UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE ANDREW J. GUILFORD, JUDGE PRESIDING

HSINGCHING HSU,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	**No. SACV15-0865-AG**
	)	
PUMA BIOTECHNOLOGY, ET AL,	)	
	)	
Defendants.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL, DAY 1

OPENING STATEMENTS

SANTA ANA, CALIFORNIA

TUESDAY, JANUARY 15, 2019

MIRIAM V. BAIRD, CSR 11893, CCRA
OFFICIAL U.S. DISTRICT COURT REPORTER
411 WEST FOURTH STREET, SUITE 1-053
SANTA ANA, CALIFORNIA 92701
MVB11893@aol.com

A P P E A R A N C E S

IN BEHALF OF THE PLAINTIFF, HSINGCHING HSU:	**TOR GRONBORG JASON FORGE SUSANNAH R. CONN PATRICK COUGHLIN ROBBINS GELLER RUDMAN & DOWD LLP 655 WEST BROADWAY, SUITE 1900 SAN DIEGO, CA 92101**
IN BEHALF OF THE DEFENDANT, PUMA BIOTECHNOLOGY, ET AL:	**COLLEEN SMITH MICHELE JOHNSON ANDREW CLUBOK SARAH TOMKOWIAK LATHAM AND WATKINS LLP 12670 HIGH BLUFF DRIVE SAN DIEGO, CA 92130**

ALSO PRESENT: ALEX YOUNGER
ALAN AUERBACH

SANTA ANA, CALIFORNIA; TUESDAY, JANUARY 15, 2019; 2:40 P.M.

(Open court - jury present)

THE COURT: Welcome, ladies and gentlemen of the jury. What a fine-looking jury. I've come to appreciate a little bit about you, hearing from you, from our World Trade Center person to our Trojan to lots of folks out there.

So, I said that I was going to begin by reading jury instructions, but I think on the first day you should hear both sides' opening statements. Therefore, I'm going to read the jury instructions tomorrow when we start at 8:00. We're going to conclude today all the way until 4:30 or a little bit after 4:30 hearing the opening statement from each side.

Now, in the jury instructions I'll say that you're to rely on evidence, and attorneys' statements are not evidence. They're there to help you through the evidence, but don't consider attorneys' statements evidence. That will be the instructions tomorrow. But for now Ms. Bredahl, has some work to do.

THE CLERK: Please stand and raise your right hand.

(Jury sworn)

THE COURT: Anyone have any problem with that oath? Okay. I see none, so we're ready to go. Again, jury instructions tomorrow. We'll go until a little after 4:30

today and start with jury instructions tomorrow at 8:00.

So we'll turn to the plaintiff. Who will we hear from? All right. Please step forward. As you like.

MR. FORGE: Thank you, Your Honor.

THE COURT: Proceed.

Opening statement.

MR. FORGE: July 22nd, 2014, was a character-defining day for Alan Auerbach, because that was the day he had to choose between integrity and easy money. We are all here, ladies and gentlemen, because Mr. Auerbach chose easy money.

THE COURT: Be a little careful on argument.

Go ahead.

MR. FORGE: July 22nd, ladies and gentlemen, was the day Mr. Auerbach announced the results of a study of an experimental cancer treatment called neratinib. He chose easy money that day by telling investors, doctors, everyone, that neratinib was twice as good and half as bad as it really was.

The reason why neratinib was so important, as you will learn, ladies and gentlemen, is because the company that Mr. Auerbach founded and his codefendant in this case, Puma Biotech, a company in which Mr. Auerbach was the single largest individual shareholder, had only one product -- neratinib.

Neratinib was doubly important to Mr. Auerbach and Puma Biotech because they didn't create it. Mr. Auerbach has never created a cancer treatment; neither has Puma Biotech.

Mr. Auerbach is a former Wall Street analyst who raised money from investors to license the rights to neratinib from Pfizer. So neratinib was not only Puma's lone product. They had no capability of developing a different product. So Mr. Auerbach and Puma were betting on neratinib to be a blockbuster drug.

But as you will learn, ladies and gentlemen, by mid July 2014 Mr. Auerbach knew that neratinib was not a blockbuster. You will see throughout this trial, ladies and gentlemen, actual e-mails, the actual results that Mr. Auerbach received, e-mails such as this one -- and I know that monitor is a little blurry, ladies and gentlemen, but you have monitors on both sides of the jury box also.

This is a July 15th e-mail from a man named Alvin Wong, who is a co-worker at Puma Biotech. He will testify for you. He's telling Mr. Auerbach the results are coming tomorrow. You can see in here there's a reference in this e-mail to safety analysis. And one of the terms you're going to hear in this case, safety analysis, safety is kind of a euphemism for side effects.

I'm going to talk to you about various terms as I go over this preview of evidence, and I want to give you

those terms in context so it's easier to understand and sink in. So on July 15th, Alvin Wong is basically telling Mr. Auerbach, get ready, the top-line analysis is coming tomorrow. And you can see in here there's a reference to efficacy.

Okay. Efficacy is another kind of fancy term for the effectiveness, the benefits of the drug. And you'll see sure enough, just as he said he would, on July 16th, 2014, Mr. Wong e-mailed Mr. Auerbach all of the top-line efficacy analysis, all of the information about how good this drug is.

On July 17th, after Mr. Auerbach told him to send the results to a wider audience, that's exactly what Mr. Wong did. He sent the same efficacy or benefits results to additional people at Puma. You are going to see those actual results, ladies and gentlemen. You are going to get the opportunity to contrast them with what Mr. Auerbach wound up telling people on July 22nd.

On July 18th, as Mr. Wong had also promised, he sent Mr. Auerbach the top-line safety results -- again, the side effects. Now, you're going to hear a lot about benefits and side effects. It's easy to keep track of those being how good the drug is, how much bad the drug does. You'll see those actual side effects.

So what the evidence is going to show here, ladies and gentlemen, is a stark contrast between what Mr. Auerbach

knew and what he said on July 22nd. That was the character-defining day to which I'm referring. And make no mistake, ladies and gentlemen. This was not a casual, water-cooler kind of encounter. This was a call with financial analysts, a call that Mr. Auerbach chose to have, chose to host for the purpose essentially of promoting Puma Biotech by virtue of releasing these results.

So, those results. What the evidence will show -- and this is not by inference. This is by direct documents, by direct eyewitness testimony -- is that Mr. Auerbach knew that neratinib delivered only a marginal benefit, 2.3 percent. That 2.3 percent figure, ladies and gentlemen, is going to be referred to as the absolute benefit, absolute difference. What it represents is the percentage of patients who take neratinib who had actually derived a benefit from it -- 2.3 percent.

Another way of looking at it, ladies and gentlemen, is the difference in patients who take neratinib versus patients who take a placebo. Let's talk about placebo right now. Remember, July 22nd was the day Mr. Auerbach was announcing the results of a study.

That study is known as the ExteNET study. It's a multi-year study involving dozens of countries and literally thousands of patients. There are two groups of patients in this study. One is the neratinib group, the group of

patients who actually receive the drug being tested. The other is referred to as the placebo group. That's the group of patients who receive a sugar pill.

So what the study does is it tracks the progress of these patients. And this acronym here, DFS, as in DFS rates, stands for disease-free survival. So what this study is measuring is what percentage of people went through a one-year period of time on neratinib and then another year on top of that. At the end of those two years, what percentage of those patients did not have a recurrence of cancer?

It's important to keep in mind that even though DFS stands for disease-free survival, it's not a life-or-death statistic. It is a measure of whether anyone had a recurrence of cancer.

So what Mr. Auerbach knew and what you will see in black and white is that the difference in the DFS rates between the placebo group and the neratinib group was 2.3 percent. However, you will hear the actual analyst call. You will see the transcript. And you will hear and see that Mr. Auerbach led people to believe that the actual absolute benefit was four to five percent, twice as good, with DFS rates of 86 percent for the placebo group, 90 to 91 percent for the neratinib group.

Here's a clip of that audio which you'll hear in this case.

(Audiotape recording played)

MR. FORGE: Okay. So that's a placeholder for you, ladies and gentlemen. I would be comfortable with that number. You could hear it. You can see it. The last number given was 86 percent. So we've got that locked in. The control arm is also another term used for the placebo group. So we've got 86 percent locked in for the placebo group.

Then this analyst inquires further.

(Audiotape recording played)

MR. FORGE: So the question of what you had to show, that's a reference to the neratinib group. So what he's saying is, so 86 percent in the placebo group. And you had to show 90 -- you must have shown 90 or 91 percent in the neratinib group.

Now, this 33 percent improvement figure, let me give you a little context for that. That is a figure that Mr. Auerbach and Puma announced in a press release. This number, this 33 percent, is known as a relative risk reduction. I emphasized that word relative because it's very important to keep it in mind.

Let me give you an example to fully understand why it's important to keep that relativity in mind. Imagine if I was selling a lead helmet for $5,000, and I told you: Ladies and gentlemen, step right up. This lead helmet will reduce your risk of being killed by lighting by 33 percent.

Well, a 33 percent reduction in the risk of being killed by lighting, that relative risk is 33 percent, but the actual benefit you get from this lead helmet which would carry with it side effects like back problems and neck problems is so marginal that people probably wouldn't step right up and buy my $5,000 lead helmet.

So this 33 percent risk reduction, relative risk reduction, is critical to understand in the context of these numbers that Mr. Auerbach was agreeing to in providing that day, because -- I know we have an accountant here, so everyone will be able to appreciate when you start off with being comfortable with that number of 86 percent with a placebo group -- remember, that's 86 percent who did not have a recurrence -- that means there are 14 percent that did have a recurrence.

So that's the risk that's being reduced, and that's why this analyst is able to do the math, because -- and that's why Mr. Auerbach confirms the math. So if you do a 33 percent reduction in that 14 percent figure, okay, 33 percent of 14 percent is just under five percent. It's between four and five percent.

So that's why all he did was add the four to five percent to the 86 percent, and Mr. Auerbach confirmed that, yes, I think you can do a 33 percent improvement in DFS and come up with that calculation, given the numbers we gave.

That's all a long way of demonstrating that Mr. Auerbach led investors to believe that neratinib was delivering an absolute benefit of four to five percent instead of 2.3 percent.

