- Exhibit 136?**
 5 A No.
 6 **Q So no role in preparing, editing, or**
 7 **reviewing?**
 8 A No, not that I recall.
 9 **Q Do you know who did prepare it?**
 10 A No, I do not.
 11 **Q Okay.**
 12 **Exhibit 137, the Master Distribution**
 13 **Agreement?**
 14 A I reviewed that document.
 15 **Q Before it was finalized?**
 16 A I believe so.
 17 **Q Okay.**
 18 **Did you have any changes to it?**
 19 A Not that I recall.
 20 **Q Do you know who prepared it?**
 21 A No, I do not.
 22 **Q Okay.**
 23 **And do you know who prepared the**
 24 **Technical License Agreement?**
 25 A No, I do not.

1 Q All right. The next one, the MOU,
2 which is Exhibit 138?
3 A Yes.
4 Q Did you have any role in preparing
5 this document?
6 A I reviewed that document prior to it
7 being signed, yes.
8 Q And who gave it to you to review?
9 A I believe it came to me from the
10 sponsor company, AnC Bio Vermont, LLC.
11 Q Who there?
12 A Mr. Quiros. I presume Mr. Quiros gave
13 it to me.
14 Q Okay. Do you know who drafted this
15 document?
16 A No, I do not.
17 Q Okay.
18 And then --
19 A I may have had comments to this comment
20 -- to this document. As I recall, I may have
21 made comments on that document.
22 Q On Exhibit 138?
23 A Yes.
24 (Mr. James enters the room.)
25 BY MS. FUCHS-SINDLER:

1 Q And Exhibit No. 89, the proforma
2 invoice, did you have any role in --
3 A I did not.
4 Q -- drafting, editing, or reviewing
5 this document?
6 A I did not.
7 Q Do you know who prepared it?
8 A I do not.
9 Q Okay.
10 Exhibit No. 90, same question? This is
11 the purchase order.
12 A Yes, I did. I did participate in the
13 review and editing of this document.
14 Q Do you know who drafted it initially?
15 A I do not.
16 Q Okay.
17 And who gave it to you to review and
18 edit?
19 A This would've come from the general
20 partner of the limited partnership. I assume
21 this would've come from Mr. Stenger.
22 Q Okay.
23 MS. LAMA: And do you know who provided
24 it to Mr. Stenger?
25 THE WITNESS: I don't. I'm sorry.

1 BY MS. FUCHS-SINDLER:
2 Q I'm sorry. And the previous document
3 you said that you reviewed was the Master --
4 A The Master Distribution Agreement.
5 Q And that's Exhibit 137?
6 A Yes.
7 Q Who gave that to you to review?
8 A That would have come from the -- I
9 believe that came from the offering memorandum.
10 I believe that was -- that particular document
11 was from the offering memorandum in draft form,
12 and that's what came to me.
13 Q Okay.
14 Do you remember who provided that to
15 you?
16 A The offering memorandum?
17 Q I mean, who -- yes. I mean, who
18 provided -- who asked you to take a look at this,
19 the Master Distribution --
20 A Oh, I'm sure the general partner, the
21 general partner of the limited partnership, Bill
22 Stenger.
23 Q Okay.
24 A The general partner. I don't know
25 whether it was Bill Stenger or Ariel Quiros, but

1 it was the general partner who would've asked me
2 to take a look at this on behalf of the limited
3 partners.
4 Q Okay.
5 (SEC Exhibit No. 139 was
6 marked for identification.)
7 BY MS. FUCHS-SINDLER:
8 Q The Court Reporter has marked as
9 Exhibit No. 139 a copy of what appears to be an
10 agreement between AnC Bio Vermont, LLC, AnC Bio
11 Vermont GP Services, LLC, which says it's general
12 partner of Jay Peak Biomedical Research Park, and
13 Northeast Contract Services.
14 Can you please take a look at this
15 document.
16 A Okay.
17 Q Do you recognize this document?
18 A I do.
19 Q And what is it?
20 A This is the contract for services to be
21 provided by NECS for these contract services to
22 the sponsor company, AnC Bio Vermont, LLC, on
23 behalf of the -- on behalf of the limited
24 partnership.
25 Q And is this the document that you

1 referring to earlier today?
 2 A Yes. Well, I did refer to this
 3 document earlier today, yes.
 4 Q And who prepared this document?
 5 A I prepared this document.
 6 Q Did anyone else prepare it?
 7 A No.
 8 Q Okay.
 9 And if you look at the second to the
 10 last page under, Northeast Contract Services, and
 11 says, William Kelly, President. Is that your
 12 signature?
 13 A It is.
 14 Q And next to that, GP services for
 15 itself and Jay Peak Biomedical Research Park, and
 16 it's signed by Ariel Quiros, General Partner. Do
 17 you recognize that to be Mr. Quiros's signature?
 18 A I do.
 19 Q And for the record, it's dated January
 20 30th of 2013 on the last page.
 21 And do you see under, AnC Bio Vermont,
 22 it says, Ariel Quiros, President and Managing
 23 Member?
 24 A Yes.
 25 Q And do you recognize that to be his

1 signature?
 2 A Yes.
 3 Q Did anyone else take part in
 4 preparing, editing, reviewing this document?
 5 A No.
 6 Q Earlier on, you remember you had
 7 referred to a potential conflict with Mr. Choi,
 8 like they wanted to avoid a potential conflict.
 9 You had mentioned that.
 10 A I believe I testified that I was in
 11 support of a US, Vermont company. You asked the
 12 reason why they may have done that, and I
 13 suggested it may have been because there could be
 14 a potential conflict, because the procurement
 15 company for the limited partnership would be --
 16 would be done through JCM to AnC Biopharm. I
 17 don't know that there was a potential conflict. I
 18 suggested that that possibly could be.
 19 My support of JCM being transacted to a
 20 company owned by Mr. Quiros was that I saw it as
 21 a US, Vermont-based company where the limited
 22 partnership's money was going to be deposited as
 23 a procurement company.
 24 Q Was there ever any discussion amongst
 25 anyone regarding what you said was something that

1 you thought could be a potential conflict with
 2 Mr. Choi?
 3 A No. No. No.
 4 MS. LAMA: And what is Mr. Choi's
 5 association with AnC Bio, AnC Biopharm, or any
 6 AnC entity?
 7 THE WITNESS: Mr. Choi is the
 8 President, Chairman of AnC Bio, Inc. That is my
 9 knowledge.
 10 I don't know what the relationship is
 11 between AnC Bio, Inc. and AnC Biopharm, and,
 12 therefore, other than a document that you've
 13 shown me where Mr. Choi has signed as the
 14 President of AnC Biopharm, I don't know.
 15 BY MS. FUCHS-SINDLER:
 16 Q And I think we -- I don't know if we
 17 talked about what's the relationship between AnC
 18 Bio Inc. and Jay Peak Biomedical Research Park?
 19 A Jay Peak Biomedical Research Park
 20 procures goods and services from AnC Biopharm,
 21 and I believe initially from AnC Bio, Inc. And
 22 then at some point, from AnC Bio, Inc. and AnC
 23 Biopharm.
 24 Q So initially, it was procuring from
 25 AnC Bio, Inc., and then later, AnC Biopharm?

1 A I believe it was originally procuring
 2 goods and services from AnC Bio, Inc., and at
 3 some point, the decision was made either within
 4 the parties to change that AnC Biopharm.
 5 Q Do you know when that decision was
 6 made?
 7 A I do not.
 8 Q Do you know who made the decision?
 9 A I do not.
 10 Q And do you know why the decision was
 11 made?
 12 A I do not.
 13 Q So how did you come to understand that
 14 the procurement was originally from AnC Bio,
 15 Inc., and then later AnC Biopharm?
 16 A You will see a Master distribution
 17 Agreement between AnC Bio Korea, Inc., your
 18 Exhibit 137.
 19 Q Yes.
 20 A And that agreement is with -- that
 21 agreement has gone from a distribution agreement
 22 being agreed to by AnC Bio Korea, Inc. to part of
 23 a procurement program with AnC Biopharm, because
 24 those are being procured through AnC Biopharm.
 25 Q What is the other document that you're

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1 looking at?

2 A I'm looking at the Master Distribution

3 Agreement that was referencing a Master

4 Distribution Agreement being acquired by Jay Peak

5 Biomedical Research Park, LP from AnC Bio, Inc.

6 That distribution agreement became part

7 and parcel of a Jay Peak Biomedical Research

8 Park, LP, JCM agreement calling for that ten

9 million dollar distribution. It could very well

10 be that AnC Biopharm is buying it from or

11 procuring it through AnC Bio, Inc. That, I do

12 not know. But you have shown me documents today

13 where you show AnC Bio, Inc. and AnC Biopharm

14 signatures in similar places.

15 **Q Yeah. There was one where it was**

16 **slash, and I think I had asked you about that.**

17 A So -- my thing is, I don't -- I don't

18 know what the relationship is between those two

19 companies are, but I know that we have a Master

20 Distribution Agreement that I have reviewed at

21 one point between AnC Bio, Inc. and Jay Peak

22 Biomedical Research Park.

23 Now, however, that Master Distribution

24 Agreement has AnC Biopharm's letterhead on it, so

25 they may very well be one in the same company. I

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1 can't answer that.

2 **Q We were talking about that slash. I**

3 **think we were referring to the Memorandum of**

4 **Understanding, which is Exhibit 138.**

5 A Correct. Exhibit 138.

6 **Q Where Mr. Choi signs as Chairman and**

7 **CEO of AnC Bio, Inc., slash, AnC Biopharm.**

8 A Yes.

9 MS. LAMA: If we could turn back to

10 Exhibit 89 for a moment, the proforma invoice.

11 THE WITNESS: Yes.

12 MS. LAMA: This proforma invoice

13 reflects an arrangement between AnC Bio and/or

14 AnC Biopharm between Jay Construction Management,

15 Inc.; is that right?

16 THE WITNESS: Correct.

17 MS. LAMA: Just to clarify here. And

18 you mentioned before that this proforma invoice

19 is in connection with the purchase order that we

20 also looked at?

21 THE WITNESS: It appears to be, yes. I

22 believe it is.

23 MS. LAMA: Okay.

24 And it relates to the fifty-two million

25 -- well, approximately, fifty-two million

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1 arrangement for the architectural fees,

2 equipment, and distribution agreement?

3 THE WITNESS: Correct.

4 MS. LAMA: Okay.

5 And if we look at the payment and bank

6 information provision included in this proforma

7 invoice in item three, in the second bullet

8 point, it says, "From the next month after the

9 first payment stated above, amount of US" --

10 THE WITNESS: I'm sorry. I'm not

11 following where you are. Oh, on the proforma

12 invoices?

13 MS. LAMA: Yes.

14 THE WITNESS: We're on that. Okay.

15 MS. LAMA: Exhibit 89.

16 THE WITNESS: Yes. Okay.

17 MS. LAMA: On the first page, in item

18 three, Payment and Bank Information, it has

19 information on a payment schedule.

20 THE WITNESS: Okay.

21 MS. LAMA: And you had testified

22 earlier about a two point six million monthly

23 payment?

24 THE WITNESS: That goes between the

25 limited partnership and JCM.

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1 MS. LAMA: Okay.

2 Here, in the second bullet point, it

3 reads, "From the next month after the first

4 payment stated above, amount of US two million,

5 six hundred thousand per month for a total of

6 twenty months shall be transferred to the

7 beneficiary by the end date of each month." And

8 then the section continues on to read with bank

9 information, and it has the beneficiary as AnC

10 Biopharm, Inc.

11 Does that then -- from this, do you

12 have the understanding that the payment

13 arrangement between Jay Construction Management

14 and AnC Bio -- and/or AnC Biopharm is that AnC

15 Biopharm should be paid two point six million a

16 month from JCM?

17 THE WITNESS: Yes.

18 MS. LAMA: Okay.

19 So to clarify then, the LP pays JCM two

20 point six million monthly?

21 THE WITNESS: Correct.

22 MS. LAMA: And JCM pays AnC Bio and/or

23 AnC Biopharm, Inc. -- well, here, it says the

24 beneficiary is AnC Biopharm, Inc., the two point

25 six million monthly amount?

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1 THE WITNESS: That appears to be what
 2 this is saying, yes.
 3 MS. LAMA: Okay.
 4 THE WITNESS: I know on the first part,
 5 because I reviewed that, between the limited
 6 partnership and JCM. As I testified earlier,
 7 although now as you've shown me this document
 8 here, it appears that the JCM is paying the exact
 9 same amount of money to AnC Biopharm on the exact
 10 same schedule. It does not surprise me.
 11 MS. LAMA: And aside from the documents
 12 that we have just gone through concerning the
 13 agreements and arrangements for AnC Biopharm
 14 Inc., are there any other agreements you're aware
 15 of?
 16 THE WITNESS: No.
 17 MS. LAMA: Okay.
 18 MR. JAMES: Mr. Kelly, if I could just
 19 ask you for a moment to turn back to Exhibit 139.
 20 THE WITNESS: Yes.
 21 MR. JAMES: And if you could turn to
 22 what would be page five, and the number is in the
 23 upper right-hand corner. And you'll see that
 24 paragraph five says, "Compensation payable to
 25 NECS by Jay Peak Biomedical Research Park, LP,

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1 and/or GP Services." Do you see that?
 2 THE WITNESS: Yes.
 3 MR. JAMES: And then earlier, you
 4 talked about the construction supervision
 5 percentage that NECS collects for its supervision
 6 of the AnC Bio project. Is this what you're
 7 talking about, if you read that particular
 8 section?
 9 THE WITNESS: Yes, sir.
 10 MR. JAMES: Okay.
 11 And here it says it begins in February
 12 1st, 2013?
 13 THE WITNESS: I don't believe payments
 14 were made until March or April of 2013. But,
 15 yes, we believed it was beginning in February
 16 2013.
 17 MR. JAMES: Okay.
 18 So as far as any invoices by NECS to
 19 Jay Peak Biomedical Research Park, LP, the
 20 earliest invoice would be February 2013?
 21 THE WITNESS: Yes.
 22 MR. JAMES: Okay.
 23 And when you said you believe payments
 24 began in March 2013, it would be for the February
 25 2013 invoice?

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1 THE WITNESS: Yes. The first -- the
 2 first invoice paid I believe was in March, but it
 3 probably was for a February invoice.
 4 MR. JAMES: Okay.
 5 THE WITNESS: We began work in
 6 February, but I don't think there were any
 7 invoices paid until March.
 8 MR. JAMES: Okay. Okay. Because the
 9 invoices comes after work is completed?
 10 THE WITNESS: Of course. Of course,
 11 yes. The invoice from NECS only come when there
 12 is the intended amount of fees paid for
 13 construction or equipment. So it must be billed
 14 first.
 15 MR. JAMES: Okay.
 16 But those fees are not paid until
 17 they're billed for?
 18 THE WITNESS: That's correct.
 19 MR. JAMES: And then in theory, they're
 20 not billed for until they're actually --
 21 THE WITNESS: That's correct.
 22 MR. JAMES: -- are incurred?
 23 THE WITNESS: That's correct.
 24 MR. JAMES: Let me finish.
 25 So, for example, when you're talking

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1 about that whole process of the architect
 2 confirming that what's being invoiced for has
 3 occurred, that's what you're saying as far as
 4 confirmation of the services that are being
 5 invoiced?
 6 THE WITNESS: Yes. Although, in those
 7 particular cases, the architect would not be
 8 confirming. Frankly, I would be confirming.
 9 MR. JAMES: Exactly.
 10 THE WITNESS: Yes.
 11 MR. JAMES: And you had explained that
 12 earlier when you had testified. Okay.
 13 And then staying with that same
 14 paragraph, I see a fifteen percent and a five
 15 percent. Is that the percentages you were
 16 referring to earlier that comes from the offering
 17 materials for the AnC Bio project?
 18 THE WITNESS: Yes, sir.
 19 MR. JAMES: Okay.
 20 And I think you also -- and if you flip
 21 to the next page, Section 5.1, I think you also
 22 went on to testify that of that fifteen and five
 23 percent, which total twenty percent, that that's
 24 what you invoiced for based on the JCM invoice
 25 for services provided?