Now, the evidence will show that Mr. Auerbach also knew that the absolute benefit was not improving at the very end of that two-year period. These little squiggly lines here, ladies and gentlemen, are called KM curves. That stands for Kaplan-Meier curves. Basically these are curves that just track the disease-free survival in both groups over time.

So obviously if they want neratinib to be a blockbuster, they want that benefit to be widening over time. As you will see, those curves ended at two years, technically two years and 28 days, but I'm going to shorthand it and call it two years. Those curves ended at two years, and they're not separating at the end of two years. The absolute benefit is not improving at the end of two years.

This exhibit, this Exhibit 123, that is a graph you're going to see in this case, ladies and gentlemen. But despite seeing this graph and knowing this information, on July 22nd Mr. Auerbach led investors to believe that the absolute benefit was getting better at the end of two years and that those curves were continuing to separate at and after two years.

(Audiotape recording played)

MR. FORGE: Ladies and gentlemen, the one thing Mr. Auerbach is not going to be accused of in this case, and that is being dumb. He's very smart. He's a former analyst, and he knows how to push the right buttons. So he uses words like we're seeing preliminary trends and couches his statements with that type of language. But the message is crystal clear. The curves appear to be continuing to separate as you go out year over year. We're seeing the same preliminary trend.

The trend he just referred to was six percent at two years, seven percent at three years, eight percent at four years. As you will see, ladies and gentlemen, that simply was not true. Now, that's the good. That's what I mean when I say twice as good as it really was.

Let's talk about the bad, the side effects. The evidence will show that Mr. Auerbach knew that the grade-three diarrhea rate for neratinib users was 39.9 percent. Let me talk to you about that particular type of diarrhea. This is -- a grade-three diarrhea is a debilitating diarrhea. It means seven bowel movements per day over a baseline. It can include incontinence, possible hospitalization.

It is a very significant side effect. It does not mean it happened throughout the full year of treatment, but

it is a huge factor for patients or potential patients, because, remember, this is an experimental drug to consider. It is also a factor to consider regarding the market potential of this drug, and that's something that you need to keep in mind throughout this case, ladies and gentlemen.

There's nothing wrong with Puma Biotech trying to make a profit off of selling cancer treatment, but at the end of the day that is what the purpose is. It's to sell as much of this drug as possible.

Now, this rate was 39.9 percent, which means 40 percent of the people in the neratinib group suffered grade-three diarrhea at some point during their year of treatment. Now, Mr. Auerbach said -- and I'll show you a video of him saying it -- he admitted that he had gone over the safety results with a fine-tooth comb.

This is a clip from a deposition taken in this case. You can see this is the actual document that he received from Alvin Wong on July 18th showing quite clearly the grade-three diarrhea rate was 39.9 percent. This was the data and the results to which Mr. Auerbach was referring when he provided this admission.

(Videotape recording played)

MR. FORGE: So he went through it with a fine-tooth comb on July 18th. On July 22nd this is how he answered questions regarding grade-three diarrhea. He said, first of

all, that Puma had not even seen the safety results from the ExteNET trial.

(Audiotape recording played)

MR. FORGE: Later he said that they anticipated that the rate of grade-three diarrhea would be 29 to 30 percent. Again, this is a smart person. He's trying to couch things with saying anticipated. But as you will see, throughout this case, deception comes in many forms. Telling someone something is anticipated when he knows it not to be true is deceptive.

(Audiotape recording played)

MR. FORGE: You can see the contrast, ladies and gentlemen. You can hear for yourself, and you will hear throughout this trial.

Now, the last of these four categories of results and the second of the how-bad-is-it category, the evidence will show that Mr. Auerbach knew that 16 percent of the neratinib users, the people in the neratinib group, discontinued the drug due to the diarrhea side effect alone and that 27.6 percent discontinued due to all AEs. AE is another acronym. Stands for adverse event. It's another fancier way of saying side effects.

So he knew unequivocally because he received this information, went through it with a fine-tooth comb, and the varied tables that he received showed that 16.8 percent of

the neratinib group discontinued treatment due to diarrhea alone and 27.6 percent due to all side effects.

Here's what he told analysts: That he anticipated -- again, anticipated -- the dropout rate in the neratinib arm due to adverse events would be in the 5 to 10 percent range.

(Audiotape recording played)

MR. FORGE: Anticipate 5 to 10 percent. He knew it was 27.6 percent.

So as we've discussed, from July 16th through 18th, 2014, Mr. Auerbach and the ExteNET team were poring over those results. On July 22nd, 2014, Mr. Auerbach had that conference call and he knew that neratinib was not a blockbuster, but he led investors to believe that it was.

The very next day, on July 23rd, the price of Puma stock skyrocketed from $59 per share prior to these announcements to $233 per share by the close of trading on July 23rd, 2014.

So what Mr. Auerbach knew was that neratinib was not a blockbuster drug. He knew it had marginal benefits with major side effects, only a 2.3 benefit that, remember, was not a lifesaving benefit. In fact, four neratinib patients died versus two placebo patients.

There was an offhand remark earlier about neratinib curing breast cancer. That is simply not true. Forty

percent of patients suffered debilitating diarrhea. I went over that earlier. Almost all grade-three diarrhea. There was one instance of grade-four. That's seven bowel movements per day over an average. Potential incontinence. Potential hospitalization. 27 percent discontinued due to side effects; 16.8 percent due to diarrhea alone. 46 percent suffered vomiting. They were hoping to eventually sell all of this for $10,000 per month per patient.

So the contrast between what Mr. Auerbach knew and what he said could not be more stark. We've been over these figures. The last one on here, those Kaplan-Meier curves, again you will see all this evidence. You don't have to take my word for it. You will see for yourselves.

What Mr. Auerbach knew was laid out in black and white and what he said is laid out in black and white and on audio.

Now, the evidence will show that the primary goal for doing this was a $218 million stock offering that Mr. Auerbach and Puma started pursuing immediately. As you might imagine, a biotech company whose only product is an experimental drug, there's no revenues coming in. So Puma had to raise money to continue studying this drug. They needed more money.

It's a lot easier to raise money when prospective investors think they're raising money to develop a

blockbuster drug versus raising money to develop a marginal drug with major side effects. But this doesn't happen overnight. A stock offering takes time because the underwriters, banks, conduct marketing for the offering. They go out and solicit their clients and try to interest them in the company and its loan product. And they conduct due diligence.

Now, just because neratinib wasn't a blockbuster didn't mean Puma and Mr. Auerbach weren't going to try to treat it as if it was a blockbuster. You will see that in July -- I'm sorry -- in August of 2014 Puma pursued what's called a breakthrough therapy designation with the FDA.

You'll see that breakthrough therapies have two basic requirements. First, they must treat a serious or life-threatening disease or condition. Clearly neratinib satisfied that criterion.

Second, and this is directly from the FDA's definition, second, preliminary clinical evidence must indicate that the drug may demonstrate substantial improvement over existing therapies. The clinical evidence just has to show the potential to be a substantial improvement over existing therapies.

So in August of 2014, Puma submitted a preliminary request for breakthrough designation to the FDA. The next month, on September 23rd, 2014, Mr. Auerbach and several

other Puma employees had a telephonic meeting with the FDA. During that meeting the FDA told them that 2.3 percent absolute benefit was not sufficient for a breakthrough designation. We know that because one of the employees at this meeting took handwritten notes there.

You'll see those handwritten notes in this trial, ladies and gentlemen, and you'll see the date at the top, the attendees. Alan's name is the second one. And at the very bottom of that page, 2.3 percent improvement in DFS not enough for breakthrough.

So the FDA told Puma essentially that these results don't even show a potential for a substantial improvement over existing therapies. Puma didn't even disagree. The very next day Puma employee Christine Woods wrote the FDA and said: We appreciate you sharing your recommendations, and we will follow them. We do not intend to submit a formal breakthrough therapy designation for this neratinib indication. No dispute.

Now, just because neratinib was not going to be a blockbuster didn't mean the process with the FDA grinds to a halt. There are many mediocre drugs in the world. So there's -- the process continued, and you will learn that part of that process involves submitting information to the FDA and meeting with the FDA.

And after the next meeting with the FDA, after Puma

had submitted certain results to the FDA, the FDA generated the official minutes of that meeting. The meeting took place on November 25th, 2014. On December 15th, 2015, the FDA sent Puma the official minutes of that meeting. You'll see those actual minutes. You'll see that that very same day, Mr. Auerbach received his copy of those official minutes which were electronically signed by two FDA employees, same day, December 15th, 2014, same FDA cover letter, same reference to these being the official minutes of this government entity.

The evidence will show, ladies and gentlemen, that these official minutes posed a due diligence problem for Mr. Auerbach because those FDA minutes reflected the true absolute benefit from the ExteNET study, because those official minutes showed the actual DFS rates, the very same DFS rates Mr. Auerbach had misled people about on July 22nd.

The reason why that posed a due diligence dilemma is because one of the things that the banks, the underwriters for this offering, want to see as part of due diligence are any material or important communications with the FDA. That includes FDA meeting minutes, official FDA meeting minutes.

Now, you will see as part of that due diligence process, the lawyer for the underwriters, a man named William Hicks, Bill Hicks, signed a nondisclosure agreement. He signed that nondisclosure agreement on November 10th, 2014.

That assured Mr. Auerbach and Puma they could rely on Mr. Hicks to keep in confidence any of the information that they provided to him.

You will also learn that Mr. Hicks had done deals with them before, so there was absolutely no reason for them not to trust Mr. Hicks with the true information. You will see these official meeting minutes. You will see in them the references to DFS rates.

What you will also see, ladies and gentlemen, is that Mr. Auerbach solved his due diligence dilemma by creating phony FDA minutes. You will see that on January 6th, 2015, at 11:15 at night Mr. Auerbach created a phony set of the FDA minutes. Some of you may have heard the term metadata before. You will see in this trial metadata, which is basically like a digital fingerprint for an electronic file.

The metadata for these phony FDA minutes show that Mr. Auerbach created them at 11:15 at night, lists him as the author, and the creation time and date as 11:15 at night on January 6th, 2015. Here you can see on the left-hand side the original. It reported that the placebo group had a DFS rate of 8.4 percent. He deleted that sentence right in the middle of the paragraph and then the rest of the paragraph also. The one on the right is the phony document.