1 THE WITNESS: I invoiced the twenty
2 percent based upon fees paid by the LP applicable
3 to construction supervision fees. So if JCM were
4 to invoice, then subsequent to their being paid,
5 then NECS would invoice. Did that answer your
6 question?

7 MR. JAMES: Okay. So -- but your --
8 the dollar amount that comes from the twenty
9 percent, that's based on whatever invoice has
10 been submitted and is now being paid by --

11 THE WITNESS: Right. Yes, sir.

12 MR. JAMES: Okay.

13 And then you talked about that twenty
14 percent is collected by NECS?

15 THE WITNESS: Correct.

16 MR. JAMES: And then you said you take
17 thirty-two percent of that?

18 THE WITNESS: (The witness nods head.)

19 MR. JAMES: Verbally. Sorry. You have
20 to be audible.

21 THE WITNESS: Yes. I'm sorry. Yes, we
22 retain thirty-two percent.

23 MR. JAMES: And then the sixty-eight
24 percent or at least the remainder percentage is
25 then I guess transferred back to the sponsor, how

1 that amount because that's the work that has been
2 done and is being paid at that time?

3 THE WITNESS: Yes, sir.

4 MR. JAMES: Okay. It's not based on,
5 you know, work that's going to be done next month
6 or the next quarter or at the end of the payment
7 schedule?

8 THE WITNESS: No, sir.

9 MR. JAMES: Okay.

10 THE WITNESS: The offering memorandum
11 is not specific about that, but I --

12 MR. JAMES: Okay. And what's your
13 basis for that?

14 THE WITNESS: Because that's the way it
15 should be done.

16 MR. JAMES: Okay. And is that Mr.
17 Quiros's understanding, also?

18 THE WITNESS: Yes.

19 MR. JAMES: And do you know of anyone
20 that we --

21 THE WITNESS: I can't speak for Mr.
22 Quiros. I presume that's Mr. Quiros's
23 understanding.

24 MR. JAMES: Okay. Has he said anything
25 to suggest to you that he disagrees with --

1 you referred to that entity previously?

2 THE WITNESS: Yes, sir.

3 MR. JAMES: Okay.

4 And in this case, the sponsor is who?

5 THE WITNESS: AnC Bio Vermont, LLC.

6 MR. JAMES: Okay.

7 And looking at Section 5.1, the last
8 paragraph, is that the discussion about what we
9 just talked about, the thirty-two percent and
10 sixty-eight percent?

11 THE WITNESS: Yes, sir.

12 MR. JAMES: Okay.

13 And just in theory, your cost,
14 construction supervision fee that you collect or
15 that you bill for, in your understanding based on
16 the offering documents, that's earned by you once
17 the actual work is done?

18 THE WITNESS: That's correct. When the
19 supervision is completed, then it is billed.

20 MR. JAMES: Okay.

21 For example, when you receive an
22 invoice -- not you, but when an invoice for JCM
23 is paid for February 2013 and JCM is invoicing
24 for the work it did, that is covered in that
25 invoice. Your fifteen percent is only based on

1 THE WITNESS: No.

2 MR. JAMES: Okay.

3 What about anyone else that we've
4 talked about today, whether Mr. Stenger or anyone
5 else, Mr. Gulisano, is there anyone else as far
6 as you're aware of who disagrees with your
7 understanding that that's when the construction
8 supervision fees are earned, when the work is
9 actually performed and it's being paid for?

10 THE WITNESS: The construction
11 supervision fees are earned by the sponsor
12 company -- I don't know when the supervision fees
13 are earned by the sponsor company. That is
14 between the sponsor company and the limited
15 partners and governed by an offering memorandum
16 and the limited partnership agreement.

17 My understanding between NECS and the
18 sponsor company is that I will not bill for them
19 until that point, but I'm not speaking to any
20 understanding of the meeting of the minds of the
21 sponsor company, the general partner, or the
22 limited partnership company. I know that the
23 offering memorandum does not speak to that, but
24 in NECS, I do.

25 MR. JAMES: Okay.

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1 But as far as how you explain the
 2 structure of the transaction, if you will, you
 3 collect the construction supervision fees that,
 4 ultimately, goes to the sponsor?
 5 THE WITNESS: That's correct.
 6 MR. JAMES: Okay.
 7 So their payment is based on your
 8 understanding of how or when that fee is earned
 9 or at least when it should be paid?
 10 THE WITNESS: When it should be paid.
 11 MR. JAMES: Okay.
 12 So that's consistent with --
 13 THE WITNESS: I want to be careful with
 14 the word earned as much it should be paid.
 15 MR. JAMES: I agree.
 16 So from your understanding, the sponsor
 17 is being paid for its construction supervision
 18 portion at the same time NECS is being paid for
 19 its construction supervision percentage?
 20 THE WITNESS: Yes.
 21 MR. JAMES: Okay.
 22 And as far as the actual invoices
 23 themselves, and we may have discussed this, so
 24 for you to invoice for your construction
 25 supervision, you would need first to know what

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1 JCM is invoicing for, correct?
 2 THE WITNESS: Correct.
 3 MR. JAMES: I know we talked about
 4 there's a set schedule that identifies the
 5 amounts each month. And then using that schedule
 6 I'm assuming, but for the most part you still
 7 wait to see what JCM invoices?
 8 THE WITNESS: Correct.
 9 MR. JAMES: Okay.
 10 Because could it be different than the
 11 two point six or --
 12 THE WITNESS: Certainly.
 13 MR. JAMES: And as far as JCM's
 14 invoice, are you involved at all with their
 15 creation and preparation of their invoice?
 16 THE WITNESS: No.
 17 MR. JAMES: Okay.
 18 But you get it before it goes to Jay
 19 Peak Biomedical Research Park for payment,
 20 correct?
 21 THE WITNESS: Correct. There will be,
 22 for instance, at some date in the future, there
 23 will be not only JCM that will be being paid for
 24 work performed during that month. There will be
 25 -- that's a JCM contract. There will also be

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1 Peak CM construction contracts that will create
 2 additional fees, and those fees will be reflected
 3 in payments, too.
 4 MR. JAMES: Okay.
 5 And that's when you get into a
 6 construction stage?
 7 THE WITNESS: Correct.
 8 MR. JAMES: That's the construction
 9 build-out and fit-in?
 10 THE WITNESS: Yes, sir.
 11 MR. JAMES: And just so I completely
 12 understand, so you receive a JCM invoice for that
 13 time period, whether it's a month or what have
 14 you, and then based on that amount, you create
 15 your NECS invoice for the fifteen, twenty percent
 16 of JCM's invoice?
 17 THE WITNESS: Yes, sir.
 18 MR. JAMES: Okay.
 19 And then what do you know send into the
 20 CFO? Is it just those two invoices, or are you
 21 doing like a cover page? Are you --
 22 THE WITNESS: No. I'm sending -- I'm
 23 actually signing those invoices, both NECS's and
 24 JCM's. I'm signing that I have seen it and
 25 approved it.

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1 MR. JAMES: Okay.
 2 THE WITNESS: And then it goes on to
 3 the CFO.
 4 MR. JAMES: Okay.
 5 And then on the JCM approval, what's
 6 your basis for signing off in their invoice?
 7 THE WITNESS: Because I understand that
 8 that much money is being paid towards the
 9 procurement of those goods and services.
 10 MR. JAMES: Okay.
 11 And that understanding is from the
 12 actual agreement that lays out the schedule?
 13 THE WITNESS: Yes, sir.
 14 MR. JAMES: Okay.
 15 MS. LAMA: The agreement that we just
 16 went over?
 17 THE WITNESS: Yes, ma'am.
 18 MR. JAMES: Any other resources you
 19 look to to confirm that amount, and if it,
 20 basically, matches up with the schedule, then it
 21 coincides with what you expect to see?
 22 THE WITNESS: Yes. And if something
 23 were amiss between what's happening in a form
 24 prospective of these contracts and what's
 25 happened substantively in my day-to-day work on

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1 the project, that would trigger an exception.
 2 But without -- absent that trigger, yes.
 3 MS. LAMA: So then just to confirm, is
 4 the construction supervision fee then taken in
 5 accordance with the percentage of completion
 6 based on a measurement of actual progress?
 7 THE WITNESS: No. Percentage of
 8 payment.
 9 MS. LAMA: So the fee is taken as a
 10 percentage of the payment --
 11 THE WITNESS: Yes.
 12 MS. LAMA: -- or the -- for example,
 13 the two point six million monthly billing,
 14 there's no measurement of actual progress --
 15 THE WITNESS: That's correct.
 16 MS. LAMA: -- or delivery?
 17 THE WITNESS: That's correct. In the
 18 offering memorandum, there's provisions. This is
 19 why I say we must look at the difference between
 20 NECS's contract with the limited partnership and
 21 the offering memorandum that governs and the
 22 partnership agreement that govern the
 23 relationship between the limited partners and the
 24 project.
 25 The project says you can pay it at any

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1 point. There is no definition as to when you can
 2 pay it under the offering memorandum or the
 3 disclosures to the investors and their review of
 4 those disclosures.
 5 NECS chose, and I chose, in the
 6 drafting of this document in my agreement with
 7 the limited partnership that I would take those
 8 fees as a percentage of payment.
 9 So, no, there is no relationship
 10 between payment and completed operations, if you
 11 will, Michelle.
 12 MR. JAMES: So the two point six is a
 13 measure, as opposed to progress of actual
 14 construction of the project?
 15 THE WITNESS: Yes, sir. Albeit, not in
 16 absence of. I don't want to suggest that there
 17 is no review or supervision of the project. Of
 18 course, there is. But the measurement of the
 19 payment is the two point six being paid, the
 20 twenty percent being paid.
 21 I don't want to somehow relate the two
 22 together. There is, of course, performance under
 23 the contract. But payment under the contract is
 24 tied to a payment, not to a completed operations.
 25 MR. JAMES: So the schedule itself as

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1 these payments, isn't that -- doesn't that
 2 coincide with completion? Isn't the expectation
 3 that --
 4 THE WITNESS: When you were in
 5 construction, it would be. But when you're in
 6 ordering of equipment, it's not.
 7 Once we reach construction, we then
 8 reach -- we then move into that architectural
 9 sign off of completed operations. And, no, that
 10 vendor will not be paid until we have sign off,
 11 and, therefore, NECS will not be paid until
 12 they're paid.
 13 (SEC Exhibit No. 140 was
 14 marked for identification.)
 15 BY MS. FUCHS-SINDLER:
 16 **Q The Court Reporter has just marked as**
 17 **Exhibit No. 140 a document beginning with Bate**
 18 **ANCBIO-004304.**
 19 **Do you recognize this document?**
 20 MR. GORDON: Can I just point out that
 21 there is a page at the end that doesn't follow in
 22 sequence. Maybe you put it together
 23 intentionally. I just don't know that it looks
 24 like -- it doesn't seem to be a stand alone
 25 document based on the Bates stamp.

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1 MR. JAMES: Yeah. That last page is
 2 ANCBIO-004267. And the one that precedes it in
 3 this particular exhibit is 004306.
 4 MR. GORDON: I'm sorry. You mean to
 5 have the last page of the exhibit would be
 6 ANCBIO-004267?
 7 MR. JAMES: Yes.
 8 MR. GORDON: Okay.
 9 MR. JAMES: It's a composite exhibit.
 10 MR. GORDON: Okay.
 11 MR. JAMES: And, Mr. Kelly, if you
 12 could take a look at the composite exhibit, all
 13 the pages of the exhibit, and let me know if
 14 you've seen --
 15 THE WITNESS: I recognize this.
 16 MR. JAMES: Okay.
 17 How do you recognize it?
 18 THE WITNESS: This is a JCM invoice for
 19 funding for February 2013. I don't believe this
 20 was paid until March, but this was a February
 21 2013. This would've been the initial request.
 22 They're --
 23 MR. JAMES: That's a JCM invoice on
 24 that Bates number 4267?
 25 THE WITNESS: Yes.

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1 MR. JAMES: Okay. Continue.
 2 THE WITNESS: And the NECS invoice is
 3 on 004305.
 4 There are pages missing in this because
 5 there are additional invoices from construction
 6 companies, if I can recall, to the tune of
 7 ninety-nine thousand dollars, if I recall. There
 8 was about a hundred thousand dollars of
 9 construction invoices at this point that would've
 10 been attached to this.
 11 And so the combination of the two point
 12 six million from JCM and an additional invoice
 13 from the construction company would have resulted
 14 in the twenty percent tallying to five hundred
 15 thirty-eight zero three six. But five
 16 thirty-eight zero three six is not twenty percent
 17 of two point six million dollars. There are
 18 invoices missing here.
 19 MR. JAMES: Okay.
 20 So when you said there is a missing
 21 invoice, you mentioned the construction company's
 22 invoice?
 23 THE WITNESS: Yes, sir.
 24 MR. JAMES: Which company?
 25 THE WITNESS: Peak CM.

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1 MR. JAMES: So with this exhibit, your
 2 understanding is that what you submitted for
 3 payment included a third invoice?
 4 THE WITNESS: Yes, sir.
 5 MR. JAMES: Okay. And that's based on
 6 your memory, as well as the calculations --
 7 THE WITNESS: No. That's based on my
 8 memory.
 9 MR. JAMES: Okay.
 10 But also you just testified about the
 11 amount that you invoiced for construction
 12 supervision. You said that would be twenty
 13 percent of the JCM invoice, plus the missing
 14 invoice from Peak CM.
 15 THE WITNESS: Twenty percent of two
 16 point six million would be five hundred and
 17 something thousand, less than five thirty-eight.
 18 And I recall specifically that there's
 19 another invoice missing here, that this was --
 20 there were very few construction invoices, but
 21 there was a construction invoice at this point.
 22 MR. JAMES: And you prepared these
 23 invoices that you submitted to the CFO?
 24 THE WITNESS: I prepared the NECS
 25 invoice that was submitted. I signed off on the

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1 construction invoice, and I signed off on this
 2 JCM invoice.
 3 MR. JAMES: Do you know why there's not
 4 that third invoice from Peak CM? Do you know
 5 whether or not that was produced?
 6 THE WITNESS: It would have been part
 7 of this package. Why that was not produced to
 8 the SEC?
 9 MR. JAMES: But do you know either way
 10 whether it was or was not produced to the SEC?
 11 THE WITNESS: I don't know. I presumed
 12 it would be.
 13 MR. JAMES: Okay.
 14 BY MS. FUCHS-SINDLER:
 15 **Q Do you know who prepared the JCM**
 16 **invoice, the last page of this exhibit?**
 17 A I would presume that would've been the
 18 Accounting Department for JCM.
 19 **Q And who is that?**
 20 A The name is Ida Ovies, I believe.
 21 **Q Is there anyone else in the Accounting**
 22 **Department at JCM?**
 23 A No. At JCM's accounting would have
 24 been Ida. Again, that's the only one that I know
 25 of.