You will see the actual DFS chart, the efficacy

chart that he had received on July 16th and July 17th. No question about the accuracy of these figures. Those 93.9 percent and 91.6 percent figures, they reveal that marginal 2.3 percent benefit. He deleted the entire table. So he made all these revisions to the official FDA meeting minutes, and he did it without leaving a trace -- re page-numbered them, kept the electronic signatures on them.

You're going to see the phonies, and you're going to see the real ones. And I can assure you that you're not going to be able to tell from the phony ones that anybody had monkeyed around with them. That's how good of a job he did at 11:15 at night on January 6, 2015.

He even changed a no answer from the FDA to a yes answer to one of the questions. So you'll see that he deleted and rewrote entire sections of the FDA minutes to remove all information that revealed the actual absolute benefit from neratinib. That was January 6th, 2015, 11:15 at night.

The next day, ladies and gentlemen, Mr. Auerbach sent those phony FDA minutes to Bill Hicks, William Hicks, who is the counsel for the underwriters. He wrote: Hi, Bill. Happy New Year and best wishes to you and your family for a happy and healthy new year. Please find attached the minutes from our recent meeting with FDA for neratinib which is being provided to you for regulatory diligence.

He even pointed out this information -- it's a typo -- is being provided to you under the CDA. That's nondisclosure agreement, the confidential disclosure agreement dated November 10th, 2014. Gave Mr. Hicks absolutely no reason to doubt that he was receiving the real official FDA minutes.

Then Mr. Auerbach faced another dilemma because Mr. Hicks thanked Mr. Auerbach for providing those minutes, but he asked him: Is there any other material, FDA correspondence like this, since the deal we did in February 2014? Well, remember, material correspondence means important communications.

Just a few months earlier the FDA had told Puma that 2.3 percent absolute benefit was not enough for breakthrough therapy designation, was not enough to demonstrate even the potential for a substantial improvement over existing therapies. And Puma communicated directly to the FDA that it was following the FDA's recommendation and was not going to submit neratinib for breakthrough therapy designation.

So Bill Hicks asked him for any other important FDA communications. Another dilemma. What to do about this? If he reveals this information, that could enable people to connect the dots and see that the real absolute benefit was 2.3 percent, about half of what he had represented of four to

five percent.

You will see that Mr. Auerbach solved this dilemma by simply telling Mr. Hicks: Hi, Bill. No, there is no other material correspondence since the February 2014 deal. So he didn't alter this correspondence. He simply denied that it existed.

The evidence will show, ladies and gentlemen, that Mr. Auerbach consistently hid the actual absolute benefit from neratinib. You have seen the highlights, the phony FDA minutes, concealed correspondence with the FDA, and, of course, the July 22nd conference call.

The evidence will show it worked. You will see that the underwriters for this offering marketed it as a blockbuster market opportunity in oncology. Remember, one product, neratinib. They were marketing it to people as a blockbuster opportunity. Why? Because Mr. Auerbach had not revealed that he had told people that it was twice as good and half as bad as it really was.

So the offering went through. This is the easy money I was referring to. On January 27, 2015, the offering closed. Puma sold 1.15 million shares for $218 million at $190 a share. Remember what I said to you before. No one is going to accuse Mr. Auerbach of being dumb.

This money obviously didn't go directly into his pocket, but as the largest individual shareholder of Puma, it

clearly offered a substantial benefit to him. The evidence will show that this worked for Puma employees also. Between July 22nd and April 13th, 2015, while people outside of Puma believed that neratinib was twice as good and half as bad as it really was, these various Puma employees sold millions of dollars' worth of stock.

You'll hear from them during this trial, and you will see that they all had access to the truth. So a recap. July 16th to 18th in 2014, Mr. Auerbach learns, pores through with a fine-tooth comb the ExteNET results. The stock price on July 22nd closed at $59.

On July 22nd, 2014, he had the conference call in which he represented it to be twice as good and half as bad as it really was, and the stock price shot up to $233. On January 27th, they had the $218 million stock offering. And in the meantime Puma employees sold millions of dollars' worth of stock.

Now, from Mr. Auerbach's perspective, fraud is complete. They got the -- they got the offering. He knew the truth was always going to be revealed. That was for sure. But the money stays with Puma, that $218 million. And sure enough, the truth was revealed. It was revealed at a medical conference. The acronym ASCO -- you might be able to see the small writing -- stands for the American Society of Clinical Oncology. It is a very large and significant

medical seminar.

As you will learn, it's a natural part of the process of developing a drug to present the results at a medical conference. Now, at that time it's not Mr. Auerbach revealing the results. It's an academic steering committee. It's people he can't completely control. And the truth has to come out anyhow.

So as you'll see, the prelude to an actual presentation at ASCO is what's called an abstract, which is another fancy word for summary. The abstract revealed some of the truth that Mr. Auerbach had previously misrepresented. It revealed the true absolute benefit to be 2.3 percent because it revealed those -- you can see -- those actual DFS rates.

It also revealed that four percent of neratinib users suffered grade-three diarrhea. That's on May 13th. The very next day Puma's stock price dropped $40 per share. I probably don't have to point it out to you, but I will -- obviously an opposite reaction to the way people reacted to what he said on July 22nd.

But remember, the abstract is just a prelude to the actual presentation, and more truth was revealed at the actual presentation. The actual KM curves were not separating. So in other words, the benefit was not getting greater at the end of the two years, and they ended at two

years.

Also, the higher rate of discontinuation, not the anticipated supposedly 5 to 10 percent but from diarrhea alone of 16.8 percent. And then it was revealed that 39 percent of the people discontinued treatment, not necessarily connected to side effects but discontinued treatment, because after the presentation there's a question-and-answer session with doctors.

You will hear the actual audio of that question-and-answer session. Here's a clip and a transcript from it.

(Audiotape recording played)

MR. FORGE: Dr. Chan, Dr. Arlene Chan, the person to whom Dr. Bogel is directing that question, was the principal investigator for this study. She was the one making the presentation.

(Audiotape clip played)

MR. FORGE: So with only 61 percent completing therapy, that obviously leaves 39 percent who did not complete the therapy. So the ASCO conference reveals that the KM curves were not separating, that they ended at two years, and the higher discontinuation rate.

Then on June 1st and June 2nd, Puma's stock price dropped another $48 per share. All of this brings us back to why we are here, ladies and gentlemen. When Mr. Auerbach led

people to believe that neratinib was twice as good and half as bad as it really was, the stock price shot up to $233. When the truth was revealed, the stock price settled at the end of June 2nd at $146.

Now, as you might guess, stocks do go up and down. You'll see there was even some movement within this stock price during that May to June period. Well, we'll have an expert explain to you how he can clearly trace $87 per share of stock drop to this fraud, $87 to the statements that were made on July 22nd and then corrected in May and June.

But you don't need an expert just to see the difference in these share prices. On July 23rd after Mr. Auerbach made those statements, $233. On June 2nd after the truth was revealed, $146. The difference, $87 per share.

Ladies and gentlemen, you also don't need an expert to see that this is a case about integrity. That's why it is so fitting that Judge Guilford appointed a pension fund from a modest county in England to represent all of the investors.

THE COURT: Well, now, let's be a little careful about vouching. It's not really relevant whether I appointed them or not, and it certainly doesn't indicate anything about the strength of plaintiffs' case.

Continue.

MR. FORGE: And I apologize, ladies and gentlemen, if I gave you that impression. My point was to emphasize

that it was a pension fund from England that Judge Guilford appointed in this case.

The reason why I say that is so fitting is because we want investors all around the world to be able to trust and rely on the integrity of our stock markets, even a modest pension fund in Norfolk County, England, which protects the pensions and provides the pensions for caregivers and road workers and teachers' assistants.

Ladies and gentlemen, when Mr. Auerbach had to choose between integrity and easy money, he made the wrong choice. At the end of this trial, you and only you will have the opportunity to choose integrity. You can choose integrity by taking back that easy money and by holding Mr. Auerbach and Puma accountable for their lack of integrity.

Thank you.

THE COURT: All right. Thank you, counsel.

What would the defense like to do at this moment?

MR. CLUBOK: Your Honor, we'd like to respond if we can have a few minutes to --

THE COURT: I'm asking how much time do you want.

MR. CLUBOK: Just about a little over an hour.

THE COURT: No. How much time do you want before you respond?

MR. CLUBOK: We only need a few minutes.

THE COURT: A few minutes isn't clear to me, so I'll take it on my own. You may stand and stretch if you want as defendant prepares.

(Pause in proceedings)

THE COURT: I have a question for counsel. Is it correct in this case that the plaintiffs' counsel asked me to approve of class counsel and I did so?

MR. CLUBOK: Yes, Your Honor.

THE COURT: I believe that's what happened, correct?

MR. CLUBOK: Yes.

THE COURT: Okay. That's my understanding of what occurred.

Go ahead.

Defense opening statement.

MR. CLUBOK: Thank you.

Well, you've all heard the old saying there's two sides to every story. You just heard quite a story from the plaintiffs' lawyer, but the judge asked you at the beginning of today to keep an open mind. What you're going to see over the course of this trial is not stories but facts and evidence.

You're going to see witnesses come here and talk to you directly about what actually happened. You're going to be able to see the documents and not just clips from part of

a story but the actual documents themselves. And over the course of this trial, you are going to be able to decide what those facts show. You don't have to rely on the stories of lawyers.

I do want to preview the facts of this case for you, and I want to preview what you're going to be seeing over the course of the trial. You know, you heard a blizzard of statistics in that last hour. You heard two percent, eight percent, 30 percent, a bunch of different numbers. I'm not sure if it all registers because some of this is somewhat complicated.

But there's one fact that you're going to hear over the course of this case that no matter what story you hear, that fact is not going to change, and that's going to be the fact that the neratinib clinical trial was successful.

What's a clinical trial? A clinical trial in this case was a phase-three trial after phase-one and phase-two trials had already been met. The neratinib clinical trial had 2,800 women with breast cancer enrolled. With those 2,800 women, half of them got placebos and the lucky half got neratinib.