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1 **Q Is it your understanding that Ida has**
 2 **prepared invoices for JCM in the past?**
 3 A It's my understanding, yes.
 4 **Q And is that your understanding from**
 5 **Mr. Quiros?**
 6 A That's my understanding because I would
 7 call for invoices, and that's where they would
 8 come from.
 9 **Q And do you know when she prepared the**
 10 **invoice, what was the source of her information**
 11 **to prepare the invoice?**
 12 A I don't know that. I would presume it
 13 was the contract, but I don't know that.
 14 MR. JAMES: If I could turn your
 15 attention back to the NECS invoice on page number
 16 4305.
 17 THE WITNESS: Yes, sir.
 18 MR. JAMES: Maybe here it will show
 19 what we just talked about where in the reference
 20 box where it says, pay aps numbers one and two.
 21 THE WITNESS: Yes, sir.
 22 MR. JAMES: What does that refer to?
 23 THE WITNESS: This would've been -- my
 24 definition of pay ap would've been the JCM pay ap
 25 and the construction ap is one and two.

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1 MR. JAMES: Okay.
 2 So this is further evidence that there
 3 was --
 4 THE WITNESS: There was another invoice
 5 for those, yes. I can provide that to the SEC.
 6 MR. JAMES: Okay.
 7 If you turn to the first page of that
 8 Exhibit 140. Have you seen what appears to be a
 9 memo from Mr. George Gulisano, the financial
 10 person you referred to earlier, to Mr. Quiros
 11 asking to transfer funds? Have you seen this?
 12 THE WITNESS: Yes, sir.
 13 MR. JAMES: Okay.
 14 And tell me when you saw this, under
 15 what circumstances?
 16 THE WITNESS: These -- these are -- as
 17 I suggested, there are many sign offs before an
 18 invoice could be paid. This would be the -- this
 19 would be the transaction that would take place
 20 after the invoices were submitted to the CFO.
 21 They were then submitted to me for sign
 22 off. And once I sign them off, then George
 23 Gulisano, the CFO, the financial person, would
 24 request of the general partner authorization to
 25 pay.

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1 Once Mr. Gulisano received
 2 authorization to pay by the general partner, then
 3 the money would be moved from the general -- from
 4 the limited partner holding account to the
 5 limited partner operating account, and then Mr.
 6 Gulisano would've paid it.
 7 But this is asking for -- see, there's
 8 other pieces missing here. This says, "I have
 9 attached the authorization of the general
 10 partner, Bill Stenger, for this transaction, as
 11 well as the invoices to be paid."
 12 So this is the result of all of the
 13 transactions that take place resulting in the
 14 money being moved into the operating account.
 15 MR. JAMES: Okay.
 16 And based on what you're looking at,
 17 your belief is that this packet is also missing
 18 that authorization that's referenced as attached
 19 --
 20 THE WITNESS: Yes, sir. It says, "I
 21 have attached" -- I didn't see that, did I?
 22 Yeah. I did not see it here.
 23 MR. JAMES: And do you know whether or
 24 not that specific authorization was produced to
 25 the SEC?

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1 THE WITNESS: I don't know, but I know
 2 it exists.
 3 MR. JAMES: And then -- so, basically,
 4 you mentioned holding accounts and operating
 5 accounts in the limited partnership. If you look
 6 at paragraph one, is that the holding account,
 7 the Raymond James partnership account, and then
 8 the operating account is the People's Bank
 9 partnership account, limited partnership account?
 10 THE WITNESS: I believe so. And it's
 11 from the Jay Peak Biomedical Research Park
 12 Raymond James account to the Jay Peak LP People's
 13 Bank operating account. Yes, sir.
 14 MR. JAMES: Okay.
 15 So, basically, this first page of this
 16 Exhibit 140 is Mr. Gulisano, the CFO, basically,
 17 asking Mr. Quiros to execute the transfer of
 18 three point two five million dollars from the Jay
 19 Peak Biomedical Research Park limited partnership
 20 account at Raymond James to the Jay Peak
 21 Biomedical Research partnership limited account
 22 at People's Bank, correct?
 23 THE WITNESS: In Vermont, that's
 24 correct.
 25 MR. JAMES: Okay.

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1 And then this other authorization that
 2 we're missing, what would that say? What
 3 instructions would be in that authorization?
 4 THE WITNESS: That would -- that would
 5 be from Mr. Gulisano to the general partners
 6 saying, I have received the appropriate approvals
 7 for these invoices. Please authorize the
 8 movement of the funds or please authorize the
 9 payment of these invoices. So the general
 10 partner would sign as it is okay for the limited
 11 partner to make these payments.
 12 MR. JAMES: So the next step would be
 13 then that would actually occur, that transaction
 14 would be executed or authorized to be executed?
 15 THE WITNESS: Yes, sir. So there'd be
 16 an execution -- there would be an authorization
 17 by the general partner attached to this before it
 18 got to Mr. Quiros. Mr. Quiros would not move the
 19 funds without the authorization of the general
 20 partner to move the funds. That's the process.
 21 MR. JAMES: And do you know whether --
 22 I know we don't have that execution included in
 23 this composite. We'll seek to get that from Mr.
 24 Gordon after today, but do you know whether or
 25 not as we sit here today whether this three point

1 two five million was actually transferred to the
 2 operating account of the limited partnership at
 3 People's Bank?
 4 THE WITNESS: I would not be privileged
 5 to the information, but I -- I do know that the
 6 bills were paid, and the three point two five
 7 would be the result of the two point six million,
 8 the five hundred and thirty-eight, and the other
 9 hundred thousand that I recall is the
 10 construction -- the invoice missing here.
 11 MS. LAMA: And how do you know the
 12 bills were paid?
 13 THE WITNESS: Because I would have be
 14 having people all over me if they weren't. I
 15 have no indication from the general contractor
 16 that it wasn't paid. In fact, I have
 17 conversations, obviously, that he has been paid
 18 for that invoice. I know that I have been paid.
 19 And Mr. Quiros would know that JCM had been paid.
 20 (SEC Exhibit No. 141 was
 21 marked for identification.)
 22 BY MS. FUCHS-SINDLER:
 23 Q The Court Reporter has just marked as
 24 Exhibit No. 141 a one-page document, a memo to
 25 the attention of Joel Burstein, dated February

1 26th, 2013 regarding wire transfer.
 2 Do you recognize this document?
 3 A I do not.
 4 MR. JAMES: So you have not seen this
 5 before?
 6 THE WITNESS: No.
 7 MR. JAMES: Let me ask you a different
 8 question. You just testified about the different
 9 steps in the process of the request as far as the
 10 payment. At some point in time, would Mr. Quiros
 11 contact Raymond James and ask or authorize them
 12 to actually make that transfer from their Raymond
 13 James limited partnership account to the People's
 14 Bank limited partnership account?
 15 THE WITNESS: I would presume that
 16 would be right. I have no knowledge of that, but
 17 I presume.
 18 MR. JAMES: Okay.
 19 From you can tell of this document, and
 20 if you need to, take a look, give you time to
 21 read it, does it appear to be Mr. Quiros's
 22 authorization to Raymond James to make that
 23 transfer that we just saw that the CFO requested
 24 in Exhibit 140?
 25 THE WITNESS: Yes.

1 MR. JAMES: So on February 26th, 2013,
 2 Mr. Quiros, basically, authorized Joel Burstein
 3 at Raymond James to transfer three point two five
 4 million from the Jay Peak Biomedical Research
 5 Park LP account at Raymond James to the Jay Peak
 6 Biomedical Research Park LP account at People's
 7 Bank? Do you see that?
 8 THE WITNESS: Yes, sir. Yes, sir.
 9 MR. JAMES: And the reference says,
 10 "February funding for Jay Peak Biomedical
 11 Research Park LP."
 12 THE WITNESS: Yes.
 13 MR. JAMES: Okay.
 14 So based on this authorization, the
 15 money that's being transferred is specifically
 16 for the purposes of the February funding for Jay
 17 Peak Biomedical Research Park LP?
 18 THE WITNESS: That appears to be the
 19 case.
 20 MR. JAMES: Okay.
 21 Do you know Mr. Joel Burstein?
 22 THE WITNESS: I know of him. I do not
 23 know him.
 24 MR. JAMES: Okay. But have you met
 25 him?

1 THE WITNESS: I've met him once, yes.
 2 MR. JAMES: How many times have you met
 3 him?
 4 THE WITNESS: I've probably only met
 5 Mr. Burstein one time.
 6 MR. JAMES: One time?
 7 THE WITNESS: One time.
 8 MR. JAMES: Under what circumstances?
 9 THE WITNESS: A social engagement.
 10 BY MS. FUCHS-SINDLER:
 11 Q Have you spoken with him?
 12 A Only -- I've probably spoken with him
 13 two or three times maximum and really only on a
 14 social basis. I've never spoken with him about
 15 any of these accounts or any of the business
 16 between Mr. Quiros.
 17 MS. LAMA: Do you have any access to
 18 the Jay Peak Biomedical Research Park LP accounts
 19 at Raymond James?
 20 THE WITNESS: None.
 21 MS. LAMA: Do you have any access to
 22 any of the accounts at Raymond James?
 23 THE WITNESS: No, never.
 24 BY MS. FUCHS-SINDLER:
 25 Q Have you ever seen any of these

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1 **statements for the Jay Peak Biomedical Research**
 2 **Park at Raymond James?**
 3 A No.
 4 MS. LAMA: What about for the accounts
 5 at People's Bank?
 6 THE WITNESS: No. At one point -- no.
 7 BY MS. FUCHS-SINDLER:
 8 **Q What were you thinking of when you**
 9 **started saying at one point?**
 10 A The administration account at People's
 11 Bank, the administration funds are also held at
 12 People's Bank, which are funds that belong to the
 13 sponsor company. I don't know if at one time I
 14 was asked to review the activity in that account
 15 by Mr. Quiros, but I don't believe I have. That
 16 was my thought. I'm rarely asked to review bank
 17 accounts.
 18 MS. LAMA: Did you ever see any Jay
 19 Peak Biomedical -- I'm sorry, any bank records or
 20 bank statements from Jay Peak -- from People's
 21 Bank, pardon me, for any of the partnerships?
 22 THE WITNESS: No.
 23 BY MS. FUCHS-SINDLER:
 24 **Q We're showing you what was previously**
 25 **marked as Exhibit No. 4, a copy of a Raymond**

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1 **James statement from March of 2013 for Jay Peak**
 2 **Biomedical Research Park, AnC Bio Vermont GP.**
 3 **Do you recognize?**
 4 A No. I've never seen a Raymond James
 5 statement.
 6 MR. JAMES: But from what you can tell,
 7 it appears to be a statement for the Jay Peak
 8 Biomedical Research Park LP at the Raymond James
 9 for the period of February 28th through March
 10 28th, 2013? Do you see that?
 11 THE WITNESS: I do.
 12 MR. JAMES: Do you see the account
 13 number 54128224?
 14 THE WITNESS: I do.
 15 MR. JAMES: And if you turn back to
 16 Exhibit 141, you'll see that that's the same
 17 account number as requested on the authorization
 18 Mr. Quiros sent to Raymond James?
 19 THE WITNESS: I do.
 20 MR. JAMES: Okay.
 21 If you turn -- you're back on Exhibit
 22 No. 4. If you turn to page three of eight, and
 23 the numbers are in the bottom right-hand corner.
 24 THE WITNESS: Yes, sir.
 25 MR. JAMES: And in the middle of the

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1 page, there's withdrawals is the sub-heading and
 2 there's a March 8th, 2013 withdrawal.
 3 THE WITNESS: Yes, sir.
 4 MR. JAMES: And the description says,
 5 "Cash wired to Jay Peak Biomedical."
 6 THE WITNESS: Yes, sir.
 7 MR. JAMES: And if you keep going all
 8 the way to the right under the amount column, it
 9 has that three point two five million amount that
 10 we've been talking about?
 11 THE WITNESS: Yes.
 12 MR. JAMES: Okay.
 13 So based on Exhibit No. 41 -- 141 --
 14 sorry -- Exhibit No. 4, would you agree that it
 15 appears that that authorization that Mr. Quiros
 16 sent to Mr. Burstein in Exhibit No. 141 was
 17 actually executed as evidenced by the statement,
 18 Exhibit No. 4?
 19 THE WITNESS: It appears that way, yes.
 20 MR. JAMES: Okay.
 21 THE WITNESS: I testified earlier that
 22 this -- I recall that this payment was made in
 23 March. This appears that this was withdrawn in
 24 March.
 25 MR. JAMES: Okay. So you were correct.

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1 Let me now mark and show you the next
 2 exhibit.
 3 (SEC Exhibit No. 142 was
 4 marked for identification.)
 5 BY MS. FUCHS-SINDLER:
 6 **Q The Court Reporter has just marked as**
 7 **Exhibit No. 142 a document. It says, Statement**
 8 **Of Account. It's for Jay Peak Biomedical**
 9 **Research Park. And under that it says, William**
 10 **Stenger and Ariel Quiros.**
 11 **Do you recognize this document?**
 12 A I do not.
 13 MR. JAMES: Have you had a chance to
 14 flip through all of the pages of the document?
 15 THE WITNESS: No. I was simply trying
 16 to find out whose bank this was.
 17 MR. JAMES: Okay.
 18 THE WITNESS: It appears to be People's
 19 Bank. Okay.
 20 MR. JAMES: Do any of the pages look
 21 familiar to you?
 22 THE WITNESS: No, I've never seen this
 23 before.
 24 MR. JAMES: And let me ask you, in the
 25 first page of Exhibit 142, if you look in the

1 upper left corner where it says, Statement of
2 Account.
3 THE WITNESS: Yes, sir.
4 MR. JAMES: Do you see the digits that
5 follows, 6500346739?
6 THE WITNESS: Yes, sir.
7 MR. JAMES: Okay.
8 If you take a look back to Exhibit No.
9 141, an authorization that Mr. Quiros sent to
10 Raymond James asking that they transfer the three
11 point two five million, Exhibit 141. Do you see
12 that?
13 THE WITNESS: Yes, sir.
14 MR. JAMES: If you look in the body of
15 that memo where it says, Beneficiary account
16 number.
17 THE WITNESS: Yes, sir.
18 MR. JAMES: To the right of that you
19 will see 6500346739. Do you see that?
20 THE WITNESS: Yes, sir. Yes, sir.
21 MR. JAMES: Do you agree that that's
22 the same number that's reflected in Exhibit 142?
23 THE WITNESS: I do.
24 MR. JAMES: Okay.
25 If you go down to -- and I'm still on

1 Exhibit 142. If you go down to the March 8th
2 wire credit domestic three point two five. Do
3 you see that?
4 THE WITNESS: Yes, sir, I do.
5 MR. JAMES: Okay.
6 So based on Exhibit 142, it appears
7 that the three point two five was received by the
8 Jay Peak Biomedical Research Park LP account at
9 People's Bank?
10 THE WITNESS: Yes, sir.
11 MR. JAMES: Okay.
12 And then let me -- so what we
13 established thus far through your testimony and
14 the exhibits is that the invoices came in from
15 Jay Construction Management?
16 THE WITNESS: Yes, sir.
17 MR. JAMES: Okay.
18 And in addition to that, while it's not
19 included in our exhibit, you testified there was
20 also an additional exhibit from Peak CM for
21 ninety-nine thousand dollars as well?
22 THE WITNESS: Yes, sir.
23 MR. JAMES: Okay.
24 And in the case of the total of those
25 two amounts, you invoiced the partnership for