And what was the results of that trial? For the women who had HER2-positive breast cancer -- that's the worst kind of breast cancer -- for those women who had already had every other treatment that was then available, they had

surgery, they had chemotherapy, they had this drug called Herceptin which you heard a little about. That was all that there was available for those women. And for those women who had all the other treatments, many of them still had the disease come back.

And for those women for whom nothing else worked, neratinib saved at least 33 percent whose cancer would have otherwise come back within two years. But just stop right there, because that's the most important fact in this case. If there were nine women who would have otherwise had HER2-positive breast cancer return within two years without taking neratinib, a third of them now are saved.

You know, I'm not going to respond to every word that plaintiffs' lawyer said, but he said, look, we're just talking about -- he said something like we're just talking about the return of breast cancer. It's not like it's a life-or-death statistic. Those are the words he used.

Actually with HER2-positive breast cancer, it is a life-or-death statistic. If that disease returns, if you do not remain disease free and if it comes back within two years, it's virtually all the time you'll hear from the doctors a death sentence. Women who have that happen to them die within five years almost always.

So return of the disease. If you -- in other words, if you do not remain disease free and instead the

disease comes back, it is essentially a death sentence. That is a life-or-death statistic. And this clinical trial that neratinib was involved in for 2,800 women showed 33 percent of those who otherwise would not have been disease free -- in other words, the cancer would have come back within two years -- they remained disease free.

That's the neratinib clinical trial. What's this trial about? Okay. This trial is not about the women who were -- who got neratinib. There's no women who got neratinib who are here suing Puma. This is not about the doctors who participated in this trial. There's no doctors here suing.

This trial is about Alan Auerbach. You've heard a little bit about him. You sure haven't heard the whole story about him. You're going to learn about Mr. Auerbach and what motivates him and why he has devoted his life to fighting cancer. It's not about money. He'll tell you himself the personal reasons why he's devoted his life to this mission.

You're going to hear about the company he founded. It's actually the second company he founded to fight cancer called Puma Biotechnology company. You'll hear what that means and what it means to be not one of these big pharmaceutical companies that makes lots of money and has tens of billions of dollars. It's a company that in the early stage trying to develop a new cure.

But you'll hear about that because those are the folks that the plaintiffs have sued. Those are our clients.

I'm Andy Clubok. With my partner Michele Johnson who you met before and Colleen Smith and Sarah Tomkowiak, we are all here proud to be defending Alan Auerbach and Puma Biotechnology.

Who are we defending them from? We're defending them from the plaintiff in this case which you didn't hear too much about -- Norfolk Pension Fun. You heard at the end it's this modest pension fund from England who chose to come here and defend the rights of investors all over the world. And they're just a modest fund, and that's why they sued us.

The fact of the matter is this case is all about the fact that Norfolk Pension Fund made a bet on Puma early on, and they bailed out of that bet and lost money. As a result, they would like you to award money to them to compensate for those investment losses. That's what this trial is all about, whether or not Norfolk Pension Fund that invested in Puma and that lost money should get paid back for those losses.

Now, who is Norfolk Pension Fund? You heard it described as a modest pension fund from England. You will meet the representative, Mr. Younger. He's sitting here. You'll meet him. Norfolk Pension Fund has over $4 billion in assets. It holds these assets, investments that are managed

by some of the top investment professionals in the world. -- Goldman Sachs, Fidelity, Wellington, Standard Life. These are some of the I think more than a dozen professional financial managers who manage the billions of dollars and make investments all over the world.

In this -- in the year that they invested in Puma, I think they made something like $300 million in investments. They lost a little bit, like .025 percent of their total value or something, on the investment they made on Puma. They did lose money on that particular bet based on when they bought and when they sold.

But they made 300 million in other investments, and they have four billion dollars. That's the modest little pension fund from England that sued and asked to be the representative.

Now, they didn't do this on their own. You know, you were sort of -- Mr. Forge gave this idea about why some London pension fund would be suing us. Well, the fact of the matter is the London pension fund has all of these investment advisors like Goldman and Fidelity and others. They manage their investments.

And for the most part, the folks back in England, they certainly don't know what investments are being made at any particular time. They get reports on I think a quarterly basis or an annual basis. But what they do is they hire

professionals to make the decision, and they do something called give them discretion. So they have discretionary managers who make investment decisions and make decisions about when to buy and sell stock in companies.

In this particular case you're going to hear about a woman named Skye Drynan. I don't think Ms. Drynan's name came up at all when the plaintiffs' were telling you their story, but Skye Drynan is important because she is a woman for 20 years who has been an analyst in the biotechnology sector.

What she does for a living is she analyzes companies and she makes recommendations for her company, Capital, who make decisions to buy and sell stocks on behalf of modest investors like Norfolk that have billions of dollars in assets.

Skye Drynan you will learn made the decision to invest in Puma. She did so after researching the company, after digging under the hood, after looking at all of the data. She looked at the data before and she looked at the data after the results were announced for this clinical trial, and she looked at all the information as it came out. And more information came out over months and months.

She looked at all that. She made her investments. She made the bets for Norfolk into Puma, and it turns out, like it happens in the stock market, they didn't make money

on that particular investment. But years later we deposed her, and we got to ask her under oath what happened here. Were you defrauded? Were you misled? Did Mr. Auerbach have some character deficiency where he hid information?

Here's what she said under oath:

"Question: Do you believe Mr. Auerbach ever lied to you?"

Remember, this is years later.

"Answer: I do not believe he ever lied to me.

"Question: Do you believe he ever misled you in any way?

"Answer: I do not believe he misled me in any way.

"Question: Do you believe he ever defrauded you in any way?

"Answer: No."

That is the woman who actually made the decision on behalf of Norfolk to buy Puma after hearing all of the information, not 30 seconds of a conference call, which we'll talk about, but after seeing all the information the company put out about neratinib or about how excited it was about neratinib and after she saw all the information that the plaintiffs today, that the folks in England are now saying supposedly revealed fraud, Ms. Drynan saw all that and she says, nope, I wasn't defrauded.

So what are the keys to the case? Frankly you

could stop right there, but there are four main keys to this case that you will learn about as you learn all the facts and not just the story that you're being told.

First of all, you're going to learn that Puma developed an effective and safe breast cancer treatment. Again, I heard it being said it wasn't a cure for -- you'll hear for thousands of women with the worst kind of breast cancer. HER2-positive, it's a cure. It's a cure that never was available until neratinib came along.

Second of all, you'll hear that Puma told the truth about the development work it did. They were proud to tell the truth. They were happy to tell the truth because it was terrific news. It's a great additional step in the fight against cancer.

You'll hear that Mr. Auerbach had no motive to commit fraud. Mr. Auerbach hasn't sold a single share of stock in his company. Okay? Mr. Auerbach has raised money to develop lifesaving drugs and has plowed all that money into R&D. Mr. Auerbach has never sold a single share of stock.

So why did Norfolk -- why did the folks in this pension fund happen to lose money on this investment? Well, there are other reasons, and you will see the other reasons. It may be, as one potential juror said today, just because it's the lottery of investing in biotech. You'll see it's

also because of lots of other reasons. That's what happens. Sometimes investments pan out. Sometimes they don't.

In this case the plaintiffs want insurance for an investment, a bet they made, hoping that Puma would make a lot of money off of treating cancer patients. When they didn't make money, they sued.

So let's talk about each of those four. First, Puma developed an effective and safe breast cancer treatment. Who is Puma? Okay. Puma, we talked about this a little bit. It's actually not Puma, the sneaker company, for those who remember that company. It's Puma Biotechnology.

What's a biotechnology company? It's a development stage company that is dedicated to developing new breast cancer treatments. It's based right here in Southern California. What it basically means -- that's a bunch of fancy words for a new company. They don't have products. They're working to develop it. And by the way, you heard some criticism that, well, it wasn't Mr. Auerbach who had the original idea for the drug. No, that's not what Mr. Auerbach does.

What he does is he identifies other drugs that companies are not properly developing that they've basically put on the shelf. Maybe they think they're not going to make enough money off it. Maybe they don't realize what great potential is. Mr. Auerbach has specialized in identifying

those opportunities so that he can develop a drug that will actually drug cancer.

He started Puma in 2011. Now, what was he doing before that and who is he? Mr. Auerbach is the founder of Puma. He's the CEO. He's chairman of the board of directors. He has a master's degree. He is a Trojan. Some people will be happy. Some Bruins maybe won't be. But he has a master's degree in biomedical engineering.

What that means is it's a specialty where you identify how drugs will impact certain kinds of diseases. He has 20 years of experience. Yeah, he spent some time as an analyst analyzing these kinds of companies for other investors like Norfolk. At some point he said, hey, I'm pretty good at analyzing which drug companies have good drugs. I have -- and you'll hear -- sort of a life-changing moment, and I'm going to now devote my life to actually developing the drugs as opposed to just analyzing and talking about it.

So what did he do? He developed a company -- he started, I should say, a company called Cougar. Now, the number-one cancer killer for men is prostate cancer, and Cougar was a company he developed because he saw a drug that fought prostate cancer that a big pharmaceutical company, Johnson & Johnson, basically had on the shelf, wasn't developing.

Mr. Auerbach said, hey, give me a chance to develop this drug. I can help get trials going, and eventually I think this drug will be a success in helping fight prostate cancer. Sure enough, it was. I think Zytiga is now one of the leading components of the standard of care for fighting prostate cancer. It saved thousands and thousands of men throughout the country. There's all kinds of -- you'll hear Mr. Auerbach happily talk to you about the success of Cougar in developing this drug called Zytiga to help men fight prostate cancer.

But that wasn't enough for him. Okay. What he did then was he said, all right. We helped in the fight against prostate cancer. I'm now going to move on to the number one killer of cancer among women, and that of course is breast cancer.

He took the money he made from Cougar and he took all of his energy and he worked seven days a week. Except when he's here in court, he's otherwise at the office working developing new drugs. And he started Puma to focus on breast cancer. So what kind of breast cancer? We probably all know breast cancer, as I said, is one of the worst kinds of cancers. It is responsible for about 400,000 deaths per year.

The good news is we have lots of treatment for breast cancer. Okay. Breast cancer itself thankfully is no

longer a death sentence. There is a lot of treatment particularly if you catch it early. There is surgery. There's chemotherapy. There's this drug called Herceptin which has been a great drug. Those were the ways you would treat breast cancer.

For a lot of breast cancers that worked terrifically, and that's great. For some of the worst kind of breast cancer, at the time called HER2-positive, it's a breast cancer that has a gene mutation that makes it more aggressive even than normally bad aggressive cancer. For that, neratinib. Neratinib can come along and now can prevent HER2-positive breast cancer from recurring for thousands of women.

So what happened before neratinib if you had HER2-positive breast cancer? If you or someone you knew had it, you pretty much there's a standard of care, and everyone knew what it was and everyone knew that that was really your only hope. You had to have surgery.

You had to have something called adjuvant care. Adjuvant is a fancy word for additional. So after the surgery, for an additional year adjuvant, you take chemotherapy. You take Herceptin. You can see you take it with an IV. And these are drugs that all in, all combined actually did a lot to really cure breast cancer for many women, in fact for most women.

For about 86 to 92 percent of women, that treatment that was the only treatment available before neratinib was success in keeping women disease free. That's the focus, disease-free survivability for five years. That's effectively in the cancer world a cure. If you can keep the disease from coming back for five years, you got a good shot at basically having beaten it.

That treatment was great, but for approximately 8 to 14 percent of women, they had the disease return. Okay. I know there's a blurry of statistics. What you have to realize is we're not talking about getting hit by lightning. We're not talking about lead hats or some analogy I didn't completely understand.

We're talking about 8 to 14 percent of women who have HER2-positive breast cancer, even when they used everything else available known to science back in 2014, still 8 to 14 percent got the disease back in two years. Then it's effectively a death sentence certainly for most women if not for all.

So what about that? What about those women? Should we just say, well, you know, it's only a few. It's only 8,000 out of -- 8 percent out of 400,000, so let's not do anything about it. It's not worth doing. No. But we did was ExteNET. ExteNET is the clinical trial that had those 2,800 women, half of whom got neratinib. Half of whom got

placebo.

It was a trial that was originally started by another drug company. It was actually started by a company called Wyeth. They designed the study. They started it. And long story, but eventually they were bought by Pfizer. Eventually the drug study was basically abandoned.

That's when Mr. Auerbach and Puma came along and said, hey, I think there's something here. I want to see this study completed, and I want to see if this can actually be a cure. And sure enough, that's what they found.

The evidence they're going to show, that neratinib was a success as demonstrated in this massive clinical phase-three trial. And it's not just Alan Auerbach's word you have to take for it, and certainly don't take my word to for it because you'll hear him testify.

But you'll also hear Arlene Chan. You heard a little snippet of her, and I'm not sure you caught who she is. She's a researcher who supervised the presentation of the data and was overall looking at the study. She is not paid by Puma. She never has been. She never will be.

She runs a breast cancer study research center down in Australia. She's a breast cancer doctor. She has no financial incentive. She doesn't have any stock in Puma. All she cares about is fighting breast cancer, and she's the one who presented the results of this study declaring it to

be a great success because it is a great success.

Notwithstanding what Norfolk, the investors from back in 2014, think, for doctors, patients, women who have this disease, this is a success. But it's not just her that you'll hear from. You'll hear from Alvin Wong, who is the director of clinical and pharmacology at Puma. You'll hear from Claire Sherman who is the head biostatistician at the time of the study.

You'll hear from Troy Wilson who is another -- who is on the board of directors. You'll hear his story about why he has devoted his life to fighting cancer. Again, it's not about profit. He hasn't sold a single share of stock. You'll hear from Dr. Richard Bryce, who is the chief medical officer.

You'll hear from -- if my clicker works, you might hear from other folks. Judy Segal, who is the current head of biostats, and most importantly perhaps you'll hear from Dr. Richard Schwab, a practicing breast cancer specialist who practiced here in Southern California with real women, treating real patients. You'll hear what he says about these results and about the effectiveness of the drug.

So once you hear all this, you will decide for yourselves whether Puma developed an effective and safe breast cancer treatment. Full stop. Okay. That's where the case really should end.

But the next key to the case, the next thing that you'll be asked to consider is whether Puma told the truth about it, whether Mr. Auerbach told the truth when he had these exciting results and he released them and he announced them and talked about it. Somehow in this three- or four-minute telephone call exchange -- I think it's actually shorter than that -- did he somehow intentionally commit securities fraud to try to defraud this modest pension fund in England, or was he trying to just talk about the drug because he was excited and telling truthful information the best he could about this exciting new drug?

So first of all, what you also didn't hear about and you won't hear about in this case is any complaint over something called a press release. This press release, you heard a lot about this telephone call, the telephone calls where Mr. Auerbach got on and did some -- tried to do some Q&A with investors.

What you didn't hear was that before he ever did that, he put out a press release. Puma put out a press release. The press release on July -- and it's just this one page. This is literally it, so it's not buried in some -- you know, this is the kind of thing where if it had been a stack of documents, folks would say, oh, gee, you buried the news. If it's one page, maybe they say it's too little.

If investors lose money, you get sued either way.

But in this case this press release said something very clear and very simple in the headline. It says: Puma Biotechnology announces positive top-line results from phase three PB272 in adjuvant breast cancer ExteNET trial. Neratinib achieves statistically significant improvement in disease-free survival.

That is what was put on the press release. That is true. No witness here, no expert, no even lawyer's story will tell you that this was not true in this case.

What else did the press release say? It said simply the trial was successful. It said that there's a 33 percent improvement in disease-free survival for the entire population of the study. It said that Puma is going to be seeking FDA approval, and it said that the full trial results will be presented later at a medical conference.

All four of those things are said in this press release. All four of them exactly true. And this is what goes out to the world.

Now, it -- Mr. Auerbach and Puma did not disclose the mountain of data that was behind these results. You'll find out that some of it was not validated yet. Some of it they were still making sure it was accurate. They knew the top-line results, but some of the details they were still working through. What they said, though, was all of those details are going to be presented at a medical conference.

Okay. So we're going -- we're telling you the truth. For all the details, come to the medical conference and you'll get all the rest of the details. Why did they do that? Why didn't they just in the press release, you know, put -- make it a 50-page press release and put all the details?

The reason is because of how lifesaving drugs get to patients in this country at least. Okay. I don't know how it's done in England, but in this country the way it works is you have to go through a phase-three trial where you get clinical results. If they're bad results, you stop. You don't go and present them usually at a medical conference. Or maybe, you know, you just show it for a moment to show how something bad happened.

But if you have good results, what you do is you go try to present them at a medical conference, and you submit those results. And if the -- and there's about, I think, three or four major medical conferences around the country. They're spaced out over the course of the year.

If your results are good enough, the major medical conferences will accept you. And then what happens is at these conferences there are thousands of doctors, sometimes tens of thousands of attendees. That's how doctors find out about drugs. That's how drugs get to patients. That's an important step of the process.

You will hear testimony about how this is key. What you'll also hear is that if you don't present at the conference, if for whatever reason you're not allowed to present at the conference, doctors don't find out about the drug. Ultimately, even if it's a great drug, not enough doctors find out about it and women don't get the cures they need.

Now, again, you don't have to take my word for this. You will see facts in evidence that will show that what I'm saying is accurate. Investors, the people like Skye Drynan, the people who are doing the work and the research, who were deciding to bet on Puma, they knew that all of the results weren't going to be coming out until a medical conference.

It wasn't some big surprise to them that it was being saved. It was in the press release. Plus, they knew it and they knew why. Remember Skye Drynan? Again, she's the woman who made the decision to invest, and she did it knowing full well that all of the little details were going to be presented at the medical conference. And she said, well, yeah, that's what you have to do, because if you're a biopharmaceutical company, you have a press release with the top-line data but you can't actually give the full data out in the press release or you will not be able to present the data at the medical meeting.

That's what Skye Drynan admitted in her deposition when we asked her under oath, you know, why it is that the results were saved. It's not just her. There's another person you'll hear testimony from, someone named Eric Schmidt who also -- he may say he's unhappy about the way the investment went, but even he admits if companies give away too many details in advance, they're not accepted for presentation at the conference.

This is a picture of the 2015 ASCO annual meeting. It doesn't do it justice. This is the gold standard conference. It's the largest one I believe in the world or certainly in this country. There's 30,000 attendees in a large convection center in Chicago. This is where Mr. Auerbach and Puma and Dr. Chan, who doesn't even work for Puma, presented the results of the neratinib study, just like Mr. Auerbach promised, just like he tried because he was so excited and because ASCO agreed.

By the way, ASCO gets something like 6,000 submissions a year. They only take a tiny fraction, only the ones that have the most important results. They accepted Puma to present at this conference because of the importance of the results from the clinical study.

So we go back in time to this July 22, 2014, conference call. Remember, that's what the -- that's what this lawsuit is about. The lawsuit is whether he said

something in that few-second exchange that was intentional securities fraud. Well, that call was available to the public. It was -- it was sophisticated analysts and investors were listening to it. It was an opportunity to ask questions. And most importantly, the questions aren't provided in advance.

So Mr. Auerbach puts out the press release. He gets on the call. It lasts about a half hour. That exchange that the plaintiffs are complaining about are a few minutes at most or a few seconds out of this call, and they say the answers he gave there, because they weren't perfect, that's securities fraud and we should get our money back for the investment we made when we thought that the drug would be -- would have even bigger sales than it does.

So what are the basic misrepresentations they claim? Let's boil it down because you're going to hear a lot of things where they're going to quibble over, look, every single statement that Mr. Auerbach makes in an e-mail or in a phone call or in any context for ten months, you'll hear quibbles with him not getting the words exactly right.

But at the end of the day, or actually at the beginning of this case when the judge told you what the case was going to be about, it's about the statements that were made on this conference call, statements that relate to the absolute DFS rates, the Kaplan-Meier curves, and safety data.

That's basically what the supposed false statements were. You all are going to see what was actually said and decide for yourself whether Mr. Auerbach was intending to commit securities fraud when he tried to answer these questions.

First of all, absolute DFS rates. What was he asked and what did he say? On the conference call he was asked -- this is the -- this is a doctor who also happens to be an analyst working for one of these investment analyst firms. He says -- the doctor says, congrats on this fantastically in many ways unexpected data. So I have a ton of questions. Maybe I'll just take two if you don't mind.