1 your twenty percent construction supervision fee?
2 THE WITNESS: Yes, sir.
3 MR. JAMES: Okay.
4 And the total was three point two five
5 million?
6 THE WITNESS: The total that was
7 invoiced by NECS was five hundred and
8 thirty-eight thousand. The total of all of those
9 invoices was something, I'm sure, just less than
10 three point two five million.
11 MR. JAMES: Okay.
12 And is it your practice to just round
13 out to a full number?
14 THE WITNESS: I've heard that. I don't
15 understand that, but I've heard that.
16 MR. JAMES: Okay.
17 So what we've seen is the packet that
18 you submitted to the CFO containing those three
19 invoices, ultimately, ended up with Quiros asking
20 for those amounts to be transferred and now we're
21 seeing Exhibit 142, but now you have the three
22 point two five million in the People's Bank
23 account for the limited partnership?
24 THE WITNESS: Yes, sir, it appears that
25 that is --

1 MR. JAMES: So the next step would be
2 now to let's pay these invoices, correct?
3 THE WITNESS: Yes, sir.
4 MR. JAMES: Okay.
5 Let's first start with the payment of
6 your invoice, NECS.
7 THE WITNESS: Yes, sir.
8 MR. JAMES: Did you -- and stick with
9 the same exhibit, 142. If you turn to -- I'm
10 going to use the Bates numbers on the lower left
11 corner. If you have the page under the landscape
12 direction. I'm not sure if that made sense. But
13 if you go to Bates number SEC-PUB-P-0001240.
14 It's almost all the way to the end, the second to
15 the last page.
16 THE WITNESS: Yes, sir.
17 MR. JAMES: Okay.
18 And if you go to the top where it says,
19 Wire transfer archive, and it goes across and
20 says, People's United Bank.
21 THE WITNESS: Yes, sir.
22 MR. JAMES: If you go down, there's an
23 amount for five hundred and thirty-eight thousand
24 and thirty-six dollars. Do you see that?
25 THE WITNESS: Oh, I see, under the

1 amount. Yes, sir.
 2 MR. JAMES: Okay.
 3 Read that for me just to make sure
 4 we're in the same place.
 5 THE WITNESS: Under one, two, three --
 6 fourth column in on this page, there is amount of
 7 five hundred and thirty-eight thousand, zero
 8 thirty-six dollars.
 9 MR. JAMES: Okay.
 10 And you can turn back to it, but do you
 11 recall the amount that you invoiced for? Do you
 12 recall exactly what it was? It's on Exhibit 140.
 13 THE WITNESS: Five hundred and
 14 thirty-eight thousand, zero thirty-six.
 15 MR. JAMES: So that's the amount that
 16 you invoiced for?
 17 THE WITNESS: Yes, sir.
 18 MR. JAMES: Okay.
 19 So based on this exhibit, particularly
 20 this payment, it appears that that amount that
 21 you invoiced for was actually transferred to
 22 NECS's bank account?
 23 THE WITNESS: Yes, sir.
 24 MR. JAMES: Okay.
 25 So you got paid your construction

1 supervision fee on the February 2013 invoices?
 2 THE WITNESS: Yes, sir. I might -- on
 3 page 1236, you will notice the three invoices in
 4 a row, two point six, five hundred and
 5 thirty-eight, then ninety thousand, one
 6 ninety-nine. That's the third invoice.
 7 MR. JAMES: Exactly. I was going to
 8 ask you that. Thank you for helping me
 9 along.
 10 Okay. So going back to -- sticking
 11 with that page you just showed me, so we have the
 12 three point two five coming in. Then we see the
 13 three invoices being paid. We just dealt with
 14 your five thirty-eight.
 15 THE WITNESS: Yes, sir.
 16 MR. JAMES: So if you want to go to the
 17 one above that, two point six. Which invoice is
 18 that that's being paid by the Jay Peak Biomedical
 19 Research Park People's Bank account?
 20 THE WITNESS: That would be JCM.
 21 MR. JAMES: Okay.
 22 THE WITNESS: Again, I'm presuming from
 23 what I see in front of me that's JCM.
 24 MR. JAMES: Okay. And that's based
 25 upon the amounts match up?

1 THE WITNESS: Yes, sir.
 2 MR. JAMES: Okay.
 3 And that ninety-one nine nine, although
 4 we haven't seen the invoices, that's the amount I
 5 think you just testified to that evidences the
 6 Peak CM invoice being paid?
 7 THE WITNESS: Yes, sir. If you look at
 8 page 1239 in your Bates stamp, you'll see that
 9 amount was paid to Peak CM, LLC.
 10 MR. JAMES: Exactly.
 11 And then just for completeness, if you
 12 turn to the last page, Bates 1241, you'll see the
 13 transfer of that two point six go into JCM. Do
 14 you see that?
 15 THE WITNESS: Yes, sir.
 16 MR. JAMES: Okay.
 17 So based on this, it appears that all
 18 three invoices were paid by the Jay Peak
 19 Biomedical Research Park limited partnership,
 20 correct?
 21 THE WITNESS: Yes, sir.
 22 MR. JAMES: And do you know whether or
 23 not the monies that are coming out of the
 24 People's Bank Jay Peak Biomedical Park limited
 25 partnership are investor funds?

1 THE WITNESS: Could you repeat that,
 2 please?
 3 MR. JAMES: Do you know whether this
 4 two point six, or the five thirty-eight, plus
 5 thousand, or the ninety thousand, do you know
 6 whether those amounts are funds that came from
 7 investors in the Jay Peak Biomedical Research
 8 Park limited partnership?
 9 THE WITNESS: Again, I don't touch
 10 banking documents, but from the discussions we
 11 have just had, the trail certainly appears to be
 12 the case. I have no reason to believe otherwise.
 13 MR. JAMES: Okay.
 14 MS. LAMA: And just a quick follow-up
 15 question on the payment that you received that we
 16 referred to a moment ago. Where does Northeast
 17 Contract Services have its bank accounts?
 18 THE WITNESS: People's -- People's Bank
 19 in Burlington.
 20 MS. LAMA: And how many accounts do you
 21 have at People's bank?
 22 THE WITNESS: One, one account.
 23 MS. LAMA: So Northeast has one account
 24 at People's Bank?
 25 THE WITNESS: Yes, ma'am. And that is

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1 referred to in my questionnaire.
 2 MS. LAMA: Okay. Thank you.
 3 So Northeast does not have accounts in
 4 any other bank?
 5 THE WITNESS: No, ma'am.
 6 MR. JAMES: And let me ask you a
 7 question similar to Michelle. So we have the
 8 five thirty-eight, plus that goes to NECS's bank
 9 account at People's Bank?
 10 THE WITNESS: Yes, sir.
 11 MR. JAMES: At that point in time, if
 12 we look at that bank, would we then see the
 13 sixty-eight percent of that amount then going out
 14 --
 15 THE WITNESS: Yes, sir.
 16 MR. JAMES: -- to the sponsor?
 17 THE WITNESS: Yes, sir.
 18 MR. JAMES: And do you do that
 19 immediately, or is it lime elapses, the month
 20 after?
 21 THE WITNESS: Within thirty days by
 22 contract, but I do it within probably five days.
 23 MR. JAMES: Okay.
 24 THE WITNESS: It's always done -- it's
 25 always done within a few days.

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1 MR. JAMES: Okay.
 2 And that account, what other monies
 3 comes into NECS's bank account?
 4 THE WITNESS: No other monies come into
 5 that account.
 6 MR. JAMES: So the monies that come in
 7 are --
 8 THE WITNESS: No other monies have come
 9 into that account. No other monies have come
 10 into that account.
 11 MR. JAMES: And then similar question
 12 while I have this exhibit -- oh, this one's
 13 already marked actually. Similar question. So
 14 we just talked about the monies that go from the
 15 partnership to NECS's bank account, and then the
 16 sixty-eight percent is then sent on to the
 17 sponsor for their construction supervision
 18 portion. Now the monies that are now going to
 19 pay the JCM invoice, once that gets to JCM, I
 20 think your testimony a short while ago in
 21 response to one of Michelle's questions is that
 22 at that point, JCM then passes on the entire
 23 amount to AnC Biopharm?
 24 THE WITNESS: I -- I don't know that.
 25 It appears from this pro forma invoice that I've

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1 been shown that the terms of the payment between
 2 JCM and AnC Biopharm are just that. I cannot
 3 testify as to whether that's actually done.
 4 MR. JAMES: Okay.
 5 MS. FUCHS-SINDLER: We're going to have
 6 to go off the record for a break at 4:22.
 7 (Whereupon, at 4:22 p.m., a short
 8 recess was taken.)
 9 (Ms. Fuchs-Sindler and Ms. Lama are not
 10 present in the room.)
 11 MR. JAMES: We're back on the record at
 12 4:34 p.m.
 13 And as we did earlier, I just want to
 14 confirm, Mr. Kelly, we did not have any
 15 discussions about the case during our last break;
 16 is that correct?
 17 THE WITNESS: That's correct.
 18 MR. JAMES: Okay.
 19 So when we broke, and if I'm off a
 20 little bit, just I apologize, but we were talking
 21 about the February 2013 invoices and the payments
 22 that started with the invoices, and then went
 23 through the whole process. And the monies are
 24 wired from the Jay Peak Biomedical LP account at
 25 People's Bank to pay the invoice from NECS. We

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1 saw that documented in the exhibits.
 2 Then we saw the amount that went to
 3 Peak CM for the ninety, plus thousand invoice.
 4 And then we were talking about the two point six
 5 million that went to JCM for that invoice.
 6 THE WITNESS: The documents appear to
 7 show that, yes.
 8 MR. JAMES: And then I had just asked
 9 you about the JCM invoice, that once they
 10 received payment, that they then paid AnC
 11 Biopharm on that same invoice?
 12 THE WITNESS: Yes, sir, the documents
 13 appear to show that as well.
 14 MR. JAMES: Okay.
 15 And based on the documents, it says
 16 that the dollar to dollar payment, that if they
 17 collect two point six million from the limited
 18 partnership, they, in turn, pay two point six
 19 million to AnC Biopharm.
 20 THE WITNESS: Yes, sir. And that was
 21 the intent as well.
 22 MR. JAMES: Okay.
 23 Let me show you what has been marked
 24 previously as Exhibit No. 5. And I'll have a
 25 copy for Mr. Gordon.

1 MR. GORDON: Thank you.
 2 MR. JAMES: Have you seen what has been
 3 previously marked as Exhibit 5 before?
 4 THE WITNESS: No, I have not.
 5 MR. JAMES: Okay.
 6 And let me just give a review of it,
 7 and you tell me whether or not that appears to
 8 your impressions, also. It appears to be a
 9 Raymond James statement for account holder Jay
 10 Construction Management, Inc. for the period of
 11 February 28th to March 28th, 2013, account number
 12 [REDACTED] 174. Do you see that?
 13 THE WITNESS: Yes, sir.
 14 MR. JAMES: Okay.
 15 And Jay Construction Management, Inc.,
 16 that's JCM, correct?
 17 THE WITNESS: Yes, sir.
 18 MR. JAMES: Okay.
 19 So have you ever seen a Jay
 20 Construction Management statement for their
 21 Raymond James account?
 22 THE WITNESS: No, sir.
 23 MR. JAMES: Okay.
 24 So you don't have access to those
 25 accounts?

1 THE WITNESS: No, sir.
 2 MR. JAMES: Okay.
 3 But you've seen statements before in
 4 general, whether it's Jay Construction Management
 5 or some other entity?
 6 THE WITNESS: I've seen bank statements
 7 before, yes, but never Raymond James statements.
 8 MR. JAMES: Okay.
 9 So with Exhibit 5, if you could turn to
 10 the second page where the sub-heading is, Your
 11 Activity. If you go down, you'll see there's a
 12 March 11th, 2013 cash receipt. It says, Wire
 13 from People's United, and the amount is two point
 14 six million. Do you see that?
 15 THE WITNESS: Yes, sir.
 16 MR. JAMES: Okay.
 17 Based on this statement accepting that
 18 it is a Raymond James statement for JCM's bank
 19 account, does this appear to be the receipt of
 20 the two point six million that was transferred
 21 from Jay Peak Biomcdical Research Park LP's
 22 People's Bank account?
 23 THE WITNESS: Yes, sir, it appears to
 24 be.
 25 MR. JAMES: And this is in payment of

1 that two point six million invoice that you
 2 submitted on behalf of JCM?
 3 THE WITNESS: That JCM submitted --
 4 MR. JAMES: Through you?
 5 THE WITNESS: Through me, yes, sir.
 6 MR. JAMES: And then based on what
 7 we've discussed through your testimony and the
 8 documents, what should happen next is that we
 9 should now see this two point six now -- and when
 10 I say now, I don't mean immediately or the next
 11 day, but that we should now see some evidence
 12 subsequently of that two point six going from the
 13 JCM bank account to AnC Biopharm?
 14 THE WITNESS: The contract would call
 15 for that, but I have no knowledge of that, but it
 16 appears the contract you showed me calls for that
 17 to happen, yes, sir.
 18 MR. JAMES: Okay.
 19 So what we're looking at, that March
 20 11th wire from People's for two point six
 21 million, that's in the deposit row. Do you see
 22 that, the sub-heading, Deposits?
 23 THE WITNESS: Yes, sir. Yes, sir.
 24 MR. JAMES: If you go down, you see,
 25 Income, and then you go down further, you see,

1 Withdrawals. Do you see that?
 2 THE WITNESS: Yes, sir.
 3 MR. JAMES: Okay.
 4 So just follow me, let's see if we can
 5 find that two point six million going out. So we
 6 see a bunch of withdrawals on March 11th, 2013,
 7 and the amounts do not seem to coincide.
 8 If you turn to the next page, page
 9 three of ten, if you see about a third down, do
 10 you see a March 11th, 2013 withdrawal cash
 11 description says, Wire to AnC Biopharm for two
 12 million? Do you see that?
 13 THE WITNESS: Yes, sir.
 14 (Ms. Fuchs-Sindler and Ms. Lama enter
 15 the room.)
 16 MR. JAMES: Okay.
 17 Does that appear to you to be a payment
 18 from JCM to AnC Biopharm based on the
 19 descriptions in the document?
 20 THE WITNESS: It appears to be, yes,
 21 sir.
 22 MR. JAMES: But my question now to you,
 23 I mean, if you know, so we talked about the
 24 dollar to dollar amounts that comes into JCM and
 25 then goes out to AnC Biopharm?

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1 THE WITNESS: Yes, sir.
 2 MR. JAMES: In this instance -- and
 3 we'll continue with the statements. In this
 4 instance, what we've seen so far is that two
 5 point six million did come in in payment of that
 6 two point six million dollar invoice, but so far,
 7 we've only seen two million go out to AnC
 8 Biopharm; is that correct?
 9 THE WITNESS: Yes, sir.
 10 MR. JAMES: Okay.
 11 So let me just ask you to -- and as you
 12 sit here today without looking at the statement,
 13 do you know whether or not that additional six
 14 million was actually paid -- six hundred
 15 thousand, sorry, was actually paid to AnC
 16 Biopharm?
 17 THE WITNESS: I would have no knowledge
 18 of that.
 19 MR. JAMES: Okay.
 20 So let's -- we'll continue through this
 21 statement and let's see if we see any other
 22 entries that have a similar description or any
 23 reference to AnC Biopharm.
 24 So as we go down the same page, I don't
 25 see any, but if you catch one, just let us know.