One is, and he starts with, give us a little bit of a sense what was the DFS on the control arm. That's his question, give us a little bit of a sense. Why does he say that? This is Dr. Werber, Yaron Werber. You'll hear I think a video deposition from him.

He knows he can't get all the details. Puma said we're not going to give all the details. He knows that Alan Auerbach is not going to tell him the precise numbers. But, you know, he's doing his job. No blame to him. He's trying to get a little bit of a sense of what he can get.

What Mr. Auerbach responds is, so in terms of the DFS of the placebo arm of the trial, it was in line with other reported trials. So it's in line with the Herceptin

adjuvant studies.

Anybody know what any of that means? Probably not. But Dr. Werber knew exactly what that meant, in line with the Herceptin adjuvant studies -- or at least he should have known. What does that mean?

Remember the drug Herceptin? Herceptin was the standard of care before neratinib came along and it still is for the first year after surgery. What happens is neratinib is the second year after surgery. So neratinib is extended adjuvant additional theory after Herceptin.

Well, these were the four prior Herceptin studies, and the comparable DFS rates -- and I know this is all a blur of stuff, but these are people who are talking together. They're all doctors. They all know what these words mean. The comparable DFS rates for the four prior Herceptin studies from 2005, it went from 85.8, to 2011, 86.7; 2011, 88, all the way up to 2013, 92 percent.

What does that mean? That means if you just take -- if you get surgery, you get chemo, and you get Herceptin. Remember, this is Herceptin trying to demonstrate that it's successful. The good news is that as of 2013, the disease-free survivability rate had gotten up to about 92 percent. And you can see it's kind of increasing over time. There's no change in the treatment. It's just that doctors get more familiar with how to give Herceptin, as they

figure out how to --

THE COURT: You need to slow down a bit.

MR. CLUBOK: I appreciate that. Thank you.

As doctors figure out how to adjust the dosage, and sometimes they will discontinue some of the dose or decrease the dose over the course of a woman's treatment. As they figure out how to do that over the years, you can see that the DFS rates are increasing such that by 2013 about 92 percent of women were disease-free survival after two years just with Herceptin. That's terrific. Okay?

But it still leaves eight percent, and it still is a serious problem for eight percent out of 400,000 a year. That's a lot of women. So remember, what Alan Auerbach has said is, well, this is -- what we saw is in line with these studies. So what did they see? For ExteNET, 91.6. You can decide for yourself.

You don't have to -- as Mr. Forge would say, you don't need an expert to tell you. Is 91.6 in line with these other comparable DFS rates? When Mr. Auerbach says, yeah, it's in line with the prior studies, and you could see it's almost exactly like the most recent study and certainly in line with the others, is he committing securities fraud? You are the ones who are going to decide that.

So that's the first question. Was it in line with the prior studies? You'll decide. Then there's this

exchange that's even more complicated, and I apologize, but this is the accusation, that in the complicated question and answer, Mr. Auerbach committed securities fraud. So the next series of questions: Is Dr. Werber still trying to get a little more information? And he says you're thinking that if I'm correct, the DFS is probably around mid to high 80s, mid to high 80s, around 86 percent or so.

Mr. Auerbach says he would be comfortable. Mr. Werber says you can imagine one probably had to show 90 or 91. Is that reasonable? Mr. Auerbach says, yes. I think you can do a 33 percent improvement in DFS and come up with that calculation given of the numbers we give.

Again, probably incomprehensible to people who are not experts in this field and analysts and doctors. But let's break that down. What was he asked and what is he saying? Yaron Werber is estimating.

THE COURT: Hold on. Especially when you're reading, you're going a bit too fast. You would be more effective and the court reporter would be more relieved if you went a little slower.

MR. CLUBOK: I appreciate that. Thank you, Your Honor.

You can see, ladies and gentlemen, that Mr. Werber is saying the placebo estimate, he guessed it was mid to high 80s. Now, mid to high 80s, I think folks would agree without

an expert is about 85 to 89. That's mid to high 80s. Then he says, well, if that were true, then the treatment would be 90 to 91. So he's asked this question, and Mr. Auerbach has to quickly in his head do the math. What's the math show? 89 to 90? That's a one percent difference. You're basically trying to figure out what is the absolute difference between the women who had the placebo, the sugar pill, versus the women in the study who got neratinib.

What's the absolute difference? If, for example, 89 percent with the placebo were disease free, that's great. If it goes up to 90 percent with neratinib, that's very good. It's not as good as you would like, but it's still one percent, which translates to lots of women.

On the other hand, if the placebo arm was 85, and therefore the treatment arm was 91, that would be a six percent difference. He's basically speculating that the absolute difference is somewhere between 1 to 6.

What were the ExteNET results? Well, and again we're not talking about percentage improvement, which is that other stat. We're talking about the absolute numbers which they complain about. For every single woman in the study at the exact end point, 2.3 percent. So right there in that range of 1 to 6.

But even more importantly, for women in the study who had centrally confirmed HER2-positive, that means that,

you know, sometimes people in these studies just want to be in the studies. They might not actually have the really bad kind of breast cancer. They might have had not HER2-positive. But there's a central lab that tests to see whether or not they really have the HER2-positive, and there's a lot of what they call subgroup data where they look at women who have the worst of the worst kind of breast cancer.

For those women who are centrally confirmed, it was a 4.1 percent difference, a 4.1 percent absolute improvement. All of these statistics get released at the medical conference months later. None of them can be released now or they won't be invited to present to the medical conference.

But when Yaron Werber says, hey, give me a little sense of what's going on here, and then he gives this range that translates to 1 to 6, Mr. Auerbach says, yeah, I would be comfortable with that, that's what he's referring to. And that is one of the three big things they claim is securities fraud when he says that in that two-second moment.

That's what this case is about. You will decide whether that's securities fraud.

The second thing they quibble with is the Kaplan-Meier curves. Kaplan-Meier curves are just pictures that show these same numbers. So what's a Kaplan-Meier curve? On the conference call a different doctor, Dr. Liang,

said again can you give us a sense as to whether the separation is widening over time? He says, give us a sense of that. So Mr. Auerbach says -- it's a long answer. We'll play the whole thing. We'll happily play it two or three or four times. You can take the transcript. You can read it yourself.

He says, if we look at the curves going out beyond, it looks like the curves are continuing to separate. He also talks about it being a preliminary trend because the data is not all in. They have the data for two years, but there's lots of women who started taking this drug more than two years ago and they are starting to get post two-year data.

They had some three-year data at the time, the evidence will show, and eventually they're going to get four- or five-year data. So going out beyond two years he talks about it being a preliminary trend.

Well, what do the curves again actually show? He's not going to -- everyone knows they're not putting the curves in the press release. You know this is the curve. This is what the curves look like. So folks know they don't have the curves. Dr. Liang is, like, hey, can you give us a little sense of what they look like? Are they continuing to separate?

What does that mean? The curve just shows here, this is all the women who started in this trial. At the

beginning they're all at the same place. What happens is over time, this is months. As months go by, the women who took the placebo, the number who remain disease free goes down and down. That's the problem. Okay? As time goes on, some of them have cancer return, so disease-free survival rate goes down.

For the women who got neratinib in the trial, you can see the curves are separating and they continue to separate throughout. What that means is there's a big difference at every point in time between the lucky women who got the neratinib in the trial versus the women who did not.

At year one it was a 2.2 percent difference. At year two it is a 2.3 percent difference. That means -- that is what continuing to separate means. It means it's not -- if the curves came back together, if after a couple years it just ended up being you're in the same place whether you took the drug or not, that would be a problem. But when the curves stay separated, when it shows that even after two years it's not just holding steady but in fact continuing to separate, that's a good drug.

And by the way, for those centrally confirmed women, the ones who actually were confirmed to have the HER2-positive, it's even better. At year one it's 3.2 percent difference. At year two it's 4.1 percent difference. That's the data he had in mind when he said the

curves are continuing to separate. You all will decide whether that's securities fraud.

By the way, we will bring an expert here. They may not want you to hear from experts, but there's an expert in statistics. They will bring one, and their expert will try to say that our statistics are wrong. We have hired one of the best experts in the world. Went to the University of Nottingham. He's now a professor in residence at the University of California San Francisco.

He will show you statistically even if you couldn't see it with your own eyes that the curves were not narrowing. In fact, the curves are continuing to separate.

So finally, safety data. This is -- essentially it's diarrhea rates. Okay? It's grade three -- as the judge said at the beginning of the case, it's whether or not Mr. Auerbach committed securities fraud when he tried to describe generally the grade-three diarrhea rates in this study.

So what did he say? First of all, he said, hey, listen. The safety data, that is, the diarrhea rates, that has not yet been validated. Okay. They had validated the what's called efficacy results, the results about how it actually worked on women. As of July 22nd you will see the safety data had not yet been validated. And he says this several times.

He says the data is still being validated. He says that -- he refers to previous studies where grade-three or higher diarrhea was seen in approximately 30 percent or more. And in response to questions, he talks about it not being validated, not being validated.

The plaintiffs are going to get up here and say that was a big lie because he had a team of folks helping him and of course it would have been validated. Remember, he's anal, by his own words, so he would have of course had validated data.

You'll see what the facts show. The facts are the safety data had not been completely validated. It had been clinically validated, and that's what Alvin Wong will testify to. So it was good enough that you could tell basically where it was going to come out, but it had not been statistically validated at that time.

You will hear from the chief biostatistician, Claire Sherman, who will just tell you we hadn't finished the statistical validation to make sure it was right. And you'll hear from Judy Segal explaining that that validation process takes months. By the way, it does get validated by January, and the data comes in just fine.

THE COURT: Okay.

MR. CLUBOK: Again, I apologize. I appreciate it.

THE COURT: I think the record is going to be

unclear, and I think you lose effectiveness.

MR. CLUBOK: Thank you. Thank you, Your Honor.

What's most important for you to know and what's most important really about this whole grade-three diarrhea rate is whether the grade-three diarrhea rate was 20 percent, 30 percent, or 40 percent in this study, it was not a material fact for investors to care about.