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1 So do you agree that there's no other wires out
 2 to AnC Biopharm on page three of ten?
 3 THE WITNESS: One second, please.
 4 MR. JAMES: Sure. Take your time.
 5 THE WITNESS: I don't see any other
 6 wires that are apparent to me to be to AnC
 7 Biopharm on this statement.
 8 MR. JAMES: Okay.
 9 Did you flip through the additional
 10 pages?
 11 THE WITNESS: I did.
 12 MR. JAMES: Okay.
 13 Let me -- and, again, this -- I'm going
 14 to hand you -- and, again, I know your testimony
 15 was that specifically to the NECS invoices and
 16 the amounts that -- the sixty-eight percent that
 17 goes to the sponsor, you said, you know, you
 18 typically do it the next day, but you have thirty
 19 days do that?
 20 THE WITNESS: Yes, sir.
 21 MR. JAMES: Okay.
 22 In the instance of the money that JCM
 23 receives that is then supposed to go AnC
 24 Biopharm, do you know whether that could be done
 25 the next day, within thirty days, sixty days?

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1 Any sense of what's the requirements on those
 2 payments?
 3 THE WITNESS: I have no knowledge,
 4 other than the contract that you showed me, the
 5 pro forma invoice that you showed me, Exhibit 89,
 6 says, Shall be transferred to the beneficiary by
 7 the end date of each month.
 8 MR. JAMES: Of each month. Okay.
 9 So we just looked at the February 28th
 10 to March 28th statement, and we did not see that
 11 additional six hundred thousand being
 12 transferred, and that's Exhibit 5?
 13 THE WITNESS: That's correct.
 14 MR. JAMES: Okay.
 15 So just for completeness, let me show
 16 you the following months, and we can do the same
 17 exercise just to make sure, and it's pretty
 18 thick, but, again, it's easy to flip through.
 19 MR. GORDON: Do you have work privilege
 20 issue you want to discuss?
 21 THE WITNESS: No. I have a question.
 22 The absence of them here doesn't mean it wasn't
 23 done.
 24 MR. GORDON: Say it on the record.
 25 MR. JAMES: I'm going to mark for you

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1 the next exhibit. As I said before, it's the
 2 following months statements for the JCM account
 3 at Raymond James.
 4 (SEC Exhibit no. 143 was
 5 marked for identification.)
 6 MS. FUCHS-SINDLER: So I'm now handing
 7 you what's just been marked as Exhibit No. 143,
 8 the Raymond James account statement for April
 9 2013 for Jay Construction Management.
 10 MR. JAMES: And just for completeness,
 11 it's a composite exhibit that includes the April
 12 2013 statement for JCM, the May 2013 statement
 13 for JCM, the June 2013 statement for JCM, the
 14 July 2013 statement for JCM, August 2013
 15 statement for JCM, September 2013 statement for
 16 JCM, November, December 2013 statements for JCM,
 17 and then the January 2014 statement for JCM.
 18 MS. LAMA: October 2013 is also
 19 included.
 20 MR. JAMES: Oh, I missed that one?
 21 THE WITNESS: So this is a composite?
 22 MR. GORDON: Do you have a copy?
 23 MR. JAMES: Yes.
 24 THE WITNESS: I don't appear to see
 25 where one statement ends and the next begins.

1 MR. JAMES: Yeah, it's not divided by a
2 marker. It's kind of you reach the end, and then
3 you go to the begin.

4 THE WITNESS: Okay.

5 MR. JAMES: But if you want, you can
6 take your time and flip through carefully, or you
7 can accept my representation that it's the
8 statements for that time period from April 2013
9 through January 2014.

10 THE WITNESS: I don't understand why I
11 don't see other pages that look like this page
12 for the other months. Maybe I'm just missing
13 them.

14 MR. JAMES: I'll help you with Bates
15 numbers.

16 MS. LAMA: And I can also help you
17 answer your last question. It looks like the
18 format of the statement was changed.

19 THE WITNESS: Okay. That would explain
20 it. So let me just separate these into the
21 months that we're talking about.

22 MR. JAMES: Let's start with April
23 2013, May 2013 starts on Bates number 4646.

24 THE WITNESS: Okay.

25 MR. JAMES: What we'll do is --

1 obviously, the question is: Do you see any
2 entries in any of these statements suggesting
3 that that additional six hundred thousand was
4 actually wired out to AnC Biopharm? And to do
5 that, we could just go through the withdrawals
6 and look for that entry similar to what we saw
7 before where it says, Wire to AnC Biopharm, or we
8 can look for the amount of six hundred thousand.

9 THE WITNESS: I could look, but I see
10 --

11 MR. JAMES: And then just so -- I'm
12 sorry, or if you see any other indication to you
13 that that entry reflects that amount or a portion
14 of that amount going to AnC Biopharm.

15 And if you could let me know once
16 you're finished with the May 2013 statement, and
17 then we'll continue from there.

18 THE WITNESS: Okay.

19 The May 31st to June 28th, Mr. James?

20 MR. JAMES: You can stop there. So
21 you've reviewed the April 2013 and the May 2013.
22 So you've reviewed the composite exhibit up to
23 that point in time, the June 2013 statement,
24 correct?

25 THE WITNESS: April 30th up to May

1 31st, I renewed.

2 MR. JAMES: Okay.

3 So -- and I think based on the contract
4 terms, I think your testimony is that that amount
5 that JCM invoices is supposed to be paid to AnC
6 Biopharm within thirty days of receipt, is what
7 we saw?

8 THE WITNESS: I see by your Exhibit 89
9 that there is language in the contract that would
10 call for payments to be made to AnC Biopharm
11 within thirty days of JCM's receipt of the funds,
12 and I've reviewed two of your months -- or three
13 of your months of activity of the Raymond James
14 account. And, although, I don't think my review
15 of those accounts conclude that they were not
16 paid, I don't see anywhere in those accounts
17 where they were.

18 MR. JAMES: And that's the question.

19 THE WITNESS: Yes, sir.

20 MR. JAMES: And so your understanding,
21 whether personally or through someone else, is
22 there other ways that the amounts could be paid
23 to AnC Biopharm?

24 THE WITNESS: I have no -- I have no
25 knowledge of that. I mean, it -- well, of

1 course, there could be. I don't know what they
2 would be. I have no knowledge of that.

3 MR. JAMES: Are you aware of any other
4 means that that six hundred thousand would've
5 been paid to AnC Biopharm by JCM, other than
6 through its bank account, whether or not you're
7 aware of any?

8 THE WITNESS: I'm not aware of any
9 other. I don't know that. And I don't know if
10 there are other accounts either.

11 MR. JAMES: Okay.

12 But what we do know is that the two
13 point six was transferred to that account, the
14 JCM account?

15 THE WITNESS: Yes, sir.

16 MR. JAMES: Okay.

17 So we saw that come in and we only saw
18 two million going out to AnC Biopharm directly?

19 THE WITNESS: Yes, sir.

20 MR. JAMES: Okay.

21 THE WITNESS: But I believe I saw other
22 fees going out of this account to other JCM
23 accounts, I thought.

24 MR. JAMES: Okay. Tell me where you
25 see it. Do you have a particular line that you

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1 recall, or --
2 THE WITNESS: On 4/15/2013, there was a
3 wire to Jay Construction of three million.
4 MR. JAMES: What Bates number?
5 THE WITNESS: 004639. And I have no
6 knowledge of what that is.
7 MR. JAMES: You said 4639?
8 THE WITNESS: Yes, sir, 004639.
9 MR. JAMES: Okay.
10 And what would be your suggestion of
11 that entry?
12 THE WITNESS: I don't have a
13 suggestion. My question is -- your question to me
14 was: Do I have any indication that this money
15 was or was not paid based on these documents to
16 AnC Biopharm? And I cannot conclude from my
17 review of these documents that it was or was not
18 paid.
19 I do not see a wire transfer to AnC
20 Biopharm for the six hundred thousand dollars,
21 but nothing by my review of these documents would
22 ever conclude that it wasn't done based on that.
23 MR. JAMES: Okay. But the documents --
24 THE WITNESS: But I do not see that
25 here.

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1 MR. JAMES: Okay. Perfect.
2 Let me now show you --
3 MR. GORDON: I'm sorry. Are you asking
4 him to stop, though, at a particular date?
5 Because I think he hadn't looked through the
6 entire exhibit.
7 MR. JAMES: Yeah, I did ask him to stop
8 before he got to June 2013.
9 MR. GORDON: Okay. I just want to make
10 sure.
11 MR. JAMES: Yeah.
12 MR. GORDON: Okay.
13 MR. JAMES: And we'll continue. I just
14 wanted to show another exhibit before we continue
15 on with June 2013.
16 (SEC Exhibit No. 144 was
17 marked for identification.)
18 MS. FUCHS-SINDLER: The Court Reporter
19 has just marked as Exhibit 144 a composite
20 exhibit. The first page is ANCBIO-004381
21 regarding payments that are due. And the memo's,
22 dated June 18th, 2013.
23 MR. JAMES: Let me ask you to flip
24 through different pages of Exhibit 144.
25 THE WITNESS: Yes, sir.

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1 MR. JAMES: And just my initial
2 question, does this appear to be a similar
3 payment packet as to the one we looked at for
4 February 2013?
5 THE WITNESS: Yes, sir, except this is
6 from all four months.
7 MR. JAMES: Okay. And what months?
8 THE WITNESS: This is for the --
9 MR. JAMES: Is it March 2013, April
10 2013?
11 THE WITNESS: This is for March, April,
12 May, and June of 2013.
13 MR. JAMES: Okay.
14 So we've already looked at February?
15 THE WITNESS: Yes, sir.
16 MR. JAMES: And now we're looking at
17 the next four months?
18 THE WITNESS: Yes.
19 MR. JAMES: Obviously, you just
20 testified about the earlier packet and some of
21 these are the same documents. So from an invoice
22 standpoint, this packet contains invoices from
23 your entity, Northeast Construction Services,
24 correct?
25 THE WITNESS: Yes, sir.

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1 MR. JAMES: Okay.
2 And it contains an invoice for March,
3 an invoice for April, an invoice for May, an
4 invoice of June --
5 THE WITNESS: Yes, sir.
6 MR. JAMES: -- in the amount of five
7 hundred and twenty thousand dollars, correct?
8 THE WITNESS: Yes, sir.
9 MR. JAMES: Okay.
10 For construction supervision services?
11 THE WITNESS: Yes, sir.
12 MR. JAMES: Okay.
13 And that amount for each month, the
14 five twenty, that's based on the JCM invoices,
15 and if you could turn to those, the packet
16 includes a JCM invoice for March 2013, April
17 2013, May 2013, and June 2013, correct?
18 THE WITNESS: Yes, sir.
19 MR. JAMES: And each of those are in
20 the amount of two point six million each?
21 THE WITNESS: Yes, sir.
22 MR. JAMES: And the description is,
23 Architectural engineering fees and deposits for
24 equipment?
25 THE WITNESS: Yes, sir.

1 MR. JAMES: Okay.
 2 So the JCM invoices amount is what you
 3 based your construction supervision percentages
 4 off of?
 5 THE WITNESS: Yes, sir.
 6 MR. JAMES: And as you testified
 7 before, you create your invoice based on JCM's
 8 invoice, you look at JCM's invoice and approve
 9 it, and then you send it to CFO, and then that
 10 starts the process of getting these transactions
 11 executed?
 12 THE WITNESS: Yes, sir.
 13 MR. JAMES: Okay.
 14 If you go back to the first page, this
 15 page is different. It's in addition to what we
 16 saw in the February 2013 packet, correct?
 17 THE WITNESS: This is the page that was
 18 missing or not attached.
 19 MR. JAMES: Exactly.
 20 THE WITNESS: This is the form of the
 21 page that was not attached. There were two pages
 22 not attached in my belief to the first package.
 23 MR. JAMES: Okay.
 24 THE WITNESS: One was the general
 25 partner's authorization, and the second one was a

1 ninety thousand, one ninety-nine invoice from
 2 Peak CM.
 3 MR. JAMES: Okay.
 4 THE WITNESS: This is a representative
 5 of the page that was missing by the general
 6 partner's authorization, yes, sir.
 7 MR. JAMES: And in this instance, it
 8 comes from the general partner of the Jay Peak
 9 Biomedical Research Park LP, AnC Bio Vermont GP
 10 Services, LLC, as indicated on Exhibit 144,
 11 correct?
 12 THE WITNESS: Yes, sir.
 13 MR. JAMES: And it is June 18th, 2013?
 14 THE WITNESS: Yes, sir.
 15 MR. JAMES: And as we said, pursuant to
 16 contracts between Jay Peak Biomedical Research
 17 Park, and Northeast Construction Services, and
 18 Peak CM, and Jay Construction Management, Inc.,
 19 and it goes on, "Further detail in the offering
 20 memorandum published by that limited partnership
 21 in December 2012." And then it goes on to list
 22 each of those invoice totals, and then it rounds
 23 it up to a whole dollar amount, correct?
 24 THE WITNESS: Yes, sir.
 25 MR. JAMES: And that whole dollar

1 amount is twelve point five six million, correct?
 2 THE WITNESS: Yes, sir.
 3 MR. JAMES: Okay.
 4 And that's comprised loosely of the ten
 5 point four million for JCM invoices and the total
 6 of two point one, plus million for Northeast
 7 Contract Services invoices, correct?
 8 THE WITNESS: Yes, sir.
 9 MR. JAMES: Okay.
 10 So what we will now see is -- or what
 11 we should now see, based on what we saw with the
 12 earlier exhibit from February 2013, we should now
 13 see for bank statements these monies being
 14 transferred from Jay Peak Biomedical LP account
 15 at Raymond James to the Jay Peak Biomedical
 16 Research Park account at People's Bank, correct?
 17 THE WITNESS: Yes, sir.
 18 MR. JAMES: And then we should see
 19 those amounts going from that Jay Peak Biomedical
 20 Research Park LP's account at People's Bank first
 21 to NECS's account at People's Bank, correct?
 22 THE WITNESS: Yes, sir.
 23 MR. JAMES: And then we should expect
 24 to see that ten point four million going from
 25 that same Jay Peak Biomedical Research Park LP's

1 People's Bank account to JCM's bank account,
 2 correct?
 3 THE WITNESS: Yes, sir.
 4 MR. JAMES: Okay.
 5 And then based on the documents and
 6 testimony we just developed, we should then see
 7 on your account the sixty-eight percent going to
 8 the sponsor?
 9 THE WITNESS: Yes, sir.
 10 MR. JAMES: Okay.
 11 And then likewise, we should see in the
 12 JCM account that dollar to dollar amount, the ten
 13 point four million going to AnC Biopharm?
 14 THE WITNESS: Based upon the documents
 15 I see.
 16 MR. JAMES: Yes.
 17 THE WITNESS: But, again, I have no
 18 knowledge of that transaction.
 19 MR. JAMES: Okay. I'm talking about
 20 just as far the structure --
 21 THE WITNESS: Yes, sir.
 22 MR. JAMES: -- of the transaction --
 23 THE WITNESS: Yes, sir.
 24 MR. JAMES: -- of the invoice to
 25 ultimate payment, that's the path that we expect

1 to see?

2 THE WITNESS: Yes, sir.

3 MR. JAMES: Okay.

4 And, again, I'm moving through these

5 quickly just so we can understand the structure.

6 So let me mark for you the next

7 exhibit. And, again, the amount we're talking

8 about is that twelve point five six million.

9 THE WITNESS: Yes, sir.

10 (SEC Exhibit No. 145 was

11 marked for identification.)

12 BY MS. FUCHS-SINDLER:

13 **Q Okay. I'm handing you what's been**

14 **marked as Exhibit No. 145. It's a one-page**

15 **document Bates stamped RJQUIROS-009948, a**

16 **transfer request. It appears to be from Mr.**

17 **Quiros to Mr. Burstein, dated June 18th, 2013.**

18 **Do you recognize this document?**

19 A No, I do not.

20 MR. JAMES: And -- but do you agree

21 that this appears to be another document that we

22 looked at earlier that shows Mr. Quiros

23 authorizing Raymond James to transfer that

24 amount, the twelve point five six million, from

25 the Raymond James LP account to the People's Bank

1 LP account?

2 THE WITNESS: It appears to be that,

3 yes.

4 MR. JAMES: Okay.

5 So based on this, we see the

6 authorization goes to Raymond James, so next we

7 should see that wire actually occurring, that

8 twelve point five six going from Raymond James to

9 People's for Jay Peak Biomedical Research Park.

10 Let me mark the next exhibit.

11 (SEC Exhibit No. 146 was

12 marked for identification.)

13 MS. FUCHS-SINDLER: The Court Reporter

14 has just marked as Exhibit No. 146 a copy of a

15 multiple-page document of Jay Peak Biomedical

16 Research Park, AnC Bio Vermont. Copies of

17 Raymond James statements.

18 MR. JAMES: Do you have exhibit 146 in

19 front of you, Mr. Kelly?

20 THE WITNESS: I do.

21 MR. JAMES: And, again, this is based

22 on the overview I just gave. This is that

23 statement from Raymond James for the LP account.

24 If you turn to the pages Bates number

25 005479, the bottom right-hand corner, 5479. Let

1 me when you're there.

2 THE WITNESS: Yes, I'm there.

3 MR. JAMES: Okay.

4 If you look probably the second -- the

5 first -- the second entry under, Active Detail,

6 you'll see on June 19th, 2013, there's a

7 withdrawal from this Raymond James account for --

8 it's Raymond James account of twelve point five

9 six million. Do you see that?

10 THE WITNESS: Yes, sir.

11 MR. JAMES: It goes all the way across

12 to additional detail and says, Wire to People's?

13 THE WITNESS: Yes, sir.

14 MR. JAMES: Okay.

15 And that's that same figure we just

16 saw, an authorization from Mr. Quiros to Raymond

17 James?

18 THE WITNESS: Yes, sir.

19 MR. JAMES: So based on that, now we

20 know the twelve point five six million that

21 represents the two invoice -- sorry, the invoice

22 packet for June 2013, that that amount, total

23 twelve point five six, and as far as what the

24 documents have shown thus far, that money's now

25 in the People's Bank account for the Jay Peak

1 Biomedical Research Park LP?

2 THE WITNESS: It appears that way, yes,

3 sir.

4 MR. JAMES: And just to confirm that,

5 let me know you the next exhibit. And this --

6 (SEC Exhibit No. 147 was

7 marked for identification.)

8 MS. FUCHS-SINDLER: Okay. I'm showing

9 you what's just been marked as Exhibit No. 147.

10 MR. JAMES: And you do recognize this

11 as the statement for the account activity for the

12 Jay Peak Biomedical Research Park LP account at

13 People's Bank, and if you go down in the first

14 page, second to last entry says, 06-19?

15 THE WITNESS: Yes, sir.

16 MR. JAMES: And it shows twelve point

17 five six million coming into this account,

18 correct? Do you see that?

19 THE WITNESS: Yes, sir.

20 MR. JAMES: Okay.

21 Do you also see -- so now we've

22 established the money has come in to the Jay Peak

23 Biomedical Research Park LP account at People's

24 Bank. And right under that, do you see ten point

25 four million going out the next day on June 20th?

1 THE WITNESS: Yes, sir.
 2 MR. JAMES: Okay.
 3 So we see the money comes in, and then
 4 we see the portion that represents the four
 5 months of JCM invoices, that ten point four
 6 million, that's now going out?
 7 THE WITNESS: Yes, sir.
 8 MR. JAMES: Okay.
 9 And like we did before with the
 10 February 2013, if you turn to the second to last
 11 page, 5080, and then the last page is 5081,
 12 you'll see that individual wire that's at twelve
 13 point five six coming in, and then -- yeah,
 14 that's it. Do you see the twelve point five six
 15 coming in?
 16 THE WITNESS: Yes, sir.
 17 MR. JAMES: Okay.
 18 So now if you could go back to Exhibit
 19 143, which is that composite.
 20 THE WITNESS: Yes, sir.
 21 MR. JAMES: If we turn to June 2013
 22 statement. And if you recall, we left off after
 23 the May 2013 statement. So June 2013 was the
 24 next month.
 25 THE WITNESS: The next month I have is

1 April 30th to May 31st.
 2 MR. JAMES: But that one, you've looked
 3 at already. If you keep flipping, you'll see the
 4 statement for June.
 5 THE WITNESS: I have not looked at that
 6 one, but I can now. Would you like me to review
 7 that statement? I have not reviewed that
 8 statement today.
 9 MR. JAMES: And when you say that one
 10 --
 11 THE WITNESS: The April 30th to May
 12 31st, 2013, I have not reviewed yet. I stopped
 13 at the previous one, unless this is more of the
 14 same. I reviewed March 28th to April 30th.
 15 MR. JAMES: Okay. We'll come back to
 16 it. Let me turn your attention to June 2013.
 17 (Ms. Lama leaves the room.)
 18 THE WITNESS: May 31st to June 2013?
 19 MR. JAMES: Exactly.
 20 THE WITNESS: Yes, sir.
 21 MR. JAMES: And if you go to -- bear
 22 with me. And if you go to Bates number 4668,
 23 and, again, that's in the -- located in the lower
 24 right-hand corner, 4668.
 25 THE WITNESS: Yes, sir.

1 MR. JAMES: And, again, we're looking
 2 at JCM's bank statements for that Raymond James
 3 account. So if you're on Exhibit 143, Bates
 4 number 4668 page, you'll see in the activity
 5 detail mid-section, there's a June 20th, 2013
 6 cash receipt by this JCM account for ten point
 7 four million. Do you see that?
 8 THE WITNESS: Yes, sir.
 9 MR. JAMES: If you go all the way to
 10 additional detail, it says, Wire from People's
 11 United Bank.
 12 THE WITNESS: Yes, sir.
 13 MR. JAMES: Okay.
 14 So what we have established up to this
 15 point is that the ten point four million that JCM
 16 invoiced for that you approved and calculated
 17 your construction supervision fees on was,
 18 ultimately, paid by the limited partnership on
 19 June 20th, 2013, ten point four million?
 20 THE WITNESS: It appears to be true,
 21 yes, sir.
 22 MR. JAMES: So what we should see,
 23 based on the contract and the documents we
 24 reviewed, we should now see ten point four
 25 million going out to -- you tell me -- AnC

1 Biopharm. That's what we should expect to see,
 2 right?
 3 THE WITNESS: The terms of the contract
 4 provide for that, yes, sir.
 5 MR. JAMES: Yeah.
 6 And under the contract says thirty
 7 days. So let's flip through, and if you go to --
 8 and, again, the question is: Can you identify
 9 for me on the statement any amounts going -- of
 10 that ten point four million going out to AnC
 11 Biopharm, whether as a whole amount or whether as
 12 a lesser amount? Let's see what we could locate.
 13 So I didn't see any for June that said,
 14 Wire to AnC Biopharm. Let me see if you see any.
 15 And it wouldn't be in March because you get the
 16 invoices and payment is received by JCM in June,
 17 so whatever amounts they pay out to AnC Biopharm
 18 would follow that date?
 19 THE WITNESS: Yes, sir.
 20 MR. JAMES: Let's look at the June.
 21 And I'm on to July, but I'll let you know, if I
 22 see any.
 23 (Ms. Lama enters the room.)
 24 MR. JAMES: I'm on July now, so let me
 25 know when you catch up to me.

1 THE WITNESS: I'm on July to August
2 30th, July 30th to August 30th.
3 MR. JAMES: Do you see any yet?
4 Because I just looked at one on July 12th, 2013,
5 Bates number 4680, there's a five hundred
6 thousand dollar wire to AnC Biopharm.
7 THE WITNESS: I don't see 4680 in my
8 Bates numbers anywhere.
9 MR. JAMES: You don't? Where are you
10 on there?
11 THE WITNESS: I'm on July 31st to
12 August 30th.
13 MR. JAMES: Okay. No. June 28th to
14 July 31st. Go back to Bates number 4680.
15 THE WITNESS: That's scary. That means
16 I missed one.
17 MR. JAMES: Well, there's a lot.
18 THE WITNESS: 4680?
19 MR. JAMES: Yes.
20 THE WITNESS: Yes, sir.
21 MR. JAMES: Okay.
22 That one is five hundred thousand, and
23 do you see the wire to AnC Biopharm, Inc.?
24 THE WITNESS: I do.
25 MR. JAMES: Okay.

1 So -- and this is -- it's the next
2 month, so it's still within those thirty days or
3 right around that thirty-day time period. So we
4 see five hundred of the ten point four million
5 going out to AnC Biopharm.
6 THE WITNESS: Or five hundred from the
7 six hundred from the prior statement, it could
8 be.
9 MR. JAMES: Okay.
10 So do you have any information --
11 THE WITNESS: I do not.
12 MR. JAMES: -- beyond that?
13 THE WITNESS: No, I do not.
14 MR. JAMES: Okay.
15 And for, you know, full disclosure,
16 I've already gone through all of these
17 statements, and I've attempted to identify any
18 similar entries that are labeled wires to AnC
19 Biopharm, and I found two more and the one that I
20 just showed you. So let me just direct you to
21 those.
22 Again, I'll do the Bates number because
23 the next one is not until October. So if you go
24 to Bates 8406.
25 THE WITNESS: Yes, sir.

1 MR. JAMES: You'll see on October 16th,
2 2013, there's one million wired to AnC Biopharm,
3 Inc. Do you see that?
4 THE WITNESS: Yes, sir.
5 MR. JAMES: So thus far, since the June
6 2013, payment to JCM of ten point four million,
7 we've seen five hundred thousand going out in
8 July, and now we see a million going out in
9 October --
10 THE WITNESS: Yes, sir.
11 MR. JAMES: -- which, obviously, is
12 three month later. So it's outside the
13 thirty-day time period, but nonetheless, we see a
14 total of one point five million of the ten point
15 four going out to JCM based on the exhibit?
16 THE WITNESS: Yes, sir.
17 MR. JAMES: So the next one I located
18 is in December, and that's on Bates number 8431.
19 If you could just skip to that. And that's a
20 December 5th, 2013.
21 THE WITNESS: Yes, sir.
22 MR. JAMES: Okay.
23 And that's for a million. It says,
24 Wire to AnC Biopharm, Inc. Again, all the
25 descriptions are identical to what we've seen

1 before?
2 THE WITNESS: Yes, sir.
3 MR. JAMES: So as of December 5th,
4 2013, we've seen the five hundred thousand
5 dollars in July, the one million in October, and
6 the one million in December going out to AnC
7 Biopharm from that ten point four million?
8 THE WITNESS: Yes, sir.
9 MR. JAMES: Okay.
10 So I didn't see any others in the
11 statements that go all the way through to January
12 2014, but do you have any explanation or any
13 reason to know why only two point five million is
14 showing as going out to AnC Biopharm of that ten
15 point four million that JCM collected for AnC
16 Biopharm?
17 THE WITNESS: JCM collected from the
18 limited partnership for the purposes of procuring
19 those services. I would have to know -- I cannot
20 -- I have no knowledge of why JCM would or would
21 not have paid them within the thirty-day period.
22 I have no reason to know whether or not they did
23 or they did not.
24 MR. JAMES: Okay.
25 But based on the documents, it appears

1 that only two point five --
 2 THE WITNESS: Yes, sir, it does. From
 3 the documents I reviewed, yes, sir.
 4 MR. JAMES: Okay.
 5 Just based on the sequence then, the
 6 next payment packet, if you will, would've been
 7 when, do you recall?
 8 THE WITNESS: Yes, sir. There was --
 9 the next payment package would've been in 2014 in
 10 -- I do not recall. I believe it was in early
 11 2014. And the next package was an eight-month
 12 package, if I believe -- if I'm correct.
 13 MR. JAMES: Okay.
 14 So the last one we just looked at was
 15 June 2013 --
 16 THE WITNESS: That's right. So July,
 17 August, September, October, November, December,
 18 January. I believe it would've been in about
 19 January.
 20 MR. JAMES: Okay. So it'd February
 21 2014 covering --
 22 THE WITNESS: The prior months. That's
 23 correct.
 24 BY MS. FUCHS-SINDLER:
 25 **Q Was there any discussion as to whether**

1 -- between you and Mr. Quiros as to whether or
 2 not you would ever receive or review copies of
 3 the Raymond James statements?
 4 A No, ma'am.
 5 **Q Did you ever ask him for copies?**
 6 A No.
 7 MR. JAMES: Let me hand you what has
 8 been previously marked, and it's a series of
 9 exhibits, so I'll give you them altogether one at
 10 a time, and then I'll you some questions about
 11 it.
 12 The first one I'll hand you has been
 13 previously marked Exhibit 121, and the date is
 14 February 28th, 2014. I'm also to go to hand you
 15 what has previously been marked Exhibit 122, same
 16 date. I'm going to hand you also 123. And,
 17 lastly, I'm going to hand you 124.
 18 While you flip through these, let me
 19 just identify these for the record. Have you had
 20 a chance to look at each exhibit?
 21 THE WITNESS: Yes, sir.
 22 MR. JAMES: All right.
 23 I know we've gone through this. I
 24 won't be as detailed. But, essentially, as you
 25 testified to, the next payment submission by you

1 on behalf of NECS and JCM would've been in
 2 February 2014, and Exhibit 123 -- sorry, Exhibit
 3 121, 122, and 123, it appears to reflect that --
 4 just that, invoices on behalf of JCM. If we
 5 start with 121 for the months of --
 6 THE WITNESS: There's one package
 7 missing, sir.
 8 MR. JAMES: Yes. And that's what I
 9 noticed.
 10 THE WITNESS: Okay.
 11 MR. JAMES: But essentially I'll just
 12 ask you some general questions. So just based on
 13 what we've seen already, this appears to be again
 14 your submission of invoices on behalf of NECS
 15 that's based on -- for construction supervision
 16 fees that's based on the invoices that you
 17 received from JCM for their architectural
 18 engineering?
 19 THE WITNESS: Yes, sir.
 20 MR. JAMES: And then essentially what
 21 happens is that it covers those months that we
 22 talked about, and it's submitted to the CFO, and
 23 then those monies are authorized to be
 24 transferred from the Raymond James LP account to
 25 the People's Bank LP account, then to NECS's

1 account and to JCM's account?
 2 THE WITNESS: Yes, sir.
 3 MS. LAMA: And in this circumstance
 4 with the issuance of this February 2014 payment
 5 package, which, in its -- which, in its complete
 6 form, totaled or included eight months, as you
 7 mentioned before?
 8 THE WITNESS: Yes, ma'am.
 9 MS. LAMA: What was the delay in
 10 between the payment packages between June 2013
 11 and February 2014?
 12 THE WITNESS: There was not necessarily
 13 an intent delay; however, this was the period of
 14 time when we were waiting for delays caused by
 15 USCIS in approvals of I-526 petitions on behalf
 16 immigrant investors, and, therefore, we all
 17 believed it was prudent to slow down the transfer
 18 of funds from the limited partnership into
 19 operating accounts and into paying invoices.
 20 BY MS. FUCHS-SINDLER:
 21 **Q And prudent for what reason?**
 22 A Well, because we're raising -- monies
 23 are being invested by investors and they're
 24 investors into a project. And all of that
 25 project is dependent upon certain approvals from

1 USCIS. And one of the key approvals is that each
2 investor must apply or petition the USCIS to
3 approve themselves and the project as acceptable
4 under the terms of USCIS EB-5 protocol, that
5 they, the individual, immigrant petition and that
6 the project meet all of the specifications of
7 USCIS.