Now, you're sitting there saying, well, why wouldn't they care about it? If I was taking a drug, I might care if it's a 20 or if it's a 30 or 40 percent diarrhea rate. But the fact of the matter is that the study which, remember, was designed by Wyeth, did not allow for something called loperamide prophylaxis to be used for the women who were in the study.

For whatever reason when they designed the study, they thought that maybe it would, I don't know, affect the results. So they did not allow loperamide prophylaxis to be used. What does that mean? It's a fancy term for Imodium.

All you have to do is prescribe Imodium when you start taking this drug. And by the way, you take this drug by a pill. It's not an IV. You just take pills. But if doctors prescribe Imodium at the outset prophylactically, which means preventatively -- and by the way, loperamide is just the drug name for Imodium. It's loperamide.

If you do that, the studies showed -- by the way,

when the data came in and when they presented the data at the big medical conference, the grade-three diarrhea rate dropped to 0 to 17 percent. That's what it drops to when you actually take this, 0 to 17. And by the way, it lasts for a median time of about two days.

So the question you folks will have is do you take a drug that's going to improve your chances of remaining disease free if you have the worst kind of breast cancer by 33 percent. Balance that against the chance of getting grade-three diarrhea, which by and large is manageable.

And you'll hear from Dr. Schwab who treats women in the real world, and in the real world other cancer drugs, the adverse effects that they cause like cardiomyopathy, like tumor -- cause other cancers, cause all kinds of internal organ damage, all those terrible side effects that the FDA would put a big black box around if you were prescribed those drugs? None of that stuff is here.

We're talking about grade-three diarrhea which, whether it's 30 or 40 percent, is not good. But with Imodium when it drops to 0 to 17 percent, it becomes pretty much immaterial. Again, you don't have to take my word for it. This is what the investors said at the time.

When the actual exact number came out, that it was 39.9 percent, what was the reaction? The reaction of every analyst that looked at this was pretty much. No big deal.

In terms of tolerability, the rate of grade-three diarrhea was 40 percent, which is slightly higher than what has been reported, but it was described as manageable. Recall the Imodium prophylaxis was not instituted in this trial.

Another investor from RBC Capital told its investors when high-dose loperamide prophylaxis is used, the incidence of grade-three diarrhea declined significantly. Oncologists we spoke with view it as very manageable.

So Puma told the truth.

Well, why are we here? We're here because the plaintiffs, the modest pension fund, says that securities fraud was committed. But to have a fraud like that, you would have to have a motive. You will see Mr. Auerbach had absolutely no motive to commit securities fraud. He had no reason to lie because he was excited, rightly so, about his new and effective breast cancer treatment. And you'll hear all of these other doctors say the same thing.

Also, by the way, he spent the next ten months working to present all of the details at the largest medical conference in the world. What kind of a securities fraud case is that where for a few months you -- you know, you say things that you know all the details are going to be released later?

Well, most importantly you find out that he had no personal financial motive to lie. How much did he profit

from the stock increase? I kind of gave this away at the beginning because you know he hasn't sold a single share of stock. The fact of the matter is he made zero dollars. He's never sold a stock. He's never exercised an option. He is not in it for some temporary boost in the stock price, which is the whole theory of the case. The stock jumped up for a couple months, and that was his intentional securities fraud.

Why would he do it? Now, they say, well, it's because of a stock offering. They say, oh, he had to do it to get this stock offering. Well, what they didn't tell you is that stock offerings happen all the time for developmental stage biopharmaceutical companies.

In fact, Mr. Auerbach had done two of them in over roughly a year and a half period where he raised 270 million. This is what happened back in 2012 and even earlier in the year 2014. You can see when the stock price was down at $16 a share, they were able to raise $138 million in stock offering. And when the stock goes up to $122 a share, they were able to raise $138 million in stock offering.

Trying to claim that you need to boost the stock price to raise money at a stock offering just is misleading, I would say, about what a stock offering is all about and how they occur.

By the way, what happened to this money? On this one at least you heard a little bit. The money doesn't go to

line Mr. Auerbach's pockets. The money goes to Puma's ongoing cancer trials and research. In fact, they had many, many ongoing trials. They still do. In 2014 you know how much they spent? 122 million developing drugs. Yeah, they weren't selling a single drug at that point. At that point they weren't charging a single patient. They had no revenues.

They were just spending money, including money that Mr. Auerbach had originally invested, to develop the drug. You know what they did in 2015? They spent $208 million. That's what they did with the proceeds of this stock offering. They put it into research and development to develop a breast cancer treatment.

By the way, the stock offering process, it involves lots of people. That's one that you probably will find maybe not the most exciting part of this case when you hear about the stock offering process. You'll hear about underwriters. That's bankers who work on that. You'll hear from someone named Brad Wolff from Citigroup who is one of the lead bankers.

You will hear that lawyers get involved. You heard about William or Bill Hicks. He'll testify about his role. You'll also hear about the board of directors and their role. Sorry. Troy Wilson you'll hear from. He'll talk to you about how there was a board of directors supervising to make

sure all the information came out and was appropriate in the stock offering.

You'll also hear that in that stock offering, they sold stock to lots of really sophisticated investors in this country like Fidelity, T. Rowe Price, Franklin Templeton. Interestingly, not a single share of stock to Norfolk in this stock offering.

Okay. Now, you'll hear from all these folks on the left. You'll hear from bankers and lawyers and the board who are involved in stock offering. What you won't hear from in this case is a single investor in that stock offering who will come in here and say they were defrauded. Okay.

Remember, Norfolk wasn't in that stock offering. Norfolk is complaining about that conference call that happened six months before this. They just want to talk about the stock offering and claim there was some problem there. Yet not a single person involved in that stock offering is here to complain there was fraud.

This FDA minutes thing, I guarantee you you will hear -- there will be more minutes spent in this trial on this subject than the FDA ever spent on the FDA minutes. You will hear that Mr. Auerbach sent the wrong document to Mr. Hicks during this course of what's called due diligence.

You can hear how it happened. You can hear what we know about it. What you'll also hear, though, is that it was

only sent to Mr. Hicks. Mr. Hicks is the lawyer for the bankers who were involved in the process. You'll hear that it was six months after this conference call, so it doesn't really have anything to do with why you're here. It's really a sideshow.

And you'll hear that the clinical data that is what matters in this case, that was all shared separately with Mr. Hicks. You'll also learn that those minutes were never sent to Norfolk or Capital, so they never relied on them. They had nothing to do with them.

You'll learn that it wasn't made public. It's certainly not like they were trying to trick the public by sending accidentally the wrong minutes. Of course, you won't see anything in that conference call about FDA minutes or anything like that.

What you will learn is that the three things that this case is actually about, that is, the absolute disease-free survival rates, that information, the absolute DFS rates, that was shared with Mr. Hicks in a simple PowerPoint presentation that -- I know it's a little hard to read here, but Mr. Hicks and Mr. Auerbach sat in a room. They looked at -- they went through these slides. They looked at this data. Mr. Hicks got to see all the data.

So this data that was supposedly hidden was shown to Mr. Hicks. Yes, there was a confidentiality agreement

because at the time -- this is in January of 2015 -- this is still five months or six months before the medical conference. So Mr. Auerbach can't make these -- this data public, and everyone knows he can't. But he does show it to Mr. Hicks, so Mr. Hicks is comfortable going forward with the offering.

And that's the absolute DFS rates. That's the curves, the Kaplan-Meier curves. And on the next page that's the safety data, the 39.9 percent. All of that information is showed to Mr. Hicks, the stuff that this case is supposedly about Mr. Auerbach hiding.

Mr. Hicks sees all that before he signs off on that stock offering which doesn't even involve Norfolk.

So finally, why does the stock drop? If everything that I'm talking about turns out to be true, if you see these facts and you see that neratinib was a successful drug, if you see that Mr. Auerbach did tell the truth as best he could in that short phone call, if you see that he had no motive to lie or commit securities fraud, you say, well, why did this pension fund lose a little bit of money out of their $4 billion fund on this investment?

What you'll see is that the stock dropped for other reasons. And by the way, we may never know the exact reason. You all know the stock market goes up and down a lot every day. Who knows why? There's all kinds of reasons. But what

we will see is that the plaintiffs will not be able to meet their burden of proof to show that it was somehow due to something Puma did.

Remember, the theory is that conference call launched some massive fraud that lasted ten months. That's the whole theory of the case, that when he gave those quick answers off the cuff, he was committing securities fraud.

And what they say is that then, something like ten months later when the ASCO, is the meeting, and right before you go to the meeting you publish something called an abstract where you basically write up all the details, on May 13th the abstract is released. That's when ASCO says --

THE COURT: Okay.

MR. CLUBOK: I appreciate it, Your Honor. I'm really trying.

THE COURT: Okay. Well, you need to try more.

MR. CLUBOK: I will try even more.

THE COURT: Let me ask this. I'm just giving a pause in the proceedings here. How much more time do you think you need?

MR. CLUBOK: Less than ten minutes.

THE COURT: All right. Proceed.

MR. CLUBOK: Thank you, Your Honor.

In May of 2015 the abstract is released. It has got some additional details, and this is where plaintiffs

claim that it reveals fraud from that conference call that happened ten months before. And the abstract releases some details like, first of all, the 33 percent improvement and disease-free survival. That hasn't changed. Just like Mr. Auerbach said back in July, the data still shows that there is a 33 percent improvement in disease-free survival for women who took this drug compared to the women who took the placebo. That hasn't changed a bit.

The abstract does -- technology is only so good. The abstract does show the 2.3 percent difference. This is what the plaintiffs say, well, that's revealed some kind of fraud. Now, that 2.3 percent difference again is for everyone in the study. We know that when you really dig in the details, it's much better for the centrally confirmed. But that's what it says in the abstract. By the way, the abstract is also pretty short.

But the abstract also says some really good news. It shows a 48 percent improvement in disease-free survival for centrally confirmed HER2-positive. That's the great news. Not just 33, but for those women who were centrally confirmed to actually have HER2-positive breast cancer, a 48 percent improvement.

And it shows the 39.9 percent grade-three diarrhea, but it also makes it clear that that diarrhea is manageable if you simply take Imodium. So do the stock price movements

show fraud? Again you were told a couple times you don't need an expert to tell you what happened here. Just use your own eyes. I'll tell you or I'll ask you at least to do the same thing.

Look at the stock. We start back in July 22nd, 2014. Right before the press release, right before the clinical trial is released, the stock is trading at about $59 a share. And then this press release comes out that has all truthful information about the success of the trial, and sure enough the stock drop goes way up because everyone gets excited about it.

After a couple days, it kind of settles down, right, on July 28th at about $198 a share. That's what happens when stock -- news comes out about a company. Everybody jumps in, gets excited. Maybe after a couple days it settles. It settled at $198.

For the next ten months, what happens to Puma's stock. Well, Puma's stock basically goes on a journey. As you can see if you follow the bouncing ball, this is what the stock does for the next ten months. It's up $20 one day. It's down $30 another day. It's up 41 one day, down 50 another day -- ten months of the stock being what's called volatile, nothing to do with any fraud.

There's no claim that there's any fraud that's affecting the stock price from going up and down, up and

down. That's just people making bets one day that it's going to be great. Maybe another day they bet that the FDA won't approve it. Another day a competitor announces some results so they say it's not going to be good. The next day a competitor says they didn't do well. That's what happens to stock price.

All of those fluctuations, none of those are fraud. But what the plaintiffs want to say is, well, on May 13th when the abstract gets published and the stock is $209 a share, at that point the stock does drop, and it drops just about $39 a share. The plaintiffs say, ah-hah, when the abstract came out, that must show fraud.

Forget about the fact that just like a couple weeks earlier the stock dropped $40 a share over a few days for non-fraud reasons. They want you to believe that this particular drop was all because of fraud. Well, the problem is we have how people reacted at the time, and you all will learn about that.

And how did they react at the time? After the abstract analysts continued to believe in neratinib -- remember Yaron Werber? He was the guy who asked those questions to Mr. Auerbach. He's the guy who back ten months before was supposedly defrauded. What does he say after he sees the results? Data is actually robust in HER2-positive women -- he works for Citibank. He recommends buy the stock.

He doesn't say there's fraud. He puts out a public research report telling people the data is good. Buy. RBC, another analyst, said the same thing. Trial succeeded. Drug works. Says the stock is going to outperform its competitors. UBS said that they're maintaining a buy rating into ASCO -- that means until we get to the medical conference. Bank of America, ExteNET still supports FDA approval. They recommend buy.

This is what all of these analysts said. But what does the most important person say for purposes of Norfolk? Norfolk's investment advisor, Skye Drynan, she says, after looking at all the data, the house is not on fire. Buy. She thinks the company is undervalued, as you'll hear her testify. And sure enough, Norfolk bought. They bought 2,200 shares.

Now, Mr. Younger here at the time probably had no idea that Skye Drynan was buying on his behalf because she had been given discretion by Norfolk to just do that whenever she thought it was appropriate. And after she saw this abstract which supposedly revealed some big fraud, she decides to buy more stock for Norfolk.

This is part of the damages they say that they are entitled to be paid for when they end up not making as much money or losing some money on these shares. They want Puma to now pay them back for it.

So the stock fluctuates again. You don't need an expert to see this was not fraud, but guess what happens the next few days. The stock goes right back up to $200 a share. After all of these folks like Skye Drynan and Yaron Werber and everybody else looks at this information, compares it after a couple days of thinking about it to what Mr. Auerbach said, looks at the subgroup data, looks under the hood, the stock ends up basically, you know what, after all of this, after the conference call, it had settled at 198. After the abstract it settled at 200.

That's basically the same place, and this is what plaintiffs want you to believe shows fraud. You don't have to believe an expert. You can use your own eyes.

So -- but then what happens?

THE COURT: Now, okay. But then what happened? I think it's about time to be wrapping up.

MR. CLUBOK: Okay, Your Honor.

THE COURT: How much longer do you think, because ten minutes ago you said ten minutes.

MR. CLUBOK: I now think less than five minutes. Hope springs eternal. I'm trying my best.

THE COURT: In all fairness let's bring it to a close.

MR. CLUBOK: Okay.

When the results get presented at ASCO, what

happens? All of these details are released and all of these additional details are released at ASCO, and the stock does go down. The plaintiffs again say, well, that must be fraud. Now, you got thousands of doctors at ASCO. They say if you have three doctors in a room, you're going to get five opinions. When you have thousands of doctors, you're going to get tens of thousands of opinions.

Some doctors did not think the drug was that good from what they saw, and so that's what caused the stock to go down. But you know what? The plaintiffs say the new information that is revealed that supposedly ties back to that conference call? That is -- you can barely even see it. It's this curve right here and it's this data point right here.

They say those two data points out of all this information that gets presented at ASCO somehow causes the stock to drop. Well, again, you'll hear from experts who will say this is not true. You'll hear from experts including Paul Gompers who is a professor at Harvard business school who has looked at all the analyst reports.

You guys can do it for yourselves. You'll see that the reaction to this ASCO was positive. Investors reacted positively. Again, all of these analysts at the time were like, hey, this data is great.

We believe the Kaplan-Meier curves, they did

separate. The ExteNET curves separate. Subgroup data is robust. Taking a look at the curves, we see the difference is maintained. We view this as new key takeaway from witnessing the curves. Everybody is seeing now what Alan knew at the time. The curves are separating. It's great news, not bad news.

And, yes, 16 percent required dose discontinuation, not dropout but dose discontinuation. But the reports say it's no big deal because Imodium prophylaxis can be effective in managing the disease.

Safety is in line with previous trials. That is what the analysts report at the time. And guess what Norfolk does. They get this data, and the very next day they run out through Skye Drynan and buy even more stock. The very next day they buy more stock after hearing this information that they now want you to believe is fraud.

Again, Norfolk didn't do it. The person they hired, Skye Drynan, who they trusted, she did it because it made sense. So that's what this case is about. That's the evidence that you're going to see.

By the way, you'll also see that, of course, Puma had always warned investors about the risk. Puma told everyone it only had one drug it was working on. Puma told everyone over and over again in warnings after warnings after warning that it was a risky company, that they weren't then

selling any drugs, that they were spending all their money on R&D.

They warned everybody. There's warnings -- there's more warnings in this press release than there are those four information points, but all of this they said if you want to invest in us, you're risking it. We're happy to have you risk with us, but it's a risk.

The investors at the end of the day were told the truth about this drug. They were told it was a developmental stage company, and they were told there was a risky investment. All of that is true. No fraud.

Again, finally, what does Skye Drynan say? When all of the evidence is in and she's being deposed, she was asked if she still trusts Mr. Auerbach. Yes.

THE COURT: We already did this; didn't we?

MR. CLUBOK: These are different statements.

THE COURT: All right.

MR. CLUBOK: The final statement: To the best of your knowledge, do you believe he ever lied to Puma investors? To the best of my knowledge, no. Do you believe he ever lied to you? I do not believe he ever lied to me.

I told you the four keys of the case. You're going to hear about all four of those.

I'll end where I began. I'm sorry it took a little longer, but there's a lot of things we had to respond to here

so that you get the full story. And the full story --

THE COURT: I'm sorry. Opening statement is not a response. Opening statement -- I don't understand that statement. Go ahead. Opening statement is your statement, not a response. I'll note that the plaintiff doesn't get a chance to rebut. That's because opening statement isn't about a response. Otherwise shall I give him a chance to rebut? He didn't get any chance to respond.

Continue.

MR. CLUBOK: I appreciate that, Your Honor.

You'll see the facts in the evidence for yourself. You don't have to take my word for it or the word of the plaintiffs' lawyer. You'll see that what Puma did, what Alan Auerbach did, is develop a lifesaving drug called neratinib. You will decide whether or not in the course of that, there was some kind of securities fraud.

Thanks.

THE COURT: All right, folks, thank you. We'll see you tomorrow, and we'll start at 8:00. Ms. Bredahl, will you be talking to them about that?

(Court and clerk conferring)

THE CLERK: All rise.

THE COURT: Anything else for the jury before we leave? Okay. We'll see you tomorrow at 8:00. Thank you.

(Open court - jury not present)

THE COURT: The jury is gone. Be seated for just a moment.

Gosh, there was a lot of argument in both opening statements. I hope the trial will proceed with some focus.

Two quick points. We have this projector here. I do use a button that turns off the screen to the jury at times when we need to discuss an exhibit, and we're going to need someone either able to turn off the projector with a flip or able to put a notepad in front of it or something so that we can proceed with that being blocked when I hit the blackout screen for the jury.

Also, there's a few folks in the audience chewing gum. It's not a good idea to chew gum during the trial. I think it's disrespectful of the process. So please cease on that.

Is there anything else to decide or talk about now before we meet at 8:00 tomorrow?

MR. FORGE: Your Honor, one brief matter, because it does implicate the witness who is testifying tomorrow morning.

THE COURT: All right. Now, go ahead.

MR. FORGE: Your Honor gave a very clear in=limine ruling with in limine number four. I'll just read it: Plaintiffs' motion in limine four to exclude evidence of post-class period events, results, or outcomes is granted.

That is a hard cutoff of evidence. That means both sides don't get to put in some stuff that they would like to, but it's a hard cutoff.

THE COURT: Please get to your point.

MR. FORGE: The point is defendants have already talked today about --

THE COURT: You're not getting to the point. What would you like me to do now?

MR. FORGE: I would like Your Honor to simply confirm --

THE COURT: No. I'm not going to confirm. Let me state the obvious. My motions in limine are my motions in limine. If you want to argue with them about it afterwards and confirm for yourself that I mean what I said, you may.

If you need me to say I mean what I said, I don't need to confirm that, because I do. If they go beyond that, make an objection and I'll make a response.

MR. FORGE: I didn't want to say anything in front of the jury, but there were references to --

THE COURT: What are we doing now? Are you asking me to say something more?

MR. FORGE: No, Your Honor.

THE COURT: What do you want me to do now?

MR. FORGE: I can give you specific examples of violation --

THE COURT: No. You can make an objection when they go beyond.

MR. FORGE: Okay.

THE COURT: Anything else? Okay. Yes.

MS. JOHNSON: No, Your Honor.

THE COURT: Okay. We'll see you at 8:00 tomorrow. Thanks.

(Proceedings adjourned at 4:51 p.m.)

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