8 So there was a time when the
9 preferential treatment to EB-5 investors would
10 mean they would get their application approved
11 within six to eight months. USCIS moved their
12 service center from California to Washington, DC
13 in this period of time, and when they moved their
14 service center, the adjudication of those I-526
15 applicant petitions slowed down considerably.
16 There was not anything wrong with the project
17 necessarily or anything wrong with the people
18 necessarily, the petitioners, but the process
19 slowed down considerably for the entire country.

20 And so prudent practices would say,
21 let's slow down the building process, if you
22 will. Now let's not necessarily slow down the
23 performances. In other words, let's keep the
24 architects moving, because a delay to them is a
25 significant delay to the project. Let's not slow

1 down the equipment design and manufacturing.
2 Let's just slow down the payments. It's that
3 simple.

4 MS. LAMA: And during this timeframe,
5 was AnC Biopharm requesting payment?

6 THE WITNESS: Was AnC Biopharm
7 requesting payment? Not that I know of.
8 Architects were, but I do not know that AnC
9 Biopharm -- again, as I suggested, there is a bit
10 of trust between AnC Biopharm or AnC Bio, Inc.
11 and Mr. Quiros and his companies, and so I think
12 that there was an understanding of a balance as
13 we moved along here, that they would understand
14 why were being prudent. Architects might not
15 feel quiet so.

16 BY MS. FUCHS-SINDLER:

17 **Q Whose making that decision to slow
18 down that you're talking about to be prudent?**

19 A The general partner.

20 **Q Which individuals?**

21 A Ariel Quiros and Bill Stenger, William
22 Stenger. They are the general partner, and they
23 move on behalf of the limited partnership in
24 every event. And so they believed, not that the
25 production should show down, but maybe that the

1 payment should be slowed down, delayed. I
2 presume everyone agreed to that -- not everyone
3 agreed to that, but I did, and I presume AnC
4 Biopharm did.

5 The one that didn't agree to it, quite
6 frankly, was the architects. They said, if we're
7 going to keep working, we're going to have to
8 continue to be paid. And so it was a little more
9 difficult.

10 MS. LAMA: So it's your understanding
11 that the AnC Biopharm and the parties in Korea
12 continued to work for this eight-month period
13 even though they weren't paid according to the
14 monthly billing of two point six million as
15 prescribed in the contracts?

16 THE WITNESS: Everyone did continue to
17 work, yes, ma'am.

18 BY MS. FUCHS-SINDLER:

19 **Q How do you know?**

20 A Because I was one of the ones that
21 continued to work. And, again, I was very much
22 involved with the construction management
23 company, the architect, the designers, the site
24 people, with everybody, everybody. It was very
25 difficult, but we support the project to move.

1 MS. LAMA: Okay.

2 So your understanding is that this
3 February 2014 funding request and invoice package
4 was to -- at least the portion that pertains to
5 the JCM invoices for the two point six million
6 monthly billing, that this was an eight-month, so
7 to speak, catch up of payments to AnC Biopharm?

8 THE WITNESS: Oh, yes, ma'am -- to JCM.
9 I cannot speak to AnC Biopharm as to how they
10 were paid for their catch up. Again, we have
11 just reviewed bank statements to determine
12 whether they were paid. But I can attest to the
13 fact that JCM was paid and NECS was paid and
14 architects were paid and Peak CM was paid.
15 Anybody was paid, except the relationship between
16 AnC Biopharm. Whether they were paid, I cannot
17 attest to that. I don't know that.

18 MS. LAMA: But these packages are to
19 authorize --

20 THE WITNESS: The catch up, yes, ma'am.

21 MS. LAMA: -- the catch up?

22 THE WITNESS: Yes, ma'am.

23 MS. LAMA: And payments to AnC Biopharm
24 under the terms of the contracts?

25 THE WITNESS: Yes, ma'am, presumably.

1 These were marked for these particular month's
 2 work. Yes, ma'am.
 3 MS. LAMA: Okay.
 4 MR. JAMES: And did you testify that
 5 you don't know whether or not once those monies
 6 were collected by JCM for that catch up, do you
 7 know whether or not, as we looked at earlier,
 8 whether it then turned around and it was sent on
 9 to AnC Biopharm?
 10 THE WITNESS: I cannot testify to that.
 11 I can only testify that sometime ago Mr. Quiros
 12 said to me that AnC Biopharm has produced a
 13 document that demonstrates receipt of the
 14 funding. Therefore, I take Mr. Quiros's word that
 15 -- and although I did not study the documents, I
 16 presume that we have receipt from AnC Biopharm
 17 that they are paid up-to-date, but I don't -- I
 18 mean, I have no -- that's not -- that is not
 19 within my purview, frankly.
 20 MR. JAMES: Okay. And let me --
 21 THE WITNESS: Unless they were not paid
 22 at some point in time and they were then not
 23 produced, then it would be my interest, of
 24 course.
 25 MR. JAMES: And as far as your

1 understanding that AnC Bio has said that they
 2 have been paid -- I think you said earlier
 3 twenty-six million, I think you had said?
 4 THE WITNESS: My understanding is that
 5 AnC Bio at this point has been paid twenty-six
 6 million dollars, about twenty-six million
 7 dollars.
 8 MR. JAMES: And do you get that
 9 understanding from anywhere else, other than the
 10 declarations that we've been referring to?
 11 THE WITNESS: I get that from comments
 12 from Mr. Quiros that he has paid this amount and
 13 this amount.
 14 MR. JAMES: Okay. When you say this
 15 amount and this amount --
 16 THE WITNESS: Five point five million
 17 dollars and then twenty-one million dollars.
 18 MR. JAMES: Okay.
 19 And was that statement by Mr. Quiros to
 20 you, was that in connection with you discussing
 21 the declaration, or was that a separate comment?
 22 THE WITNESS: No. That was as a result
 23 of our ongoing conversations about who's doing
 24 the work, and who's being paid, and are they
 25 up-to-date, and where are we on our fiduciary

1 responsibility to everyone?
 2 MR. JAMES: Okay. Okay.
 3 And those ongoing conversations, were
 4 those -- did those occur after you discussed the
 5 declarations with Mr. Quiros, or were those
 6 conversations that preceded --
 7 THE WITNESS: Those conversations would
 8 go on all the time, but certainly the ones where
 9 he showed me this document would be subsequent to
 10 that document being produced, yes.
 11 MR. JAMES: Okay.
 12 MS. LAMA: And the five point five
 13 million piece that you just mentioned --
 14 THE WITNESS: Yes, ma'am.
 15 MS. LAMA: -- what was -- what bucket
 16 did that piece pertain to?
 17 THE WITNESS: I believe that was part
 18 of the twenty-six million, and I cannot testify
 19 to that, but I believe that is part of the
 20 twenty-six million that has been paid to AnC
 21 Biopharm.
 22 MS. LAMA: Okay.
 23 And why that separation of twenty-one
 24 million versus the five point five million?
 25 THE WITNESS: Because I know there was

1 -- or I understood there was an acceleration of
 2 the amounts of money to be paid on the
 3 distribution agreement, which I now have many
 4 questions in my own mind that I need to report
 5 back to you with my understanding there was an
 6 acceleration on monies to be paid for the
 7 distribution agreement. So there was an initial
 8 deposit, I understood. There was an initial
 9 deposit of that amount of money towards that
 10 distribution agreement.
 11 MR. JAMES: And that's the five --
 12 THE WITNESS: Yes.
 13 MR. JAMES: -- point five million?
 14 THE WITNESS: Yes, sir.
 15 MS. LAMA: And do you know about the
 16 time of that -- I'm sorry, when that deposit was
 17 made?
 18 THE WITNESS: I do not.
 19 MR. JAMES: Do you know the -- was it
 20 five point five million? Do you know if there
 21 was any change?
 22 THE WITNESS: I only know that the
 23 comment to me was the five point five million, as
 24 a result of me saying to Mr. Quiros at one point,
 25 have we accelerated payment on the distribution

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1 agreement, and he said, we have some, and he
 2 reported to me in conversation that five point
 3 five million had been paid upfront.
 4 MR. JAMES: And that would've occurred
 5 --
 6 THE WITNESS: I saw no evidence of
 7 that, other than --
 8 MR. JAMES: That was going to be my
 9 question. We looked at February 2013 through --
 10 well, detail wise, we went all the way through
 11 January. Would it have been reflected in one of
 12 those statements for JCM?
 13 THE WITNESS: I honestly cannot answer
 14 that. I have no idea where it would've been. As
 15 to my point of reviewing those statements, those
 16 statements are one piece of statement reviewed,
 17 but I don't know if there are others to be
 18 reviewed.
 19 MR. JAMES: So the fact that the
 20 payment was an accelerated payment, is your
 21 testimony that it would've occurred early on --
 22 early, if the contract started February '13 --
 23 THE WITNESS: Yes, sir, I believe it
 24 would've been earlier -- it would be in an
 25 earlier period.

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1 MR. JAMES: Okay.
 2 And we looked at those, you and I and
 3 Mr. Gordon, and we didn't see --
 4 THE WITNESS: Yes, sir.
 5 MR. JAMES: Okay -- that amount
 6 reflected in those statements?
 7 MR. GORDON: Can we -- you correct the
 8 record, the statement, and we didn't see that --
 9 we're just making sure we're not making a
 10 representation about anything I saw or didn't
 11 see, correct?
 12 MR. JAMES: I agree.
 13 Let me show you Exhibit 131 and Exhibit
 14 132, which appears to be marked as such.
 15 THE WITNESS: This appears to be the
 16 reason we did not see these payments being made
 17 to AnC Biopharm.
 18 MR. JAMES: What do you mean by that?
 19 THE WITNESS: When we were looking for
 20 payments to AnC Biopharm, we couldn't find them.
 21 MR. JAMES: Okay. And what's the
 22 reason?
 23 THE WITNESS: It appears here that AnC
 24 Biopharm has directed the payments be made
 25 elsewhere.

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1 MR. JAMES: Okay.
 2 So we're looking at Exhibit No. 131?
 3 THE WITNESS: Yes, sir.
 4 MR. JAMES: And 132?
 5 THE WITNESS: Yes, sir.
 6 MR. JAMES: And my first question, have
 7 you seen either or both of these exhibits before?
 8 THE WITNESS: I believe that one of
 9 these exhibits is the document that Mr. Quiros
 10 showed me when he made the comment that he has
 11 receipt for all of the money due to AnC Biopharm.
 12 MR. JAMES: And do you recall which
 13 one?
 14 THE WITNESS: I do not.
 15 MR. JAMES: Okay.
 16 MR. GORDON: Just one second, I've got
 17 five minutes, so hopefully let's wind up, please.
 18 BY MS. FUCHS-SINDLER:
 19 **Q Where were you looking at when you**
 20 **said that looks like -- what paragraph of --**
 21 **we'll just take Exhibit 131, for example? What**
 22 **paragraph are you looking at?**
 23 A Paragraph six.
 24 **Q Okay.**
 25 **Where it says, "AnC Biopharm directed**

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1 **that, approximately, twenty-one million owed by**
 2 **JCM to AnC Biopharm for services be paid to Jay**
 3 **Peak, Inc." Are you surprised to see that?**
 4 A Well, a little bit. I've been looking
 5 for payments here in Raymond James statements.
 6 **Q Did you have any understanding of AnC**
 7 **Biopharm ever directing about twenty-one million**
 8 **to be paid to Jay Peak?**
 9 A I understood that there was receipt for
 10 the monies that were owed to AnC Biopharm.
 11 **Q I'm sorry. Explain.**
 12 A I understood that the monies that were
 13 owed to AnC Biopharm were accounted for.
 14 MR. JAMES: By AnC Biopharm? Was
 15 received by --
 16 THE WITNESS: Yes, sir. Yes, sir.
 17 BY MS. FUCHS-SINDLER:
 18 **Q But did you ever have any**
 19 **understanding as to whether or not AnC Biopharm**
 20 **ever directed that twenty-one million be paid to**
 21 **Jay Peak for services provided to the Jay Peak**
 22 **Biomedical Research Park?**
 23 A In any conversations that I have had
 24 about the -- with Mr. Quiros about this receipt
 25 and AnC Biopharm directing this money to be paid

1 -- or AnC Biopharm providing receipt for this
2 money, that is what my knowledge is of this.
3 **Q** No, but did you ever hear that?
4 **Before reading this now, did you ever hear that**
5 **AnC Biopharm said words to the effect, go pay Jay**
6 **Peak the twenty-one million, instead of us?**
7 **A** I could assume that, Tricia, but I
8 cannot state that.
9 **Q** **Why could you assume that?**
10 **A** Because if they were taking credit for
11 the twenty-one million dollars, or for some
12 amount of money here, if they were taking credit
13 for twenty-one million dollars being paid to
14 them, they would've directed that money be paid
15 to somebody.
16 **MR. JAMES:** But you're basing that on
17 your review right now of Exhibit 131? That's
18 what you're basing that on?
19 **THE WITNESS:** I'm basing that on
20 Exhibit 131, and any conversations that I
21 would've had with Mr. Quiros over the last couple
22 of weeks about the receipt of -- receipt by AnC
23 Biopharm of funds owed them under the twenty --
24 the fifty-two million dollar contract.
25 **MR. JAMES:** Okay.

1 Your testimony was that Mr. Quiros told
2 you that AnC Biopharm received the twenty-six
3 million?
4 **THE WITNESS:** No. My testimony was
5 that Mr. Quiros told me that they -- showed me a
6 document that said that they had receipt of the
7 -- of the funds that we owed them.
8 **MR. JAMES:** AnC Biopharm?
9 **THE WITNESS:** Yes, sir.
10 **MR. JAMES:** Okay.
11 So I think -- her question is: Is this
12 surprising to you that AnC Biopharm is claiming
13 to have allowed for that or directed that money
14 to be paid to JPI?
15 **THE WITNESS:** No, not surprising to me.
16 No.
17 **MR. JAMES:** You've heard that before,
18 that --
19 **THE WITNESS:** I've heard that there was
20 receipt -- I've heard that there was a
21 declaration. I testified I heard there was a
22 declaration. I knew that there was a declaration
23 and the declaration provided for receipt of the
24 funds.
25 **BY MS. FUCHS-SINDLER:**

1 **Q** No, but I want to specifically know,
2 before you saw this today, did you have any
3 discussions with anybody that AnC Biopharm said
4 words to the effect, pay Jay Peak, Inc. that
5 twenty-one million, instead of us? That's what I
6 want to know, specifically that.
7 **A** Yes, I understood that.
8 **Q** **When did you understand that?**
9 **A** Two weeks ago or a couple of weeks ago
10 when I had the conversation with Mr. Quiros.
11 **Q** **At that time, did Mr. Quiros say --**
12 **was it like a, hey, AnC Biopharm paid Jay Peak**
13 **this twenty-one million?**
14 **A** I don't recall whether he said those
15 words, to be honest with you.
16 **Q** **I said words to the effect.**
17 **A** I don't recall if he said words to the
18 effect. I was focusing on whether or not AnC
19 Biopharm had been paid.
20 **Q** **But two weeks ago, when you talked**
21 **with him, did he mention that twenty-one million,**
22 **instead of going to AnC Biopharm, went to Jay**
23 **Peak?**
24 **THE WITNESS:** I think I need to talk to
25 Mr. Gordon.

1 **MR. GORDON:** We have a privilege issue?
2 I think this is probably pretty much the end
3 anyway. So let's see if we can get an answer or
4 not.
5 (Mr. Gordon and Mr. Kelly leave the
6 room.)
7 (Mr. Gordon and Mr. Kelly enter the
8 room.)
9 **MS. FUCHS-SINDLER:** Okay. We are back
10 on the record, so you could talk with Counsel.
11 **THE WITNESS:** Tricia, I was concerned
12 whether or not conversations with Mr. Quiros
13 related to this document were privileged.
14 Mr. Quiros, when he showed me these
15 documents a couple of weeks ago, he did use the
16 words that would lead me to believe that AnC
17 Biopharm had directed payment to be made to JPI.
18 **MR. JAMES:** And tell me exactly what he
19 said.
20 **THE WITNESS:** When we were in a
21 discussion of, as we often are, fiduciary
22 responsibility, payments being made, reporting to
23 the LP, he told me that the AnC Biopharm had a
24 relationship -- the relationship between AnC
25 Biopharm and JCM originally was such that AnC

1 Biopharm -- where JCM would be paying money to
2 AnC Biopharm, that AnC Biopharm had directed him
3 to have monies owed by JCM to JPI paid by JCM.
4 So that the monies that would have been traveling
5 between JCM and AnC Biopharm that we have
6 discussed today, those funds, instead of being
7 paid to AnC Biopharm, AnC Biopharm had directed
8 Mr. Quiros to pay Jay -- pay JPI for funds that
9 JCM owed to JPI.

10 MR. JAMES: And what you just testified
11 to, that's what Mr. Quiros said to you in that
12 same conversation where he showed you the
13 declaration two weeks ago?

14 THE WITNESS: When he showed me his
15 declarations and I -- about two weeks ago, those
16 were words to the effect that Mr. Quiros had with
17 me. The --

18 MR. JAMES: What was your reaction?

19 THE WITNESS: My question was: What
20 was the reason for -- confirming, not what was,
21 confirming why JCM owed JPI those funds, which
22 were for services that were provided by JPI to
23 JCM.

24 MR. JAMES: That's what Mr. Quiros
25 said?

1 THE WITNESS: Yes. And I know that to
2 be the case.

3 MR. JAMES: And how do you know that?

4 THE WITNESS: I know that to be the
5 case because I know there is a relationship
6 between JPI and JCM and has been for a number of
7 years for services to be provided by JPI to JCM.

8 MS. LAMA: Were those services related
9 to Jay Peak Biomedical Research Park or AnC Bio
10 or for other partnerships?

11 THE WITNESS: Those -- the money that
12 JCM owed to JPI were for other -- other purposes.

13 MS. LAMA: Other purposes or other
14 partnerships?

15 THE WITNESS: Other partnerships.

16 MS. LAMA: So not Jay Peak Biomedical
17 Research Park?

18 THE WITNESS: Monies that JCM owed Jay
19 Peak, Inc., JPI, were for other projects, yes.
20 They're for the work that was done.

21 MR. JAMES: They're for what?

22 THE WITNESS: That was for other work
23 that was done.

24 MR. JAMES: On other partnerships?

25 THE WITNESS: Yes.

1 MR. JAMES: Okay.

2 So none of the monies that, according
3 to your testimony now, that AnC Biopharm directed
4 JCM to pay the money to JPI, that was not for
5 services that JCM performed for JPI in connection
6 with the AnC Bio project?

7 THE WITNESS: I don't believe that's
8 accurate.

9 MR. JAMES: Okay. Tell me.

10 THE WITNESS: The money that JCM owed
11 to AnC Biopharm was for services of AnC -- of the
12 Jay Peak Biomedical Research Park Limited
13 Partnership.

14 MR. JAMES: Yes.

15 THE WITNESS: That payment would have
16 taken place between JCM and AnC Biopharm, but for
17 the fact that apparently AnC Biopharm directed
18 JCM to, instead of paying them, pay some other
19 entity, but for the services provided to Jay Peak
20 Biomedical Research Park LP.

21 MR. GORDON: Okay. I got to go. I
22 think we gave you guys -- we gave you plenty of
23 time.

24 MR. JAMES: Okay. I'm confused and --
25 I'm confused of your answer, first of all. And,

1 second of all, so up until just now your
2 testimony didn't touch on any of this. Your
3 testimony was that Mr. Quiros showed you a
4 declaration and told you that AnC Biopharm had
5 attested to receiving twenty-six million from JCM
6 in connection with the Jay Peak Biomedical
7 Research Park LP project.

8 THE WITNESS: That is correct.

9 MR. JAMES: Was that your testimony --

10 THE WITNESS: Yes, sir.

11 MR. JAMES: -- that started at 10:00
12 today and went all the way until --

13 THE WITNESS: Yes, sir, that's correct.

14 MR. JAMES: 5:49 p.m.?

15 THE WITNESS: Yes, sir, that's correct.

16 MR. JAMES: So we showed you the
17 declaration, asked you the questions again, and
18 your response to words to this effect was that,
19 oh, that explains why I did not see any monies
20 going from JCM to AnC Biopharm when we looked at
21 all of the statements, correct?

22 THE WITNESS: I'm not sure that I would
23 relate those two, but, yes.

24 MR. JAMES: Okay. Well, that was my
25 question. We have the transcript, so we can look

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1 it up.
 2 So you take a break and you come back
 3 in, and then your testimony now is very vivid and
 4 clear as to what Mr. Quiros told you about the
 5 monies that were owed to AnC Biopharm by JCM?
 6 MR. GORDON: Just to be clear, the only
 7 there was no break taken. There was a conference
 8 to discuss an attorney/client privilege issue.
 9 We never went off the record, and the only thing
 10 -- and I'll tell you, the only thing that was
 11 discussed was whether or not there was a
 12 privilege issue.
 13 MR. JAMES: Okay.
 14 THE WITNESS: So understanding there
 15 was not a privilege, I then gave you my testimony
 16 to what I understood from the words of Mr. Quiros
 17 about this receipt of funds by AnC Biopharm from
 18 JCM.
 19 MR. JAMES: So throughout the entirety,
 20 you had this knowledge, but you did not share
 21 because you thought it was an attorney/client
 22 issue?
 23 THE WITNESS: Yes, sir.
 24 MR. JAMES: Is that your testimony?
 25 THE WITNESS: Yes, sir.

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1 MR. JAMES: Okay.
 2 And when Mr. Quiros told about that
 3 decision by AnC Bio to direct that money to be
 4 paid to JPI, had you ever heard of that before?
 5 THE WITNESS: Please, ask that again.
 6 MR. JAMES: Okay. Was that the first
 7 time you ever heard of that instruction from AnC
 8 Bio to JCM, that it pays JPI the monies that are
 9 invoiced on --
 10 THE WITNESS: Directly, yes. Directly,
 11 yes.
 12 MR. JAMES: You heard it indirectly
 13 previously?
 14 MR. GORDON: Are you thinking about
 15 communications with Counsel?
 16 THE WITNESS: I'm thinking about both,
 17 yes.
 18 MR. GORDON: Well, you can't reveal
 19 communications with Counsel, but if you learned
 20 something separate from communications with
 21 Counsel --
 22 THE WITNESS: I didn't.
 23 MR. GORDON: -- answer that -- you did
 24 not?
 25 THE WITNESS: I did not receive

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1 information, other than in conversation with
 2 Counsel -- conversations with Counsel -- yes.
 3 Yes, that's my answer.
 4 MR. JAMES: So other than conversations
 5 with Counsel, have you heard any other
 6 information about this decision by AnC Biopharm
 7 --
 8 THE WITNESS: Only in conversation with
 9 Counsel, but that could include conversation with
 10 Mr. Quiros and Counsel, I presume.
 11 MR. GORDON: I'm sorry. Are you saying
 12 that would be you, me and Mr. Quiros?
 13 THE WITNESS: Yes.
 14 MR. GORDON: Obviously, he can't talk
 15 about that either.
 16 MR. JAMES: I understand that.
 17 Just a couple of last questions. So in
 18 the twelve years that you've known Mr. Jang, Dr.
 19 Jang -- how long have you known him? You've
 20 known him twelve years, I think you said?
 21 THE WITNESS: I've known Mr. Kim
 22 probably twelve years. I've only known Dr. Jang
 23 a few years. But I don't know Dr. Jang. I'm
 24 familiar with Dr. Jang.
 25 MR. JAMES: Okay. But you interact

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1 with him weekly on your telephone --
 2 THE WITNESS: Now, yes, sir.
 3 MR. JAMES: Okay.
 4 And in all the instances, whether it's
 5 on the telephone, in person, in Morrisville,
 6 Vermont, in Miami, Florida, has Dr. Jang or Mr.
 7 Kim ever told you that they directed JCM to pay
 8 JPI the monies that are owed from JCM?
 9 THE WITNESS: They have not and would
 10 not. That would never be a subject of a
 11 conversation between myself and Mr. Jang.
 12 MR. JAMES: Why not?
 13 THE WITNESS: As I testified earlier,
 14 when I'm in these meetings, there are multiple
 15 parties in these meetings, and I would no more
 16 talk about architectural fees with the architects
 17 in those meetings than I would talk about AnC
 18 Biopharm fees, for my perspective JCM fees,
 19 within the meetings with them.
 20 MR. JAMES: Other communications
 21 outside of the meetings, Emails?
 22 THE WITNESS: I don't have other
 23 communications outside of the meetings. My
 24 communications with him are specifically about
 25 architectural engineering and construction and

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1 equipment.
2 MR. JAMES: Okay.
3 So when you met them at Ceviche 105 --
4 THE WITNESS: Yes.
5 MR. JAMES: -- I'm assuming there
6 weren't any other individuals outside of you, the
7 individuals on behalf of AnC Biopharm, Mr. Quiros
8 --
9 THE WITNESS: There's no conversation
10 about that.
11 MR. JAMES: So they never said to you
12 --
13 THE WITNESS: No, sir. There was no
14 conversation about these.
15 MR. JAMES: Let me finish. They never
16 said to you or even suggested to you that they
17 had directed JCM to pay twenty-one million to
18 JPI?
19 THE WITNESS: No, sir. And they would
20 not have. There would be no cause for that.
21 MR. JAMES: The question is: Did they
22 ever suggest to you --
23 THE WITNESS: No, sir. I'm sorry.
24 MR. JAMES: -- that they had made that
25 decision, had instructed JCM to pay JPI the

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1 twenty-one million?
2 THE WITNESS: No, sir. I know that
3 information only from conversations with Mr.
4 Quiros or conversations with Mr. Quiros and
5 Counsel.
6 MR. JAMES: Okay.
7 And you just shared it to us five
8 minutes ago; although, we've been asking
9 questions about these monies for the last seven
10 hours?
11 THE WITNESS: I did not know what I
12 could and could not say or were privileged.
13 MR. JAMES: But a number of times you
14 turned to Mr. Gordon and you asked for
15 clarification, whether you could answer
16 something, but I don't think you did that as to
17 this until just now. Would you agree with --
18 THE WITNESS: Earlier today, you asked
19 me to testify whether or not I have seen,
20 apparently, this document, and I told you that I
21 have seen a document similar to this and that
22 that document represented receipt by AnC Biopharm
23 for monies that were owed under a contract.
24 That's what I said and that is what happened. I
25 can only expand on that based upon whether or not

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1 it is privileged, and I don't know whether it was
2 privileged.
3 MR. JAMES: That's your testimony under
4 oath?
5 THE WITNESS: Yes, sir.
6 MR. GORDON: Let me just make one thing
7 perfectly clear, not only did we -- not only did
8 I tell you that we were done at 5:45 when I said
9 that earlier, and we haven't asked for a single
10 break today, so we're done.
11 The other thing to say is, you've made
12 an issue about I guess what Mr. Kelly said now,
13 as opposed to what he said earlier today. I
14 think it's noteworthy that we went outside and he
15 asked whether there was a privilege. The answer
16 was, no, go ahead and talk.
17 If he had something to hide -- if we
18 were trying to hide something all day long, I
19 don't think that would've been the outcome of our
20 conference out there.
21 Anyway, thank you.
22 MS. FUCHS-SINDLER: Okay. So I know
23 your Counsel has to leave, so --
24 MR. GORDON: Let's go. Sorry. I don't
25 mean to be rude, but we're ten minutes over what

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1 I said I could do, and I have someone downstairs,
2 and I can't miss my plane.
3 MS. FUCHS-SINDLER: Can we ask one more
4 question?
5 BY MS. FUCHS-SINDLER:
6 **Q Do you have any awareness of whether**
7 **or not there was ever a margin loan?**
8 A I do not.
9 MS. LAMA: Do you know whether this
10 twenty-one million was used to pay off a Jay
11 Peak, Inc. margin loan?
12 THE WITNESS: I do not.
13 MS. FUCHS-SINDLER: Okay. So we are
14 not ending, but we're adjourning for today.
15 We'll continue.
16 Thank you so much. We appreciate you
17 coming in.
18 (Whereupon, at 5:57 p.m., the
19 examination was concluded.)
20 * * * * *
21
22
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1 PROOFREADER'S CERTIFICATE

2

3 In The Matter of: JAY PEAK, INC.

4 Witness: William Kelly

5 File Number: FL-03815-A

6 Date: Thursday, July 24, 2014

7 Location: Miami, FL

8

9 This is to certify that I, Maria E.

10 Paulsen, (the undersigned), do hereby swear and

11 affirm that the attached proceedings before the U.S.

12 Securities and Exchange Commission were held

13 according to the record and that this is the

14 original, complete, true and accurate transcript

15 that has been compared to the reporting or recording

16 accomplished at the hearing.

17

18

19 _____
(Proofreader's Name) (Date)

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PROOFREADER'S CERTIFICATE

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In The Matter of: JAY PEAK, INC.
Witness: William Kelly
File Number: FL-03815-A
Date: Thursday, July 24, 2014
Location: Miami, FL

This is to certify that I, Maria E. Paulsen, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

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(Proofreader's Name) (Date)

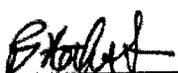
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UNITED STATES SECURITIES AND EXCHANGE
REPORTER'S CERTIFICATE

I, BRIGITTE ROTHSTEIN, Court Reporter, hereby certify that the foregoing transcript of 301 pages (July 24th, 2014) is a complete, true and accurate transcript of the testimony indicated held on July 24th, 2014 at 10:22 a.m. in the matter of: JAY PEAK, INC.

I further certify that this proceeding was recorded by me, and that the foregoing transcript was prepared under my direction.

Date: August 1st, 2014
Official Reporter: Brigitte Rothstein
Diversified Reporting Services, Inc.


BRIGITTE ROTHSTEIN, Court Rep
Notary Public - State of Florida
Commission No.: EE 175314
Expires: March 17th, 2016
Transmittal Number:

