

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10036 / February 5, 2016**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77073 / February 5, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3740 / February 5, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17104**

**In the Matter of**

**BioElectronics Corp.,  
IBEX, LLC,  
St. John's, LLC,  
Andrew J. Whelan  
Kelly A. Whelan, CPA, and  
Robert P. Bedwell, CPA,**

**Respondents.**

**DECLARATION OF CHARLES D. STODGHILL**

I, Charles D. Stodghill, the undersigned, declare:

1. I am an Assistant Chief Litigation Counsel with the Enforcement Division ("Division") of the Securities and Exchange Commission and counsel to the Division in the above-captioned administrative proceeding. I submit this Declaration in support of the Securities and Exchange Commission's Opposition to Respondents' Motion for Summary Disposition. I have personal knowledge of the following facts and could testify competently to them.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of the investigative testimony of Andrew Whelan, dated November 26, 2013.

3. Attached hereto as **Exhibit 2** is a true and correct copy the transcript of the investigative testimony of Kelly (Lorenz) Whelan, dated February 23, 2013.
4. Attached hereto as **Exhibit 28** is a true and correct copy of a document previously identified in this action by that number, a series of emails the last of which is dated December 15, 2011, bates numbered SEC-BIO-MKW-E-000267.
5. Attached hereto as **Exhibit 29** is a true and correct copy of a document previously identified in this action by that number, an email from Andrew Whelan, dated April 26, 2012, bates numbered SEC-BIO-MKW-E-0003222.
6. Attached hereto as **Exhibit 30** is a true and correct copy of a document previously identified in this action by that number, an email from Andrew Whelan dated June 5, 2012, bates numbered SEC-BIO-MKW-E-0003809.
7. Attached hereto as **Exhibit 32** is a true and correct copy of a document previously identified in this action by that number, a series of emails, the last of which is dated December 15, 2011, bates numbered SEC-BIO-MKW-E-0010033.
8. Attached hereto as **Exhibit 34** is a true and correct copy of a document previously identified in this action by that number, an a Resolution of the Bioelectronics Board of Directors dated July 22, 2010, bates numbered SEC-BIO-MKW-E-0012519.
9. Attached hereto as **Exhibit 35** is a true and correct copy of a document previously identified in this action by that number, an email from Andrew Whelan to Mary Nyary, dated June 5, 2012, bates numbered SEC-BIO-MKW-E-0007029.

**EXHIBIT 1: Investigative Testimony Transcript of  
Andrew Whelan**

1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )

4 ) File No. HO-11713-A

5 BIOELECTRONICS )

6 CORPORATION )

7

8 WITNESS: Andrew Whelan

9 PAGES: 1 through 225

10 PLACE: Securities and Exchange Commission

11 100 F Street, N.E.

12 Suite 1590, Room 2

13 Washington, D.C.

14 DATE: Tuesday, November 26, 2013

15

16 The above entitled matter came on for hearing,

17 pursuant to notice, at 9:55 a.m.

18

19

20

21

22

23

24 Diversified Reporting Services, Inc.

25 (202) 467 9200

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 THOMAS ROGERS, ESQ.

5 ROSE ZUKIN, ESQ.

6 BRAD MROSKI, Accountant

7 Securities and Exchange Commission

8 Division of Enforcement

9 100 F Street, N.E.

10 Washington, D.C. 20549

11 (202) 551-4776

12

13 On behalf of the Witness:

14 STANLEY MORRIS, ESQ.

15 Corrigan & Morris LLP

16 201 Santa Monica Boulevard, Suite 475

17 Santa Monica, CA 90401

18 (310) 394-2828

19

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21

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1 PROCEEDINGS

2 MR. ROGERS: Okay. We are on the record at

3 9:55 a.m. on Tuesday, November 26, 2013, at the

4 Securities and Exchange Commission's Washington, D.C.

5 office located at 100 F Street, Northeast, Washington,

6 D.C. 20549.

7 The Commission has issued a formal order of

8 investigation in this matter which you were shown prior

9 to the opening of the record. This formal order empowers

10 me to administer the following oath. Please raise your

11 right hand.

12 Whereupon,

13 ANDREW WHELAN

14 was called as a witness, and having first been duly

15 sworn, was examined and testified as follows:

16 MR. ROGERS: Please state your name and spell

17 your name. Give me your birth date and social security

18 number for the record.

19 THE WITNESS: Andrew John Whelan, W-h-e-l-a-n,

20 [REDACTED]

21 MR. ROGERS: My name is Tom Rogers. I'm an

22 attorney in the Enforcement Division of the U.S.

23 Securities and Exchange Commission. With me is Rose

24 Zukin from the Commission's Division of Corporate

25 Finance. Also with me is Brad Mroski, an accountant with

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1 CONTENTS

2

3 WITNESS:		EXAMINATION
4 Andrew Whelan		7
5		
6		
7 EXHIBITS:	DESCRIPTION	IDENTIFIED
8 80	Subpoena	8
9 81	Background questionnaire	15
10 82	Financial statement	43
11 83	Correspondence	80
12 84	Letter	170
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1 the Enforcement Division. For the purpose of these

2 proceedings we are officers of the Commission.

3 This is an investigation by the United States

4 Securities and Exchange Commission entitled, "In the

5 Matter of BioElectronics Corp.," File Number HO-11713.

6 We are investigating whether there have been violations

7 of certain provisions of the federal securities laws.

8 However, the facts developed in this investigation may

9 constitute violations of other federal or state, civil or

10 criminal laws.

11 Prior to the opening of the record, you were

12 provided a copy of the formal order of investigation in

13 this matter. The formal order will be available for your

14 examination during the proceedings. Have you had an

15 opportunity to review the formal order?

16 THE WITNESS: Yes.

17 MR. ROGERS: Do you have any questions

18 concerning the formal order?

19 THE WITNESS: No.

20 MR. ROGERS: Prior to the opening of the record

21 you were also provided a copy of the Commission's

22 Supplemental Information Form, Form 1662, which has been

23 pre-marked as Exhibit Number 1. Have you had an

24 opportunity to read Exhibit Number 1?

25 THE WITNESS: Yes.

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1 MR. ROGERS: Do you have any questions  
2 concerning Exhibit Number 1?  
3 THE WITNESS: No.  
4 MR. ROGERS: Are you represented by counsel  
5 here today?  
6 THE WITNESS: Yes.  
7 MR. ROGERS: Would counsel please identify  
8 himself for the record?  
9 MR. MORRIS: Yes. Stanley Morris of the law  
10 firm of Corrigan & Morris. I'm appearing here today as  
11 Mr. Whelan's personal counsel. And for the record, we  
12 appreciate the Commission providing us with a copy of the  
13 SEC Form 1662.  
14 I would like to place a formal objection on the  
15 record to the Form 1662, in particular, the so-called  
16 routine uses of information, including item number 18  
17 that specifies that the Commission may -- staff may  
18 provide copies of this transcript and the exhibits  
19 attached thereto to members of the press and otherwise  
20 make it public. We've asked for confidential treatment  
21 on a number of documents. I will follow up.  
22 Today I would like to make that request orally  
23 now and will follow up later with a written request as  
24 well to the FOIA office that this transcript be afforded  
25 confidential treatment. As noted, we don't acquiesce in

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1 the so-called routine uses of information but hereby  
2 object. I understand the staff is not at liberty to  
3 amend the Form 1662. And with that objection noted on  
4 the record, we're prepared to move forward.  
5 MR. ROGERS: Okay. So noted. You mentioned  
6 that you're Mr. Whelan's personal counsel, but I do want  
7 to follow up with are you representing anyone else here  
8 today.  
9 MR. MORRIS: Today I don't represent anyone  
10 other than Mr. Whelan in this matter. I do represent  
11 Kelly Whelan and Mary Whelan and Richard Staelin.  
12 MR. ROGERS: Is that it?  
13 MR. MORRIS: I believe so at this time, yes. I  
14 do not represent the corporation. Mr. Lex Kuhne  
15 represents the BioElectronics Corporation.  
16 MR. ROGERS: Okay. Mr. Whelan, have you taken  
17 any medication that might affect your ability to  
18 understand and respond to my questions today?  
19 THE WITNESS: No.  
20 MR. MORRIS: I'd like to amend that. Mr.  
21 Robert McGuire as well. I -- he was an earlier witness.  
22 MR. ROGERS: Thank you.  
23 Mr. Whelan, is there any reason you cannot give  
24 full and complete testimony today?  
25 THE WITNESS: No.

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1 (SEC Exhibit 80 was marked  
2 for identification.)  
3 MR. ROGERS: I'm going to show you what has  
4 been marked as Exhibit 80. Exhibit 80 is a March 12,  
5 2013, subpoena issued to you in this investigation,  
6 requesting both documents and testimony. Is Exhibit 80 a  
7 copy of the subpoena to which you produced documents to  
8 the SEC?  
9 (The witness examined the document.)  
10 THE WITNESS: I think there was two.  
11 MR. ROGERS: Okay.  
12 THE WITNESS: This one appears to be the first  
13 one, but I think there was a subsequent one.  
14 MR. ROGERS: Okay. Did you produce all the  
15 documents called for in that subpoena?  
16 THE WITNESS: Yes, to the best of my knowledge.  
17 MR. ROGERS: All right. As I understand it --  
18 and maybe we can hash this out here. There was an  
19 earlier subpoena directed to BioElectronics not to you.  
20 This subpoena was directed to you and asked for a  
21 production that overlapped in some ways with the earlier  
22 subpoena but also called to your attention the fact that  
23 there were additional documents requested here. Do you  
24 still think there was two subpoenas directed to you  
25 individually?

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1 THE WITNESS: I think you're correct. The  
2 first one was directed to the corporation, and the second  
3 one was directed to me. I don't remember specifically,  
4 but it sounds correct.  
5 MR. ROGERS: Can you describe what actions you  
6 took to search for the documents responsive to that  
7 subpoena?  
8 THE WITNESS: Yeah. Actually I did some of the  
9 searching myself because I've been around longer than  
10 anyone else. But I had staff people go through and pull  
11 like the emails, go over the old files, sorted it out,  
12 put it on the conference table, packaged it up and sent  
13 it down.  
14 MR. ROGERS: Did you send us all the documents  
15 that were responsive?  
16 THE WITNESS: Yes, that we know of. Yes.  
17 MR. ROGERS: Did you withhold any?  
18 THE WITNESS: No.  
19 MR. ROGERS: For any reason?  
20 THE WITNESS: Yeah, documents that we believe  
21 were client -- I mean attorney privilege.  
22 MR. ROGERS: And how did you know that?  
23 THE WITNESS: Because they were attorneys.  
24 MR. ROGERS: I'm sorry?  
25 THE WITNESS: They were attorneys, the people

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1 that -- the correspondence is with -- and documents were  
2 from law firms.  
3 MR. ROGERS: Okay. Then my question wasn't  
4 clear. How did you document that you were withholding  
5 those documents and for what reasons?  
6 MR. MORRIS: If I can interject, Tom, we have a  
7 privilege log that I'm working on I should have to you by  
8 the end of next week for certain. So we've -- we put  
9 together a privilege log, and we are prepared to produce  
10 that. It's just in the final stages of being prepared.  
11 I don't know if that answers the question.  
12 But maybe you're familiar with the privilege  
13 log that --  
14 THE WITNESS: Yes.  
15 MR. MORRIS: Yeah.  
16 THE WITNESS: The files that were from like  
17 Drew Walker, Lex Kuhne, Alston Bird -- we've had --  
18 there's substantive of files and attorneys that we've  
19 engaged over the years. So the files that had documents  
20 in there from law firms or, you know, individual lawyers  
21 like Kuhne -- they are obviously privileged.  
22 MR. ROGERS: Well, I disagree on that. I don't  
23 think that it's clear as to whether Mr. Walker is -- was  
24 acting as attorney. So I'm not going to take that simply  
25 on your statement. We have asked that you produce a

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1 contract that signifies that relationship. We've also  
2 asked for the privilege logs in which you've asserted  
3 privilege since the first -- you know, you have not done  
4 so to this point.  
5 MR. MORRIS: Yeah. And for the record it is  
6 not whether he was working as an attorney. The law is  
7 very clear that if my client had reason to believe Mr.  
8 Walker was an attorney, then he was an attorney for  
9 attorney-client privilege purposes. And you have to show  
10 that he didn't reasonably believe him to be an attorney,  
11 which would be difficult given his email address,  
12 Lawcpas, given every single email says, "J.D.," at the  
13 bottom, and his resume said he was a member of the  
14 California bar.  
15 MR. ROGERS: Can you produce the contract?  
16 MR. MORRIS: We are not going to produce any  
17 privileged documents to the SEC --  
18 MR. ROGERS: How is the contract privileged?  
19 MR. MORRIS: The contract is a communication  
20 between an attorney and a client. And attorney-client  
21 communications are privileged.  
22 MR. ROGERS: We disagree with you on that.  
23 We're going to need to hash out whether we're going to  
24 get Mr. Whelan's documents, but today is not the time to  
25 do that.

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1 Is Exhibit --  
2 MR. MORRIS: Excuse me. They're --  
3 THE WITNESS: They're not my documents.  
4 They're the corporation's documents.  
5 MR. ROGERS: Okay. Thank you. Is Exhibit 80  
6 the subpoena to which you are appearing for testimony  
7 today?  
8 THE WITNESS: Yes.  
9 MR. ROGERS: Can I have that document back  
10 please?  
11 THE WITNESS: Sure.  
12 MR. ROGERS: Mr. Whelan, have you discussed  
13 with anyone other than your attorneys what your testimony  
14 would be here today?  
15 THE WITNESS: My testimony?  
16 MR. ROGERS: Mm-hmm.  
17 THE WITNESS: No.  
18 MR. ROGERS: Who knows that you're going to be  
19 here today other than your attorneys?  
20 THE WITNESS: Well, the members of the board.  
21 Most of the people in the company, I assume, know.  
22 MR. ROGERS: Who are the members of the board?  
23 THE WITNESS: Rick Staelin, Mary Whelan.  
24 MR. ROGERS: Anyone else?  
25 THE WITNESS: No.

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1 MR. ROGERS: Who in the company would know that  
2 you're here?  
3 THE WITNESS: Like most small companies,  
4 everybody. I mean Bill Monn, who is the VP of  
5 Production, Ben Fichter, who is the vice President of  
6 Sales and Marketing, my assistant John Martinez, who is  
7 the engineer, the logistics manager Sarih Glossigher.  
8 I'm assuming people doing the boxing and packaging.  
9 Well, everybody would know.  
10 MR. ROGERS: Is that because you discussed it  
11 with them, or you think somebody else passed the word  
12 along?  
13 THE WITNESS: I don't discuss things generally  
14 of that nature. I discussed it with some of them  
15 because, you know, like we produced the documents. It  
16 was, you know, all hands on board -- find the documents,  
17 go back with the stuff. You know, some of that stuff you  
18 asked was quite old. So --  
19 MR. ROGERS: So the question is who did you  
20 discuss with with specifically?  
21 MR. MORRIS: Discussed --  
22 THE WITNESS: Yeah.  
23 MR. MORRIS: Objection, vague and ambiguous.  
24 MR. ROGERS: Discuss the testimony today  
25 specifically.

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1 THE WITNESS: My testimony? Nobody.  
2 MR. ROGERS: That you were going to be here  
3 today.  
4 THE WITNESS: That I – let me clarify.  
5 Yesterday I asked Fichter for some documents and things  
6 that I wanted to review.  
7 MR. ROGERS: Mm-hmm.  
8 THE WITNESS: Terry Hilton, who is our  
9 assistant, had put some files together and information so  
10 I had – you know, had files in order. It's obvious what  
11 we're doing. But, you know, did I sit down and talk to  
12 somebody -- "I'm going to tell the SEC this or that"?  
13 No.  
14 MR. ROGERS: Okay.  
15 THE WITNESS: The facts are the facts.  
16 MR. ROGERS: They are.  
17 THE WITNESS: They are.  
18 MR. ROGERS: Before we begin substantive  
19 questioning today, I'd like to review with you additional  
20 procedures to be followed during testimony. First, this  
21 proceeding is being conducted on the record. If you'd  
22 like to go off the record, please let me know, and if  
23 appropriate, we'll do so. Please understand the court  
24 reporter will only go off the record at the SEC staff's  
25 instruction.

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1 You are under oath, so you must answer  
2 truthfully and accurately. Do you understand that  
3 providing false testimony could subject you to criminal  
4 sanctions?  
5 THE WITNESS: Yes.  
6 MR. ROGERS: The court reporter is taking down  
7 everything said today, so it's important that you speak  
8 clearly. Because the proceedings are being sound-  
9 recorded, please keep your voice up and respond to all  
10 questions verbally rather than through gestures. We  
11 cannot speak at the same time, so we're going to have to  
12 work out when each is down. I do pause before I finish  
13 my sentence every once in a while, and I apologize for  
14 that. We'll work it out.  
15 THE WITNESS: Okay.  
16 MR. ROGERS: If you do not understand any  
17 question that I ask you, please ask me to clarify or  
18 rephrase, and I'll attempt to do so. Do you understand  
19 these procedures?  
20 THE WITNESS: Yes.  
21 MR. ROGERS: Do you have any questions?  
22 THE WITNESS: No.  
23 (SEC Exhibit 81 was marked  
24 for identification.)  
25

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1 MR. ROGERS: Prior to today we asked you to  
2 complete a background questionnaire. I'd like to  
3 introduce what's been marked Exhibit 81. Please take a  
4 minute and look at the document.  
5 (The witness examined the document.)  
6 THE WITNESS: Looks complete to what I sent  
7 you.  
8 MR. ROGERS: Okay. So that is the document  
9 that you provided to us?  
10 THE WITNESS: Yes.  
11 MR. ROGERS: A couple clarifying questions --  
12 has anything changed since you filled out the form?  
13 THE WITNESS: No.  
14 MR. ROGERS: You have no securities accounts?  
15 THE WITNESS: I personally? No.  
16 MR. ROGERS: Do you own any in joint?  
17 THE WITNESS: My wife has a securities account.  
18 MR. ROGERS: Do you have trading authority over  
19 it?  
20 THE WITNESS: No.  
21 MR. ROGERS: Do you have authority to withdraw  
22 assets?  
23 THE WITNESS: Only on a credit card.  
24 MR. ROGERS: And what's your wife's name?  
25 THE WITNESS: Patricia.

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1 MR. ROGERS: What's her last name?  
2 THE WITNESS: Whelan.  
3 MR. ROGERS: Okay. Is Tricia her formal first  
4 name or is that a nickname.  
5 THE WITNESS: No. Patricia is her name. Most  
6 people call her Patty, but --  
7 MR. ROGERS: There is a section here on prior  
8 proceedings, and in question 19 it asks, "Have you ever  
9 been deposed in connection with any court proceedings."  
10 And you checked, yes, a lawsuit against Tony Chase.  
11 THE WITNESS: Right.  
12 MR. ROGERS: Is that all?  
13 THE WITNESS: No. I mean all the time there  
14 have been small, you know, company credit collection  
15 actions and things like that.  
16 MR. ROGERS: That's what we're asking you. And  
17 I don't think there's anything in this question that says  
18 only answer some of it. So what have the other  
19 proceedings been?  
20 THE WITNESS: Oh, I don't actually remember.  
21 They -- I remember once being deposed in Frederick on a  
22 collection matter.  
23 MR. MORRIS: Any of those lawsuits involve  
24 securities?  
25 THE WITNESS: No.



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1 MR. MORRIS: We can supplement that, Tom. I'll  
 2 ask Mr. Whelan to leave those records up.  
 3 MR. ROGERS: Yeah.  
 4 MR. MORRIS: I'm making a note now.  
 5 MR. ROGERS: If I were to say the name William  
 6 Lyons, would that signify anyone that you know?  
 7 MR. MORRIS: Yeah, that's a -- it was an  
 8 arbitration case.  
 9 MR. ROGERS: Okay. Were you deposed in that?  
 10 THE WITNESS: Testified at -- I believe it was  
 11 -- right?  
 12 MR. ROGERS: I'm sorry. What's your answer?  
 13 THE WITNESS: Yeah, I testified in the case.  
 14 MR. MORRIS: Testified at the arbitration but  
 15 not at a deposition.  
 16 MR. ROGERS: Okay. Okay. I'm going to ask you  
 17 to supplement that because I don't think that was  
 18 complete.  
 19 Mr. Whelan, as we go forward, I need complete  
 20 answers, not just the first thing that comes to your --  
 21 THE WITNESS: Well, I apologize. My assumption  
 22 it was -- it was an arbitration case. It was in the  
 23 court.  
 24 MR. MORRIS: It does say, "Court proceeding."  
 25 THE WITNESS: Arbitration?

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1 MR. MORRIS: No, I mean that says, "Court  
 2 proceeding," question 19.  
 3 MR. ROGERS: Did you appeal that matter?  
 4 THE WITNESS: Did we appeal it?  
 5 MR. ROGERS: Yes.  
 6 THE WITNESS: Yes.  
 7 MR. ROGERS: And where did you appeal it?  
 8 THE WITNESS: I think it's a state arbitration  
 9 appeals board. But we never -- the appeal was filed;  
 10 then it was settled.  
 11 MR. ROGERS: Okay.  
 12 THE WITNESS: There wasn't a subsequent --  
 13 EXAMINATION  
 14 BY MR. ROGERS:  
 15 Q What do you do for a living, Mr. Whelan?  
 16 A Run BioElectronics.  
 17 Q When you say, "Run," what does that mean? Did  
 18 you hold titles? Why don't we start with that?  
 19 A Yeah, I -- I have the title of president, but  
 20 I'm not an employee.  
 21 Q What does that mean?  
 22 A Well, the compensation, whenever I get some, is  
 23 paid through St. John's LLC, which is owned by my wife.  
 24 Q Why is that?  
 25 A Why does she own it?

Page 20

1 Q No. Why don't you get paid for the work that  
 2 you do?  
 3 A Because over the years most of the time I'm  
 4 putting money in. You know, I haven't been paid in a  
 5 long time. And if I put my money in and pay myself a  
 6 payroll check and I have to pay tax benefits on, you  
 7 know, social security and things on that check, it  
 8 doesn't make any sense.  
 9 Q What other titles do you hold?  
 10 A I'm a director.  
 11 Q Okay. Is there anything more? Are you a  
 12 chairman of the board? Are you a member of any  
 13 committees on the board? Those are examples. I'm  
 14 looking for you to fill in the blanks.  
 15 A No, there's just two director -- I mean Rick  
 16 Staelin is the -- I was the chairman years ago. Rick's  
 17 been the chairman -- I don't know, could be five years  
 18 even now.  
 19 Q Okay. You were the chairman from what period  
 20 to what period?  
 21 A Well, from the founding of the company -- I  
 22 think we incorporated it in 2000. I'd just be guessing  
 23 how long Rick's been chairman. It's a good couple of  
 24 years. I honestly just don't remember.  
 25 Q So you were the chairman prior to Mr. Staelin?

Page 21

1 A Yes.  
 2 Q Okay. And prior to you being the chairman, who  
 3 was the chairman?  
 4 A No one.  
 5 Q So you were the chairman from the founding of  
 6 the company, which is when?  
 7 A April of 2000 --  
 8 Q Okay. Until approximately how many years ago?  
 9 A You know, I don't think it's longer than five  
 10 years, and I know it's probably not less than at least  
 11 three years. I --  
 12 MR. MORRIS: Somewhere around 2007, 2008?  
 13 THE WITNESS: Yeah. If I had to throw a number  
 14 out, probably --  
 15 BY MR. ROGERS:  
 16 Q Seven, eight, nine years you were the chairman?  
 17 A Yeah, I was -- I was chairman for a long period  
 18 of time, you know, just -- I just don't remember when  
 19 Rick took over. We had an executive committee for a  
 20 while, so it's kind of blurred as to when Rick formally  
 21 became the chairman and when he was really running the  
 22 executive committee.  
 23 MR. MORRIS: Has the size of the board changed  
 24 over the years?  
 25 THE WITNESS: Yeah. Originally we had -- if I

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1 remember correctly, we had like seven people on the  
2 board. And, you know, we're down to three now, so –  
3 BY MR. ROGERS:  
4 Q Who is the chief executive officer of  
5 BioElectronics if there is one?  
6 A I am.  
7 Q You are? How about the chief financial  
8 officer?  
9 A I am.  
10 Q Okay. Who do you report to?  
11 A The board.  
12 Q Okay. And what on what matters do you report  
13 to the board?  
14 A Anything that's of importance or relevance.  
15 And, you know, most of the conversations are – you know,  
16 if I have questions about making a good decision, I'll  
17 frequently call Rick up and run it by Rick.  
18 MR. MORRIS: Rick being Richard Staelin?  
19 THE WITNESS: Yeah. I'm sorry.  
20 BY MR. ROGERS:  
21 Q But as a day-to-day matter, do you report to  
22 anyone?  
23 A Day to day? No. But I call Rick Staelin, you  
24 know, depending on what we're up to and how busy we are,  
25 you know, what the issues are, on a pretty regular basis.

Page 23

1 Q Okay. So you call him. And are you consulting  
2 with him, or are you asking him to make the decision?  
3 A I don't -- let me put it this way. I never  
4 made a decision that Rick didn't concur to.  
5 Q Okay. Describe the company as it currently  
6 exists. I'd like to know how many people work for  
7 BioElectronics to start with.  
8 MR. MORRIS: Today?  
9 MR. ROGERS: Yes, today.  
10 THE WITNESS: Yeah. I think we have 12 on the  
11 payroll right now. It varies, you know, based on how  
12 busy we are, but basically it's just 12. And what we're  
13 doing is – you know, I'm kind of proud of. I mean we're  
14 literally changing the face of medicine. We've made a  
15 medical device that's won Wall Street Journal awards, OTC  
16 Bulletin awards. We've solved a major riddle on why the  
17 therapy works. We have six -- right now we have six  
18 published clinical trials. We have three more that have  
19 finished. We have an article coming out next month --  
20 no, January in Pain Management, which is an extremely  
21 prestigious medical journal.  
22 MR. ROGERS: Mm-hmm.  
23 THE WITNESS: We have clinical trials being  
24 done at Tufts, University of British Columbia, Albergo  
25 Hospital in Italy, New Zealand, the U.K. You know, we --

Page 24

1 and I'm thinking of -- also about the devices we make.  
2 We make a device that runs 720 hours. It sells -- it  
3 retails like at Boots in the U.K. at 30 -- the equivalent  
4 of \$30. It could be sold down as low as \$20. And, you  
5 know, medical professionals describe it as being  
6 miraculous.  
7 BY MR. ROGERS:  
8 Q You're finished? I'm sorry. Are you finished  
9 with your answer?  
10 A No.  
11 Q Okay.  
12 A I mean the device provides five times better  
13 pain relief, and we've developed eight products. We've  
14 done an extraordinarily good job. Is that responsive?  
15 Q No. I asked you how many people work for the  
16 company, and you gave me a very nice resuscitation of --  
17 A No, no. You asked me what BioElectronics was.  
18 Q And then I said I'd specifically like to  
19 know --  
20 A All right. Well --  
21 Q -- how many people work there. And, you know,  
22 I think it's important --  
23 A Well, I apologize. I'll be more attentive to  
24 your questions. I -- you know, but I thought that's what  
25 you asked.

Page 25

1 MR. MORRIS: He answered that question. I  
2 wrote it down, 12 people.  
3 Didn't you answer the question, 12 people?  
4 MR. ROGERS: He did answer that.  
5 MR. MORRIS: Okay.  
6 MR. ROGERS: Then he went off with a very nice  
7 resuscitation of where he thinks the company's business  
8 is. And I think that's great. And we've got it on the  
9 record now.  
10 Please don't give it to me again unless I ask  
11 for it.  
12 THE WITNESS: Well, I thought you asked for it.  
13 I apologize. I thought that's what you asked for.  
14 BY MR. ROGERS:  
15 Q Okay. We've got a lot to get through today.  
16 Can you give me what -- are those 12 employees divided up  
17 into any sort of divisions or recording chains? How are  
18 they organized?  
19 A Well, people in production report to Bill Monn,  
20 who's VP of Production and Regulatory Affairs. We have  
21 one guy in engineering that's in the company. We have  
22 one marketing guy who reports directly to me, an  
23 assistant who reports to both of us, and the logistics  
24 people report to Bill.  
25 Q How many people work in each of those? How

1 many people are in Logistics? Why don't you answer that  
 2 question?  
 3 A Depending on the time, usually about three to  
 4 four.  
 5 Q Okay. How many accountants do you have on  
 6 staff?  
 7 A None.  
 8 Q I'm sorry? None?  
 9 A None.  
 10 Q Who does the books?  
 11 A We've always had it done by somebody outside.  
 12 Right now it's Chesapeake CFOs.  
 13 BY MR. MROSKI:  
 14 Q I'm sorry? Who?  
 15 A Chesapeake CFOs.  
 16 MR. MROSKI: Chesapeake CFOs.  
 17 BY MR. ROGERS:  
 18 Q So there's nobody at the company that keeps  
 19 track of day-to-day asset flows or product flows or any  
 20 of the items that an accountant would take care of?  
 21 A Yeah. The logistics manager processes the  
 22 invoices, payments that have come in, and, you know, we  
 23 keep those in QuickBooks. And then when the accountant  
 24 comes in, he takes the records off the QuickBooks and  
 25 prepares financial statements.

1 BY MR. ROGERS:  
 2 Q 10 to 15,000 feet?  
 3 MR. MORRIS: Under 5,000 square feet.  
 4 THE WITNESS: No, no, no. Oh yeah. Right,  
 5 dramatically under 5,000.  
 6 BY MR. ROGERS:  
 7 Q How many desks are there?  
 8 A One, two, three, four, five, six -- eight.  
 9 Q Are they all full currently?  
 10 A No.  
 11 Q How many are full?  
 12 A Probably seven of them.  
 13 MR. MORRIS: And then how many individual  
 14 offices --  
 15 THE WITNESS: Oh, individual offices? One,  
 16 two, three -- five of them.  
 17 BY MR. ROGERS:  
 18 Q You mentioned St. John's earlier. What is St.  
 19 John's?  
 20 A A limited liability company.  
 21 Q How is it related to BioElectronics?  
 22 A Well, I work for -- essentially for St. John's,  
 23 so we provide management to BioElectronics. It owns --  
 24 it holds several -- a lot of notes that are payable by --  
 25 to and from BioElectronics. At -- a couple of years ago

1 Q You've already told us that your role on the  
 2 board of directors has changed over time. Has it changed  
 3 as to your role as president?  
 4 A No.  
 5 Q No. How about as the CEO?  
 6 A I mean there's only one other officer, Bill  
 7 Monn. So, you know, chief executive officer is kind of  
 8 pretentious if you will.  
 9 Q Well, let me ask you this. What are the  
 10 specific responsibilities of Bill Monn?  
 11 A Production, inventory control, and regulatory  
 12 affairs.  
 13 Q Does he answer to you?  
 14 A Yes.  
 15 Q How big is the office?  
 16 MR. MORRIS: I guess it's not clear.  
 17 He's talking today --  
 18 MR. ROGERS: Today.  
 19 MR. MORRIS: Just -- because I think it's  
 20 changed.  
 21 THE WITNESS: I think -- yeah, it's changed. I  
 22 don't -- I think we have 3,700 square feet, which  
 23 includes production, warehousing. So the office -- I  
 24 don't know. Maybe it's half of that -- not quite half.  
 25 I don't know.

1 at Patty's retirement -- that's my wife. She worked in  
 2 the company full-time.  
 3 Q Is there a contract between St. John's and  
 4 BioElectronics?  
 5 A There's notes. There's not a -- you mean a  
 6 consulting agreement?  
 7 Q A contract establishing that they're providing  
 8 management services. I think that's the way you  
 9 described it.  
 10 A I don't think so.  
 11 Q Okay. So are there formalities separating St.  
 12 John's and BioElectronics that you can describe as far as  
 13 the flow of money?  
 14 A Is there any -- I mean there's no -- I know  
 15 what BioElectronics money is, and I know what St. John's  
 16 has.  
 17 Q How do you know that?  
 18 A What money BioElectronics has?  
 19 Q How do you know which -- the money belongs to  
 20 which entity?  
 21 A Because they don't -- don't commingle. St  
 22 John's never does anything that would commingle funds  
 23 other than I will pay personal expenses on the behalf of  
 24 BioElectronics. Like last week I was on a trip. I paid  
 25 the expenses myself. So -- and I just give an expense

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1 report, and they send those expense reports to -- off to  
 2 Staelin to approve.  
 3 Q Okay. So just so I understand, when you said  
 4 you paid yourself, you were actually -- you were implying  
 5 that St. John's was paying through you or you were paying  
 6 through St. John's? I'm not sure how St. John's played  
 7 into that.  
 8 A Well, because I used the credit card on the  
 9 trip, the same --  
 10 Q And that credit card has whose name on it?  
 11 A It actually has Patricia's name, my wife's  
 12 name.  
 13 Q Okay.  
 14 A Okay.  
 15 Q So how is that -- how is St. John's involved  
 16 here?  
 17 A Well, because I -- the credit card is drawn on  
 18 Morgan Stanley. But she --  
 19 MR. MORRIS: St. John's advanced the funds for  
 20 your trip. Is that correct?  
 21 THE WITNESS: Yes. Okay.  
 22 MR. ROGERS: Okay.  
 23 THE WITNESS: Sorry.  
 24 BY MR. ROGERS:  
 25 Q I think I was understanding that's what you're

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1 trying to say. What I'm trying to get at is why I should  
 2 believe it. You say you paid it yourself out of funds  
 3 that were in your wife's name.  
 4 A And some of mine.  
 5 Q Okay. Again, how does St. Johns play into  
 6 that?  
 7 A Because when I submit the expense report --  
 8 Q Right.  
 9 A -- a payable goes back to St. Johns.  
 10 Q Okay.  
 11 MR. MORRIS: And who do you submit the expense  
 12 report to? To --  
 13 THE WITNESS: Right.  
 14 MR. MORRIS: -- BioElectronics -- well,  
 15 BioElectronics?  
 16 THE WITNESS: Yeah. I'm sorry. Yes.  
 17 BY MR. ROGERS:  
 18 Q And it's ultimately approved by Dr. Staelin?  
 19 A Yes.  
 20 Q Which is the same person as Richard Staelin?  
 21 A Yes.  
 22 Q Okay. I'm just --  
 23 MR. MORRIS: Probably for clarity better to  
 24 just say Mr. Staelin or Richard Staelin for the record  
 25 just so --

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1 THE WITNESS: Yeah.  
 2 MR. MORRIS: -- so there's no confusion.  
 3 THE WITNESS: Sorry.  
 4 MR. ROGERS: Thanks.  
 5 BY MR. ROGERS:  
 6 Q All right. What about an entity IBEX LLC? Is  
 7 that associated with BioElectronics?  
 8 A It's an investor.  
 9 Q It's an investor. And how has it invested?  
 10 A It's loaned money to BioElectronics.  
 11 Q Okay. And do you have any relationship to IBEX  
 12 yourself?  
 13 A To IBEX? No.  
 14 Q Who runs IBEX? Are you aware?  
 15 A Yes.  
 16 Q And who is it?  
 17 A My daughter Kelly Ann.  
 18 Q Kelly Ann?  
 19 A Whelan. Yeah.  
 20 Q Thank you.  
 21 A I'm sorry.  
 22 Q Who has --  
 23 A You know the family by now.  
 24 Q Who also uses the name Kelly Lorenz, if I'm  
 25 correct?

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1 MR. MORRIS: No.  
 2 THE WITNESS: Not anymore.  
 3 BY MR. ROGERS:  
 4 Q Okay. She did use the name Kelly Lorenz.  
 5 A She was married to Bill Lorenz.  
 6 Q Yeah. So that was her --  
 7 MR. MORRIS: They're now divorced.  
 8 THE WITNESS: Yes.  
 9 MR. MORRIS: So she has used the name during  
 10 the marriage and --  
 11 MR. ROGERS: Please don't testify. Let's let  
 12 the witness testify.  
 13 MR. MORRIS: My client's familiar --  
 14 MR. ROGERS: I am aware.  
 15 THE WITNESS: I need help though thanks.  
 16 MR. ROGERS: I'm trying to just establish the  
 17 record here, so --  
 18 THE WITNESS: That's fine.  
 19 MR. ROGERS: -- we need you to testify.  
 20 THE WITNESS: Right.  
 21 BY MR. ROGERS:  
 22 Q And you say IBEX has invested in  
 23 BioElectronics, correct?  
 24 A Yes.  
 25 Q And what -- describe those investments for me.

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1 A For the most, they're notes. I mean they're  
2 notes payable by BioElectronics to IBEX.  
3 Q Okay. Has IBEX provided any other services to  
4 BioElectronics?  
5 A IBEX? No.  
6 Q You sure of that?  
7 A IBEX is a corporation.  
8 Q Do you own any part of BioElectronics Corp?  
9 A Personally? No.  
10 BY MR. MROSKI:  
11 Q What do you mean when you say, "Personally,"  
12 because you've used that qualifier a couple of times?  
13 Are you an official owner?  
14 A My wife owns shares --  
15 Q Okay.  
16 A Through St. John's.  
17 Q Okay.  
18 BY MR. ROGERS:  
19 Q Do you and your wife hold assets separately or  
20 jointly?  
21 A I don't really have any assets other than, you  
22 know --  
23 Q I don't know. I'm looking for the facts.  
24 A I -- yeah. No, we don't --  
25 MR. MORRIS: I'll object to the extent that

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1 calls for a legal conclusion, but --  
2 THE WITNESS: Yeah, I don't understand. I mean  
3 do we have a house or something like that? No. Do we  
4 have joint accounts? No.  
5 BY MR. ROGERS:  
6 Q I find that very interesting. You have no bank  
7 accounts in your name.  
8 A I have bank accounts in my name.  
9 Q Okay. I think we asked in the --  
10 A They're listed -- the Middleburg Bank in  
11 Virginia.  
12 Q Okay. And what's the balance in that account  
13 as of today?  
14 A Like I stated, [REDACTED]  
15 Q [REDACTED] okay.  
16 A And some odd, you know --  
17 Q And you hold no brokerage account?  
18 A Correct.  
19 Q How about a retirement account of any sort?  
20 A None.  
21 Q And you hold no assets of BioElectronics  
22 individually, correct?  
23 A Correct.  
24 Q So your wife has all meaningful assets. Why is  
25 that?

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1 A I love her.  
2 Q Okay. Is there any other reason?  
3 A I don't need -- I don't need to own anything.  
4 Q Okay.  
5 A I'm going to [REDACTED]  
6 MR. MORRIS: It's a joke.  
7 BY MR. ROGERS:  
8 Q I was actually -- I was going to confirm that  
9 you were a Marine at one point, but I think that's clear  
10 in the background questionnaire. I took that to be a  
11 reference to that.  
12 A That has nothing to do with it. I just kept a  
13 [REDACTED] It's the only -- that and a duty belt is the  
14 [REDACTED]. So I don't think you need anything  
15 else in life. If it didn't fit in that bag, you don't  
16 need it.  
17 Q Have you made any loans to BioElectronics  
18 yourself individually?  
19 A No.  
20 Q Has your wife?  
21 A Yes.  
22 Q And did she do so as an individual or through  
23 some other entity or a combination of people?  
24 A Both.  
25 Q Okay. And what entity did she make those loans

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1 through?  
2 A Originally we had another entity, Paw, P-a-w,  
3 which got screwed up in that silly Lyons thing. But --  
4 and then we -- then she formed St. John's LLC. And over  
5 the years she would make loans personally into the  
6 company at times like to cover payrolls and normal  
7 catastrophes that befall a business.  
8 Q Did she get repaid?  
9 A Rarely.  
10 Q Did she get repaid even once?  
11 A Oh yes.  
12 Q Okay. When she got repaid, did she get paid in  
13 cash or some other way?  
14 A Checks.  
15 Q Okay. Was she ever paid in shares?  
16 A I -- St. John's converted some shares -- I  
17 don't know -- from time to time, maybe a year ago.  
18 BY MR. MROSKI:  
19 Q Is St. John's a for-profit entity?  
20 A I'm sorry. I didn't --  
21 Q Is St. John's a for-profit entity?  
22 MR. MORRIS: It's not a charitable --  
23 THE WITNESS: No. I think I've --  
24 MR. MORRIS: For IRS purposes is that --  
25 BY MR. MROSKI:

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1 Q Yeah, like it pays some taxes or --  
2 MR. MORRIS: It's not a 401(c), correct?  
3 THE WITNESS: It pays -- it pays its taxes.  
4 BY MR. MROSKI:  
5 Q Okay. And you said you're an employee of St.  
6 John's?  
7 A Well, I do the work. I mean St. John's -- I do  
8 the work. St. John's gets the checks whenever. But I'm  
9 -- there's no -- we don't --  
10 MR. MORRIS: You're not an employee?  
11 THE WITNESS: I'm not an employee.  
12 MR. MORRIS: You don't get a 1099 or --  
13 THE WITNESS: No.  
14 MR. MORRIS: -- what is it? The other one for  
15 employees -- W-2 is for employees, right?  
16 THE WITNESS: No.  
17 BY MR. MROSKI:  
18 Q Who do you work for? I mean forgive me. I  
19 just want to understand --  
20 A That's all right.  
21 Q -- the dynamic here. Who do you work for? Do  
22 you work for St. John's, or do you work for BioElectric?  
23 A BioElectronics.  
24 Q BioElectronics.  
25 A I go -- I do the work as the president of

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1 BioElectronics.  
2 Q I know. But I'm just asking who you work for.  
3 A I don't really work for anybody.  
4 Q Not what you do but who do you work for?  
5 A I don't -- I don't mean to be evasive. You  
6 know, I don't consider my -- if I don't show up tomorrow,  
7 there's no consequences or --  
8 Q Who records payroll expenses for your services?  
9 A Nobody? I mean because it -- the agreement  
10 with BioElectronics is \$150,000 on an annual basis  
11 payable, you know, semimonthly. There probably was some  
12 draft agreements on it at one point. Where they are, you  
13 know, I don't know. And so when --  
14 MR. MORRIS: You have an employee agreement  
15 with BioElectronics Corporation.  
16 THE WITNESS: Yeah.  
17 MR. MORRIS: Is that what you just testified  
18 to?  
19 THE WITNESS: I don't think there's a formal  
20 written right now, okay? When I'm asked who pays for --  
21 you know, I record that I'm entitled to -- St. John's is  
22 entitled to \$150,000 in annual consulting fees payable  
23 semimonthly.  
24 BY MR. MROSKI:  
25 Q From BioElectronics?

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1 A Right. And so if you go look at the ledgers of  
2 BioElectronics, every month they'll record the liability.  
3 Q Okay. And why is St. John's the beneficiary if  
4 you don't work for St. John's?  
5 A Because it's my wife, and St. John's has, you  
6 know, interest in the shares and all.  
7 BY MR. ROGERS:  
8 Q I'm going to move on to another exhibit. Can I  
9 have 81 back?  
10 A Sure.  
11 Q I'm going to hand you what has been marked  
12 Exhibit 51. Why don't you take a few minutes and take a  
13 look at that. I'm going to -- we're going to go through  
14 some specific items on here, so you -- it's really up to  
15 you. If you think you want to look through every line  
16 now, then you have the right to do so. But I'd like to  
17 ask you some questions, so let me know when you're --  
18 A Well, give them -- you just direct me to what  
19 section you want to talk about, give me a chance to look  
20 at it, and then I'll respond to you if that's --  
21 Q Sure. Yeah.  
22 A -- satisfactory.  
23 Q So let me say for the record that Exhibit 51 is  
24 a multi-page document. It is the Form 10-K submitted to  
25 the U.S. Securities and Exchange Commission by

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1 BioElectronics Corp. for the period ending December 31,  
2 2009. Going forward I'm going to refer to this as the  
3 2009 10-K. Do you understand that to be -- this document  
4 to be the 2009 10-K for BioElectronics?  
5 A Yes.  
6 Q Let's go to the end here.  
7 A Well, that was fast.  
8 Q Let's see. On page 48 of 49 in the upper  
9 right-hand corner -- you have a two -- a front and back-  
10 printed copy, so you might want to look at the back of  
11 the page there.  
12 A I don't have -- this is 48.  
13 Q Look at the upper right-hand corner.  
14 A Oh.  
15 Q 49 of 49 and then --  
16 A Okay. 48. Right.  
17 MR. MORRIS: Page numbering at the upper right  
18 corner as well as page numbering on -- that actually go  
19 to the --  
20 THE WITNESS: Okay. So we're going to use the  
21 upper right corner numbering.  
22 BY MR. ROGERS:  
23 Q If you're confused at all, go ahead and ask me,  
24 okay?  
25 A Right. I'm fine.

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1 Q All right. Did you sign this document? It has  
2 your name there under signature for BioElectronics Corp.  
3 A If this is the document that was filed -- there  
4 was multiple, multiple perversions of it. I would -- the  
5 answer is yes.  
6 Q So you ultimately signed the --  
7 A The filing.  
8 Q -- 2009 10-K?  
9 A The filing, yes.  
10 Q Okay. And you signed as president and chief  
11 executive officer, chief financial officer, and director.  
12 Is that correct?  
13 A Yes.  
14 Q On page 15 of 49 in the upper right-hand  
15 corner, which is also annotated as page 14 at the bottom  
16 of the page of the text -- do you see where I am?  
17 A Yes.  
18 Q Okay. In item three, Legal Proceedings --  
19 A Yes.  
20 Q -- there is a statement here that "the matter  
21 was submitted to arbitration at which the plaintiff  
22 prevailed, and a judgment was entered against  
23 BioElectronics Corp., Paw LLC, and Andrew Whelan" --  
24 A Right.  
25 Q -- "in the amount of \$1,217,919.10." Do you

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1 see that sentence?  
2 A Yes.  
3 Q Okay. Who was the plaintiff in that matter?  
4 A William Lyons.  
5 Q Okay. And how was the \$1,217,919.10 accounted  
6 for in BioElectronics' books?  
7 A How was it recorded? As an expense.  
8 Q It was recorded as an expense?  
9 A Yes.  
10 MR. ROGERS: Let's mark another document.  
11 We'll mark that exhibit next, which is Exhibit 82.  
12 (SEC Exhibit 82 was marked  
13 for identification.)  
14 BY MR. ROGERS:  
15 Q Exhibit 82 is a document that was submitted as  
16 part of the 2009 10-K for BioElectronics, and it is the  
17 financial statement. Can you point to where the Lyons  
18 litigation was accounted for here?  
19 A I think this came in when this was -- the  
20 period -- this was a subsequent event if I remember  
21 correctly. So when the audit was done, I don't think  
22 this was in.  
23 Q I'm sorry. Does that -- are you testifying  
24 that the \$1,217,919.10 is not accounted for --  
25 A No.

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1 Q -- in the BioElectronics --  
2 A I don't know if it's in this. When this --  
3 MR. MORRIS: Objection, mischaracterizes his  
4 testimony.  
5 MR. ROGERS: I'm asking the question, Mr.  
6 Morris.  
7 THE WITNESS: Depends on what the date on this  
8 document was. It was -- I remember there was some period  
9 where the audit was done, the statements were filed, and  
10 then it came in. So is it in the financial statements  
11 itself here? I don't think so. I don't know for sure.  
12 Want me to look?  
13 MR. ROGERS: Yeah, I -- I would.  
14 MR. MORRIS: Do you remember the date of the  
15 judgment of the Lyons --  
16 THE WITNESS: No.  
17 BY MR. ROGERS:  
18 Q You mention it in the 10-K, so I certainly  
19 would like to see it in the documents that support the  
20 10-K.  
21 MR. MORRIS: I think the testimony --  
22 THE WITNESS: I mean I can't reconcile it now.  
23 It was duly reported that the judgment -- that a  
24 judgment was entered. But, you know, in what set of  
25 documents it was in, I don't know. I mean you're talking

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1 back years ago.  
2 BY MR. MROSKI:  
3 Q Well, why don't you flip to page 33 of 35?  
4 A In which one?  
5 Q The most recent exhibit.  
6 MR. ROGERS: Exhibit 90 -- I'm sorry -- Exhibit  
7 82 for our testimony here. It's also been marked as  
8 Exhibit 99 as part of the file.  
9 MR. MROSKI: Just take a second and go ahead  
10 and read number 12. See if that helps refresh your  
11 memory.  
12 (The witness examined the document.)  
13 THE WITNESS: I'm not following the question  
14 here. This is a set of financial statements. It says it  
15 can't be accurately estimated at the time. I don't know  
16 what the date -- this was, but it covers a financial  
17 period through December 31, 2009, okay.  
18 BY MR. MROSKI:  
19 Q I believe the question is what basis did you  
20 have for deciding that it could be estimated at that time  
21 as of December 31, 2009.  
22 A Because the -- as I recall, the objection to  
23 the judgment or to the arbitration decision was that I  
24 didn't have the authority to make that commitment that  
25 supposedly was made without board approval. And there

1 was clearly no board approval. They gave Lyons what  
 2 amounted to that time some -- like \$4 million solely to  
 3 come back to work the next day.  
 4 Q Okay. So as of December 31, 2009, you guys had  
 5 an arbitration ruling in the amount of roughly \$1.2  
 6 million?  
 7 A On what date?  
 8 Q As of the end of calendar year 2009, an  
 9 arbitration ruling had been entered in approximately \$1.2  
 10 million against the company, right? Is that correct?  
 11 A Well, this says, "On January 14th the court  
 12 entered a judgment" --  
 13 MR. MORRIS: January 14, 2010.  
 14 THE WITNESS: '10.  
 15 BY MR. MROSKI:  
 16 Q No. It says actually, "On May 29, 2009,  
 17 through binding arbitration Mr. Lyons was awarded  
 18 approximately \$1.2 million for his claims." Do you see  
 19 that?  
 20 MR. ROGERS: It's the paragraph above the one  
 21 you're looking at.  
 22 THE WITNESS: Right.  
 23 BY MR. MROSKI:  
 24 Q Okay. "Subsequently the company filed to have  
 25 a petition to vacate the arbitration award, and the

1 motion was denied by the court on December 30, 2009." Is  
 2 that -- is that accurate?  
 3 A I'm assuming it is because it's in the  
 4 financials.  
 5 Q Okay.  
 6 A We assume ours are correct.  
 7 Q So as of the end of fiscal 2009, the company  
 8 had had an arbitration judgment against it for  
 9 approximately \$1.2 million. A petition was filed with  
 10 the court to vacate that award, and that was denied also  
 11 by the end of the fiscal year. Is that correct?  
 12 A Yes.  
 13 Q Okay.  
 14 A I assume this is because we --  
 15 Q So given that, I guess the original question is  
 16 what basis did you have to say that you couldn't  
 17 reasonably estimate given those facts.  
 18 A Because the fundamental decision was flawed.  
 19 It could not -- he could not come to the conclusion that  
 20 I made an agreement with Mr. Lyons to give him 4 million-  
 21 something without --  
 22 Q Is it your opinion that the fundamental  
 23 decision was flawed? Did you consult with lawyers?  
 24 A Well, we -- yeah. We --  
 25 Q Who made the decision?

1 A We have had more lawyers than Watergate, okay,  
 2 over the years. We had a -- we had a whole other set of  
 3 attorneys just to handle this nonsense. That's what  
 4 McAuliffe -- and I forget the rest of that firm's --  
 5 MR. MORRIS: But who decided on --  
 6 THE WITNESS: The combination of the decision,  
 7 obviously, at the end of the day was made by the  
 8 auditors, what they're going to -- if they -- they're  
 9 clearly aware of the circumstance and the conditions.  
 10 And that was the decision that it didn't need to be --  
 11 it's disclosed in here, but it's not recorded as a  
 12 expense. Nobody expected --  
 13 BY MR. MROSKI:  
 14 Q So are you saying that it's the auditor's  
 15 decision to --  
 16 A No. It's a combination of the auditors and the  
 17 company. The company is responsible for the financial  
 18 statements, as you know, not the auditors other than --  
 19 so a combination of the multiple attorneys working on it,  
 20 the audit firm, and the board that these are accurate  
 21 statements. And the outcome is reflected, you know. We  
 22 paid them more than we should have. We had to get  
 23 another set of lawyers, and that's when Mark Flanagan  
 24 came in.  
 25 Q Okay. So as of December 31, 2009, was any

1 amount accrued for this \$1.2 million arbitration award?  
 2 A Doesn't say if it is. I don't -- my  
 3 recollection is no as of 2009. But you have audited  
 4 financial statements signed off by the audit firm.  
 5 Q Okay. And you signed these financials,  
 6 correct?  
 7 A Yes.  
 8 MR. ROGERS: Do you have anything more on this?  
 9 MR. MROSKI: No.  
 10 MR. MORRIS: What was the final amount that was  
 11 ultimately paid to Mr. Lyons?  
 12 THE WITNESS: Something under 200,000.  
 13 MR. MORRIS: Under 200,000?  
 14 THE WITNESS: Yeah. Rick paid a third of it.  
 15 Mary and I paid a third.  
 16 MR. MORRIS: So you paid that personally?  
 17 THE WITNESS: We put the money in the company  
 18 to fund it.  
 19 BY MR. ROGERS:  
 20 Q And was that a court decision for the 200,000,  
 21 or was that a settlement?  
 22 A That was a settlement because the underlining  
 23 (sic) case made no sense whatsoever. He alleged he was  
 24 entitled to \$4 million. This arbitrator said he was  
 25 entitled to it. We said, "That's fine. Here's your



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1 1099. Did you pay the IRS?" He decided he wasn't really  
2 entitled to that money.  
3 BY MR. MROSKI:  
4 Q So -- I'm sorry. Did you say it was a  
5 settlement or it was actually -- a court decided the  
6 amount?  
7 A No.  
8 Q Or did you guys settle it between the parties?  
9 A The lawyers -- we had another set of lawyers.  
10 MR. MROSKI: Okay.  
11 MR. MORRIS: Was an appeal pending at the time?  
12 THE WITNESS: Yes.  
13 BY MR. MROSKI:  
14 Q And you -- you have an accounting background;  
15 is that correct, Mr. Whelan?  
16 A Yes.  
17 Q You're a CPA?  
18 A No.  
19 Q Okay. What's your understanding as to when  
20 something's required under the accounting guidance to be  
21 accrued for in the financial statements for a contingent  
22 liability?  
23 A When it's real, when there's actually a  
24 substantive, real issue and likelihood that you're going  
25 to pay it.

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1 Q Okay. So when it's real and it's likely that  
2 you're going to pay? That's your understanding?  
3 A Yeah. There's a real expectation that there's  
4 a liability and you're going to have to pay it.  
5 Q Okay. And whose expectation?  
6 A Well, generally on something that order of  
7 magnitude, it's the board.  
8 Q Okay. Just by way of background, what is your  
9 background in accounting --  
10 MR. ROGERS: Mr. Morris, do you want a minute  
11 to talk to your client?  
12 MR. MORRIS: No, I'm okay.  
13 You want to take a break?  
14 THE WITNESS: I'm fine.  
15 MR. MORRIS: Well, take a break. Let's take a  
16 break.  
17 THE WITNESS: All right.  
18 MR. ROGERS: Let's go off the record. It's  
19 10:55.  
20 (A brief recess was taken.)  
21 MR. ROGERS: All right. We are back on the  
22 record at 10:59.  
23 BY MR. ROGERS:  
24 Q You should still have in front of you the  
25 exhibit that is the 2009 10-K for BioElectronics. I

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1 think it's Exhibit 51. If you would, double-check me and  
2 look at the front page there.  
3 A All right. Got it.  
4 Q I think I'm done with Exhibit 82, so I'll take  
5 that from you, and if it comes up again, I can give it  
6 back to you.  
7 MR. MORRIS: 82 is the -- it's this one, the  
8 financial statements.  
9 MR. ROGERS: Correct.  
10 MR. MORRIS: Is there anything you want to add  
11 to that, to your testimony on those financial statements  
12 before he puts that exhibit away?  
13 THE WITNESS: We finished on it? I mean the  
14 point is we have more lawyers there. I mean we had --  
15 including Walker, who was representing a lawyer and  
16 accountant. We had McAuliffe -- and I forget his  
17 partner's name -- which is one of the larger firms in  
18 Frederick. We had Aston Bird in there.  
19 MR. MORRIS: You're talking about Alston Bird?  
20 THE WITNESS: Alston Bird, yeah. I'm sorry.  
21 We had so many lawyers I can't remember what were their  
22 names.  
23 MR. MORRIS: Were they involved in the  
24 preparation of the K?  
25 THE WITNESS: Yeah, they filed it. They re-did

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1 the K and filed it.  
2 MR. MORRIS: Did you consult with them before  
3 you filed it?  
4 THE WITNESS: Absolutely.  
5 MR. MORRIS: Did you ask them if it complied  
6 with necessary reporting provisions?  
7 THE WITNESS: Yes. And we actually had two  
8 accounting firms still. We had the -- the Bedwell firm  
9 that was there and then a new one, Cherry Becker  
10 Nicholas.  
11 MR. ROGERS: Cherry Becker Holland.  
12 THE WITNESS: Thank you. Thank you.  
13 MR. ROGERS: Are you finished?  
14 THE WITNESS: Yes.  
15 MR. MORRIS: I asked you if you asked them if  
16 it complied. And did you ask them to make sure that it  
17 complied with the --  
18 THE WITNESS: Yeah. We had --  
19 MR. MORRIS: -- all the reporting obligations  
20 and --  
21 THE WITNESS: Yeah. And we had extensive --  
22 MR. MORRIS: -- any obligations?  
23 THE WITNESS: -- discussions about what we were  
24 going to record about the liability.  
25 MR. MORRIS: Did you follow their advice?

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1 THE WITNESS: Yes.

2 BY MR. ROGERS:

3 Q I'm sorry. I'm not sure how that sits with the

4 idea that the board ultimately made the decision as to

5 what to declare as revenue.

6 A The board, including myself, had extensive

7 conversations with the various law firms that were

8 involved in the issue. So the -- you know, Alston Bird

9 was doing the securities work. We had engaged McAuliffe,

10 Michael McAuliffe's firm to specifically handle the

11 arbitration matter and settle that. Matter of fact,

12 there was another -- Steve Camden who had to handle

13 the --

14 MR. MORRIS: Okay. The question was how does -

15 - how does the decision how to report that arbitration

16 award -- how was that determined by the board?

17 THE WITNESS: After consultation with the

18 attorneys.

19 MR. MORRIS: All right.

20 BY MR. ROGERS:

21 Q But the decision was the board's?

22 A Absolutely. It's the board's statements or the

23 company's statement.

24 Q Okay. And you're the one who signed the

25 document not the attorneys, correct?

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1 A Correct.

2 Q Thank you. Let's go to what's been marked as

3 page 21 of 49 in the upper right-hand corner of Exhibit

4 51 to go back to the 10-K itself. Mr. Whelan, it's

5 marked page 20 at the bottom of the text.

6 A All right.

7 Q You found it?

8 A The result of operations?

9 Q Yes. The bottom paragraph mentions a \$150,000

10 bill and hold transaction. Are you familiar with that

11 transaction that's being referred to there?

12 A Yeah. I assume that's the Japan transaction.

13 Q Why do you assume that?

14 A Well, because the amount and the date on it.

15 Q Could it be any other transaction?

16 A Not likely.

17 Q Let's go to page 22 of 49, the next page. Top

18 paragraph on this page refers to veterinary revenue of

19 \$271,047 in connection with a distribution agreement. It

20 goes on to describe that as a bill and hold transaction.

21 Are you familiar with the transaction being referred to

22 here? You know, let me clarify that. That was -- not

23 clarify. I was wrong. I said that the bill and hold

24 transaction had veterinary revenues or implied of

25 \$271,047. That's not correct.

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1 The paragraph -- I'm going to read this

2 sentence now. "The specialized veterinary products sold

3 to eMarkets include approximately \$216,000 of revenue

4 related to bill and hold transactions and for which the

5 related product is expected to be delivered during the

6 fourth quarter of 2010." Do you see where I'm reading?

7 A Yes.

8 Q Are you familiar with that transaction?

9 A Yes.

10 Q Were you familiar with that transaction when

11 this document was created?

12 A Yes, it was --

13 Q Okay. And let me ask you maybe a better

14 question. Were you familiar with that transaction when

15 you signed this document?

16 A When I signed the document?

17 Q Yeah, the 10-K that's in front of you that

18 you've testified that you signed.

19 A Yes.

20 Q Same question for the one on the previous page,

21 page 21 of 49. Sir, I'm asking you the question not your

22 attorney.

23 Do you need time to talk to your client?

24 MR. MORRIS: No. Go ahead. Ask the question.

25 BY MR. ROGERS:

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1 Q Mr. Whelan, on page 21 of 49 at the bottom of

2 the page we discussed a bill and hold transaction that

3 you referred to as the Japan transaction, I believe.

4 Were you familiar with that transaction when you signed

5 the 10-K?

6 A Yes.

7 Q Thank you. Let's go to page 24 of 49.

8 Mr. Morris, it's not my business what notes you

9 take, but I am going to request that you don't coach your

10 witness.

11 MR. MORRIS: I'm not coaching him. All I'm

12 sitting here -- is writing -- taking -- making scribbles

13 for the most part.

14 MR. ROGERS: Thank you.

15 MR. MORRIS: Let's take a break. I think we

16 need to take another break here.

17 MR. ROGERS: Sir, I will decide when we go on a

18 break.

19 We are off the record at 11:06.

20 (A brief recess was taken.)

21 MR. ROGERS: Let's go back on the record. It

22 is now 11:10, and we are back on the record.

23 BY MR. ROGERS:

24 Q Exhibit 51 is still in front of you. I'd like

25 you to turn to page 24 of 49 in the upper right-hand

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1 corner. You there?

2 A Yes. I'm sorry.

3 Q There is a section that's headed "Liquidity and  
4 Capital Resources." The second paragraph -- and I'm  
5 going to read this into the record. "Since our inception  
6 on April 10, 2000, a majority of our financing has been  
7 provided by the company's founders, including the CEO,  
8 certain board members, and their immediate family and  
9 associates.

10 "As of December 31, 2009, all of the company's  
11 financing was provided by these related parties through  
12 long-term notes payable. We present these notes payable  
13 as long-term liabilities and our financial statements as  
14 the holders of these notes (who are related parties) have  
15 no current intention to pursue repayment of these  
16 amounts." Is that paragraph correct?

17 A It was being paid by the law firm and the  
18 accountants. I assume it is correct.

19 Q Okay. Did you believe it was correct at the  
20 time that you signed this document?

21 A I assume we went over the financial statements  
22 with the accountants and the lawyers and -- all the  
23 lawyers. I mean Alston Bird and Lex Kuhne, the whole  
24 gamut.

25 Q Is that a yes or a no?

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1 A Yeah. Absolutely it was correct based on --

2 Q So is that a yes?

3 A Yes.

4 Q Okay. Fourth paragraph -- I'm going to read  
5 this one into the record as well. "On January 1, 2005,  
6 we entered into an unsecured revolving convertible  
7 promissory note agreement (the revolver) with IBEX LLC  
8 (IBEX), a related party, for a maximum limit of \$2  
9 million with interest at the prime rate plus two percent  
10 and all accrued interest and principal due on or before  
11 January 1, 2015, whether by the payment of cash or by  
12 conversion into shares of our common stock. The revolver  
13 is convertible at various conversion prices based on VWAP  
14 for the 10 trading days preceding the date of conversion.  
15 IBEX LLC is a limited liability company whose president  
16 is the daughter of the president of the company. As of  
17 December 31, 2009, an amount of approximately \$1,288,000  
18 was drawn from the revolver."

19 Is that paragraph correct?

20 A I assume I checked the amounts with the  
21 financial statements of the company and it was reviewed  
22 by the law firm and the accountants because I have no  
23 reason to believe it's not correct.

24 Q Did you believe it was correct at the time you  
25 signed this document?

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1 A We had more than adequate company counsel and  
2 accountants.

3 Q Okay. I'm going to hand you what's been marked  
4 as Exhibit 43. I'm also going to hand you what's been  
5 pre-marked as Exhibit 44. Do you recognize Exhibit 43,  
6 sir?

7 A I haven't examined it, but it looks like the  
8 loan agreement between BioElectronics Corporation and  
9 IBEX.

10 Q Is that the loan agreement being referred to in  
11 the paragraph we were just discussing, the fourth  
12 paragraph under "Liquidity and Capital Resources" on page  
13 24 of 49 of the 10-K?

14 (The witness examined the document.)

15 THE WITNESS: What is -- this is a loan  
16 agreement, and this is a note. I'm not sure of the  
17 question.

18 BY MR. ROGERS:

19 Q Okay. I was asking about Exhibit 43.

20 A Yeah. The loan agreement and note appear to be  
21 from the same document.

22 Q I'm sorry?

23 A They appear to be the same loan.

24 Q Okay. So just to make sure I'm understanding  
25 what you're saying, are you testifying to Exhibit 43 and

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1 44 being documents that represent the loan being  
2 discussed in the fourth paragraph of page 24 of 49?

3 A I actually have a question. What's -- is this  
4 document this loan?

5 Q Okay. Let's be careful with pronouns because  
6 we're going to have to read this -- the transcript later.  
7 The document you pointed to was Exhibit 43, correct?

8 A Yes.

9 Q Okay. And I'm asking you is Exhibit 43 the  
10 loan agreement that's being referred in the fourth  
11 paragraph on page 24 of 49.

12 A It appears to be.

13 Q How about document -- Exhibit 44?

14 A This appears to have -- you know, these are my  
15 initials on the top.

16 Q Okay. So those two documents signify the  
17 relationship that's being discussed on the paragraph  
18 we've been discussing, fourth paragraph on page 24 of 49?

19 A Assuming the lawyers that wrote it had the same  
20 documents, yes.

21 Q Okay. The date on each of Exhibit 43 and 44 is  
22 January 1, 2005. Is that date correct?

23 A I --

24 MR. MORRIS: Objection, ambiguous on --

25 MR. ROGERS: I don't know how to more clear.

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1 MR. MORRIS: Are you asking him is that the  
2 document -- is that the date the document was created or  
3 -- I don't know what -- is the date correct? What does  
4 that mean?  
5 BY MR. ROGERS:  
6 Q All right. Let me ask this. Did you sign the  
7 loan agreement that's Exhibit 43 on January 1, 2005?  
8 A I don't know. Does it have a date on it when I  
9 signed it?  
10 Q I'm asking.  
11 MR. MORRIS: There's a date in the upper right  
12 corner on the first page. There doesn't appear to be  
13 date by your signature.  
14 THE WITNESS: I don't -- I don't remember when  
15 I signed this. I mean you're talking about eight years  
16 ago.  
17 BY MR. ROGERS:  
18 Q I have testimony that says you -- it was  
19 drafted in 2009. Are you contradicting that testimony?  
20 A I have no reason to contradict the testimony at  
21 all. I don't know where you got that testimony from, but  
22 I -- 2009 sounds awful late. But --  
23 Q Do you think this document was drafted and  
24 signed on January 1, 2005, specifically Exhibit 43?  
25 A I don't recall.

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1 Q Okay. Same question for Exhibit 44. Was that  
2 exhibit signed on January 1, 2005?  
3 A I don't recall. I mean it's not dated by -- my  
4 signature is not dated, so I -- I would expect that it  
5 should have been.  
6 Q I would too. What attorney drafted these  
7 documents for you?  
8 A Mark Flanagan.  
9 Q Okay. And when did you first start working  
10 with Mr. Flanagan?  
11 A I don't remember.  
12 Q Who did you negotiate the terms of the loan  
13 agreement with? Actually, let me ask you the foundation.  
14 Did you negotiate the loans, the terms of the loan  
15 agreement that's Exhibit 43?  
16 A I would say the board did.  
17 Q Okay. And you were a member of the board. So  
18 were you part of those negotiations?  
19 A I just don't remember those negotiations.  
20 Q Okay. If it was a function of the board, were  
21 there records created for the board? Are there minutes  
22 for the board showing when this loan was negotiated?  
23 A There are minutes of board meetings. I don't  
24 know specifically about this event.  
25 Q Are all board members -- I'm sorry. Are

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1 minutes created for all board meetings?  
2 A Yes.  
3 Q Okay. And who keeps those minutes?  
4 A It would be corporate records -- the corporate  
5 secretary.  
6 Q Okay. I think my subpoena would have covered  
7 that, each -- both the subpoena that was sent to the  
8 company and to you specifically, and I haven't seen those  
9 documents.  
10 A What, the board minutes?  
11 Q Board minutes that relate to these loans. I'm  
12 going to ask you to go back and look for them.  
13 MR. MORRIS: Just so we're clear, you're  
14 talking about board minutes that would have pertained to  
15 a January 2005 note that's Exhibit --  
16 MR. ROGERS: The revolver that's described in  
17 the fourth paragraph under "Liquidity and Capital  
18 Resources" on page 24 of 49 on the 2009 10-K for  
19 BioElectronics.  
20 BY MR. ROGERS:  
21 Q Who did the board negotiate with?  
22 A Kelly.  
23 Q Okay. Who's Kelly?  
24 A Kelly Ann -- my daughter -- Whelan.  
25 Q Okay.

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1 MR. MORRIS: This is 2005, so just keep it in  
2 mind.  
3 MR. ROGERS: What do you mean it's 2005?  
4 MR. MORRIS: This note has a 2005 date on it.  
5 You said who did they negotiate with at the board. I  
6 said keep in mind it's 2005. The board was different in  
7 2005, I think, than it is today.  
8 MR. ROGERS: Okay. And perhaps you missed the  
9 part where I said I have testimony that contradicts it  
10 was 2005. So I'm asking --  
11 MR. MORRIS: No, no, no. The document was  
12 created -- you're saying the loan was created in 2005 or  
13 the document was created in 2005?  
14 MR. ROGERS: Well, the document was -- was not  
15 created in 2005.  
16 MR. MORRIS: All right. But the loan was still  
17 negotiated -- my understanding is the loan -- you asked  
18 the question.  
19 But was the loan created in 2005, right,  
20 regardless of when it was documented?  
21 THE WITNESS: No. The loan goes back to well  
22 before that.  
23 MR. ROGERS: I don't accept the regardless of  
24 when it was signed portion of your statement. I think it  
25 does matter what date is put on the document, what date

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1 is put in the 10-K. And if that's different than what  
2 actually occurred, then that's something I really want to  
3 know about.

4 MR. MORRIS: Do you understand his question? I  
5 don't know. I don't understand it. I don't know what  
6 the question is at this point.

7 THE WITNESS: The statement says on January --  
8 what the lawyers wrote in here was on January 1, 2005, we  
9 entered into an unsecured revolving convertible  
10 promissory note agreement.

11 BY MR. ROGERS:

12 Q Okay. So where is it?

13 A Where is what, the note?

14 Q The January 1, 2005, unsecured revolving  
15 convertible promissory note. Where is it?

16 A Well, it's the date they entered the note.  
17 There was probably loans on that note that are prior to  
18 2005.

19 Q So why doesn't the statement say that?

20 A You're going to have to ask Alston Bird or --

21 Q I'm asking the guy who signed it.

22 A Well, I didn't prepare it. I signed it, but I  
23 didn't prepare it. I signed it on reliance on counsel  
24 and auditors.

25 MR. ROGERS: Okay. So we're clear moving

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1 forward, Mr. Morris, I think the date stated in the 2009  
2 10-K is wrong. And if you have evidence that contradicts  
3 that belief, I would like to see it. Otherwise, I'm  
4 going to move forward with the belief that it's wrong.  
5 Is that clear?

6 MR. MORRIS: You're asking for documents  
7 that --

8 MR. ROGERS: I'm giving you a chance.

9 MR. MORRIS: One more time there because I  
10 don't understand. I'm a little slow today. But the  
11 staff's position is that at this date in the 10-K it says  
12 that there was a revolver entered into. 2005 is not  
13 accurate. It was created -- this revolver didn't exist  
14 in 2005 or that there wasn't documentation on that. That  
15 seems like there's two different questions there.

16 MR. ROGERS: You answer it to the best of your  
17 ability. You get me evidence that says there was a valid  
18 agreement on January 1, 2009 entered into between IBEX  
19 and BioElectronics in the amount of "\$2 million with  
20 interest at the prime rate of two percent and all accrued  
21 interest and principal due on or before January 1, 2015,  
22 whether by the payment of cash or by conversion into  
23 shares of our common stock."

24 MR. MORRIS: Right. Okay. I understand. I  
25 understand what you're asking for.

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1 THE WITNESS: There were loans on the agreement  
2 going back to 2003 as I recall.

3 BY MR. ROGERS:

4 Q Is that what's being described in this  
5 paragraph?

6 A Yeah. It says we entered into a note,  
7 unsecured revolving convertible promissory note  
8 agreement.

9 Q I don't see how that answers what I'm looking  
10 at.

11 A Because you can have a liability without having  
12 a note.

13 Q Right. But you're specifically speaking of a  
14 note here in this paragraph. It is very particular what  
15 is being described here, not something that happened in  
16 2003.

17 A Well, it said we entered into the note.

18 Q On January 1, 2005. Sir, I'm not going to  
19 continue to battle this point. I think it's perfectly  
20 clear. If you don't have an answer for me, then you  
21 don't have an answer for me.

22 Next page, page 25 of 49, Exhibit 51. At the  
23 top of the page there's a paragraph that says,  
24 "Additionally, on August 1, 2009, we entered into a  
25 convertible promissory note agreement with IBEX for

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1 \$519,902 with simple interest at eight percent per annum.  
2 All accrued interest and principal are due on or before  
3 August 31, 2011, whether by the payment of cash or by  
4 conversion into shares of our common stock. The  
5 promissory note is convertible equal to the quotient of  
6 i, a sum equal to the entire outstanding amount" -- I'm  
7 sorry -- "outstanding principal and interest divided by  
8 ii, the conversion price of 1.9 cents per share. Do you  
9 see where I'm reading?

10 A Yes.

11 Q Okay. Is that statement accurate?

12 A Assuming that the lawyers looked at the  
13 statement and the note -- the statement.

14 Q Was it accurate at the time that you signed  
15 this -- the 10-K?

16 A To my understanding, yes.

17 Q Okay. Page 27 of 49, "General heading as to  
18 critical accounting policies and estimates," and then the  
19 third subheading is "Revenue Recognition." Second to the  
20 last sentence reads, "Our agreement with customers  
21 includes a right of return. Do you see where I'm  
22 reading?

23 A No.

24 Q The final paragraph on the page under the  
25 heading of "Revenue Recognition."

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1 A Right. Okay. Yeah. "Allowance for returns  
2 has been provided for the years ended 2009, 2008, 2007."  
3 Q Okay. So the sentence there reads, "Our  
4 agreement with customers includes a right of return." Is  
5 that accurate?  
6 A I don't think -- it's not an inclusive right of  
7 return to everyone.  
8 Q And where does it say that?  
9 A It doesn't.  
10 Q So that sentence is misleading?  
11 A No.  
12 Q What is it then if it doesn't --  
13 A There's an allowance for some possibilities,  
14 but I don't --  
15 Q Does it say that somewhere else?  
16 A No, it says it here. It says, "An allowance  
17 for returns has been provided for the years" -- has been  
18 provided. It doesn't mean everything. It doesn't say,  
19 "For all accounts." It doesn't say either.  
20 Q It doesn't say, "Our agreement for some  
21 customers," or, "Select customers," or -- there's no  
22 qualifier on customers.  
23 A I assume it's not. I assume when the attorneys  
24 wrote it it was immaterial. It's not -- there's not a  
25 lot of sales at these numbers, so there can't be a lot of

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1 returns.  
2 Q So do customers have a right of return or not?  
3 A Most, no.  
4 Q Okay. Who do?  
5 A I don't remember it back in -- you're talking  
6 about eight years ago or something, six years.  
7 MR. MORRIS: The general policy is there's no  
8 return, but there may have been some. Is that your  
9 testimony?  
10 THE WITNESS: Yeah. I assume -- you know, you  
11 never say an absolute --  
12 BY MR. ROGERS:  
13 Q Well, let me give you the -- find where it says  
14 that in the 10-K.  
15 A Find what?  
16 Q That only some customers have the right of  
17 return -- because this sentence says, "Our agreement with  
18 customers includes the right of return," period.  
19 A Well, it said --  
20 Q So if there's something that contradicts that,  
21 show me.  
22 A It doesn't need to contradict it. It says, "An  
23 allowance for returns has been provided," okay? So I  
24 assume the accountants and the lawyers -- well, the  
25 accountants decided that we should put some allowance in

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1 there, an allowance. It doesn't say everybody can return  
2 product. If --  
3 Q It does say that.  
4 MR. MORRIS: Then the next sentence says,  
5 "Defective units are replaced at the request of the  
6 customer."  
7 THE WITNESS: Yeah, that's slightly different.  
8 It says, "An allowance for returns has been provided."  
9 BY MR. ROGERS:  
10 Q No. Before that sentence it says, "Our  
11 agreement with customers includes the right of return,"  
12 period. So you think that sentence is inaccurate?  
13 A It's not -- yeah. It's not inclusive. It's  
14 not inaccurate.  
15 MR. ROGERS: Thank you.  
16 MR. MORRIS: So it's not inaccurate.  
17 MR. ROGERS: Sir, you're not testifying.  
18 THE WITNESS: It's not inaccurate. That's what  
19 I said. It's not --  
20 MR. ROGERS: Mr. Whelan has given his answer.  
21 MR. MORRIS: I was just clarifying it because  
22 you keep trying to mischaracterize his testimony and  
23 saying that he said it's inaccurate. He says it's not  
24 inaccurate.  
25 MR. ROGERS: It's not inaccurate. I think

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1 that's your testimony. I think Mr. Whelan's testimony is  
2 that it wasn't inclusive of all customers.  
3 BY MR. ROGERS:  
4 Q Is that correct, Mr. Whelan?  
5 A No.  
6 Q What is your testimony?  
7 A My testimony is that the -- it says, "Our  
8 agreement with customers includes -- it's plural, okay.  
9 So it doesn't mean it's absolute or entirety, okay. And  
10 with the following sentence it says, "An allowance." And  
11 I think what the attorneys and the accountants were  
12 saying -- that there's probably something in all those  
13 documents that says somebody could return something some  
14 time, someplace, somewhere, okay? And so there's an  
15 allowance for it to be conservative.  
16 Q For all customers?  
17 A I didn't say, "All." It's plural.  
18 Q I'm asking.  
19 A It doesn't say, "All," or, "Absolute." I  
20 assume the attorneys understand the English language and  
21 could -- if it was all and absolute, they would put all  
22 and absolute in it, you know.  
23 Q If it's not all or absolute, they would have  
24 put a qualifier. That's my position.  
25 A It's an allowance.

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1 MR. MORRIS: We're talking about agreements  
2 that were from four years ago, so you may need to go back  
3 and review those. And we can produce them, I'm sure.  
4 THE WITNESS: Yeah. An allowance doesn't --  
5 BY MR. ROGERS:  
6 Q Sir, I'm not asking about the allowance.  
7 A Yes, you are. You asked me about that  
8 sentence.  
9 Q No, I'm not. No. I'm asking you about whether  
10 agreements with customers include the right of return.  
11 A Some may.  
12 Q Some may. And where is that indicated in the  
13 2009 10-K?  
14 A It says, "Our agreements." It's plural. And  
15 it's an allowance. It doesn't say --  
16 Q Actually, it says, "Our agreement," period.  
17 A That's our customers -- includes right of  
18 return.  
19 Q And how does that indicate that only some  
20 customers have the right of return and some don't?  
21 A Well, if you want, I'll get a -- you know,  
22 subpoena the law firm in here or something. I don't  
23 know.  
24 Q I'm asking you if the sentence that I've read  
25 to you a few times now -- and I'll read it to you again.

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1 "Our agreement with customers includes a right of  
2 return. Is that accurate?  
3 MR. MORRIS: Yes.  
4 THE WITNESS: We have one --  
5 MR. ROGERS: Sir, you cannot testify for him.  
6 MR. MORRIS: He's -- he's asked and answered.  
7 And I object.  
8 Don't answer the question.  
9 You've already asked -- you have asked him  
10 three times, and he hasn't given you the answer you like,  
11 so you keep asking him. But he's asked -- he's answered  
12 it.  
13 MR. ROGERS: He has answered it, and then  
14 you've asked him questions that have changed his answer.  
15 BY MR. ROGERS:  
16 Q I'm going to ask it one more time. The  
17 sentence says, "Our agreement with customers includes a  
18 right of return," period. Is that sentence accurate?  
19 A Our -- that sentence is accurate. "Our  
20 agreement with customers," plural, "includes a right of  
21 returns." We have one agreement. We have a form  
22 agreement that we use that we change at various times.  
23 We'd have to go through each one of those documents to  
24 figure out what the accountants and the lawyers on it --  
25 on that statement -- and the allowance. I do not have

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1 the schedule of allowances for all the sales and all the  
2 contracts to give you a statement on that. The statement  
3 in and of itself is correct.  
4 Q Thank you. Let's go to page 38 of 49. Under  
5 the heading "Regulation SK Item 407(b)4 and 5", "the  
6 company does not fulfill their requirements for this  
7 disclosure. Is that sentence accurate?  
8 A I have no idea at this point what is Regulation  
9 SK Item 407(b)4 and 5 is.  
10 Q The next sentence says, "However, the company  
11 has an audit committee consisting solely of Dr. Staelin.  
12 Is that sentence correct?  
13 A Yeah, at the time it probably was.  
14 Q Were there ever any other members of the audit  
15 committee?  
16 A Yes.  
17 Q Who were they?  
18 A My recollection we had Doug Watson, who was on  
19 several audit committees of major companies who's a  
20 chartered accountant -- I think is the correct term --  
21 and well-qualified and may have -- I'm not sure, but  
22 Asher Perry was probably on it too.  
23 Q Okay. In 2009 was there anyone else on the  
24 audit committee?  
25 A Not according to this statement.

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1 Q Okay. What are Dr. Staelin's qualifications  
2 for audit committee work?  
3 A Dr. Staelin was the associate dean for a decade  
4 at the Fuqua School of Business. He's one of the leading  
5 published people in the country. Dr. Staelin has access  
6 all the time of the finance department of the Duke School  
7 of Business, who would -- frequently consulted with on  
8 accounting and the law school on legal matters.  
9 Q Okay. So --  
10 A So his qualifications are eminent. I mean I  
11 don't know anybody in the world that has better access.  
12 Q Is he a CPA?  
13 A No.  
14 Q Is he an accountant?  
15 A No. He's a mathematician/statistician.  
16 Q And as I understand it, he specializes in  
17 marketing. Is that correct?  
18 A That's my understanding too.  
19 Q And I think that's what he earned his doctorate  
20 in.  
21 A No. I think his doctorate's in math and  
22 statistics.  
23 Q Okay. So what audit qualifications does he  
24 have for the committee?  
25 A He has the resources of the Duke School of

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1 Business and Law.  
2 Q So is the Duke School of Business and Law the  
3 audit committee for BioElectronics?  
4 A No. He consults frequently with them. If we  
5 had accounting issues or legal issues, he'd frequently  
6 get -- you know, including the former chairman of the  
7 Financial Accounting Standards Board.  
8 Q Who's that?  
9 A I forget her name, but I was duly impressed by  
10 the help I was getting.  
11 Q How do you know?  
12 A How do I know what?  
13 Q That he consulted her?  
14 A Because he told me, and I talked to her.  
15 Q You talked to her?  
16 A Yes.  
17 Q And she gave you advice?  
18 A Yes.  
19 Q Okay. In what time period was that?  
20 A I don't remember specifically what the specific  
21 issues were but -- and there were other accounting staff  
22 -- faculty members. There was a woman that was -- I  
23 forget her name -- who was at one of the major accounting  
24 firms that we've consulted with on issues.  
25 Q And this was in 2009?

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1 A It was all -- it was over the years when -- you  
2 know, Staelin has been an absolute godsend to the  
3 company. For, you know, a small company, you know,  
4 struggling to be in compliance with accounting and with  
5 legal requirements, his resources have been staggering.  
6 Q Turn to page 45 of 49 if you would please.  
7 A All right. I want you to read through that  
8 page, and I'm going to ask you whether the finances --  
9 financial transactions described on this page are  
10 accurate and, if not, which ones are not accurate.  
11 MR. MORRIS: We're on page 45 of 49? Is  
12 that --  
13 MR. ROGERS: Correct.  
14 THE WITNESS: Yes.  
15 (The witness examined the document.)  
16 THE WITNESS: I don't -- I didn't see anything  
17 that I think is inaccurate, but without having all those  
18 schedules and loans, I don't see anything. I assume the  
19 accounts and lawyers have prepared it, checked the facts.  
20 And at the time I believe they were correct.  
21 BY MR. ROGERS:  
22 Q Did the accountants or lawyers sign each  
23 individual transaction that's described here, or did you?  
24 Or did someone else?  
25 MR. MORRIS: But -- well --

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1 BY MR. ROGERS:  
2 Q As a representative of BioElectronics Corp.  
3 A At this time I assume I signed it as president.  
4 Q Would there have been anybody else at  
5 BioElectronics Corp. who was authorized to enter into  
6 these transactions?  
7 A I think the board resolution says, "The  
8 officers," doesn't identify me personally. But my  
9 assumption is I did it.  
10 Q Do you recall anyone else entering into any of  
11 these transactions for BioElectronics Corp.?  
12 A No.  
13 Q We're going to go through -- I'm going to take  
14 back the documents that you have in front of you if you  
15 would.  
16 A Do you want them all?  
17 MR. ROGERS: Yeah. Thank you. I'm going to  
18 have the reporter mark the next exhibit as Exhibit 88.  
19 Excuse me. Exhibit 83 is the next exhibit.  
20 (SEC Exhibit 83 was marked  
21 for identification.)  
22 MR. ROGERS: What I've put in front of you is a  
23 bound set of correspondence between BioElectronics Corp.  
24 and the SEC's division of Corporate Finance. I'm going  
25 to have you take a few minutes and just thumb through and

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1 have some sort of familiarity with this. And then we're  
2 going to go through specific items contained in this  
3 collection. So let me know when you're ready, and we'll  
4 get to specifics.  
5 (The witness examined the document.)  
6 THE WITNESS: Some of this is upside down.  
7 This doesn't appear to be in chronological order. Is  
8 there some order to this?  
9 MR. ROGERS: It's a reverse chronological  
10 order, I believe, but we'll go through each tab, and  
11 we'll identify the date of the letter when we're looking  
12 at it. But specifically as to chronological order, I do  
13 believe it's reverse chronological order. I could be  
14 wrong.  
15 (The witness examined the document.)  
16 MR. ROGERS: You ready?  
17 THE WITNESS: I mean it's kind of overwhelming.  
18 MR. MORRIS: Yeah. I'm not quite -- give me  
19 one moment. I think I'm through tab seven. And for the  
20 record, this is 200 pages.  
21 MR. ROGERS: I do believe you have access to  
22 all of these documents as they're documents exchanged  
23 between BioElectronics Corp. of which your client is the  
24 president, CEO, and functional CFO if I'm understanding  
25 correctly. He signed each and every one of these



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1 documents as I understand them.

2 MR. MORRIS: No, not each and every one.

3 MR. ROGERS: He signed each and every one that

4 was produced by BioElectronics, and he received each one

5 that came to him -- or came to BioElectronics from the

6 Division of Corporate Finance.

7 MR. MORRIS: Right, including the cc to Drew

8 Walker, Esquire.

9 MR. ROGERS: Any time you want to produce that

10 -- the contract showing that he was hired to be an

11 attorney, I'm interested in seeing that.

12 MR. MORRIS: The SEC was communicating with him

13 as an attorney. They addressed him as esquire and all

14 that that means.

15 MR. ROGERS: It doesn't mean he was acting as

16 an attorney.

17 MR. MORRIS: He was putting himself out to the

18 commission as an attorney.

19 MR. ROGERS: That is not the same thing. It

20 means that he has a J.D. as I understand it, not that he

21 was acting as BioElectronics Corporation attorney.

22 BY MR. ROGERS:

23 Q Are you ready to go?

24 A (Indicating.)

25 Q Under tab number five there is a letter dated

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1 January 17, 2011, from BioElectronics Corp. to Timothy

2 Buckmiller of the United States -- oh, and Leigh Ann

3 Schultz of the U.S. SEC Division of Corporate Finance.

4 Do you see the first page of the letter I'm looking at?

5 A Yes.

6 Q Okay. Let's go to page 25, 25 of 32 as noted

7 in the upper right-hand corner. Did you sign this

8 document?

9 A The attorneys -- I've obviously put my

10 signature on it. I assume I -- on the -- you know, I

11 reviewed with them and signed it.

12 Q I'm asking you did you sign this document?

13 A I don't specifically remember the document or

14 signing it.

15 Q Is there someone else who would have signed it

16 for BioElectronics Corp.?

17 A Not that I know of.

18 Q Is there anyone authorized to speak for the

19 company under your name to the United States Securities

20 and Exchange Commission's Division of Corporate Finance?

21 A Yeah. The law firms did frequently talk

22 directly to the --

23 Q In your name?

24 A It was in the company's name.

25 Q Did the law firm produce the -- sign this

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1 document, or did you?

2 MR. MORRIS: You're talking about typed his --

3 there's no signature on there. Are you talking about who

4 typed it? Are you -- physically you're talking about did

5 he sign a copy of this?

6 BY MR. ROGERS:

7 Q Did you sign a copy of this?

8 A I don't remember. You're talking about a

9 decade ago.

10 BY MR. MROSKI:

11 Q Do you have any reason to believe that you

12 didn't sign this?

13 A Do I have any reason to believe? No.

14 BY MR. ROGERS:

15 Q On the first page, page 1 of 32, the first

16 comment that is being respondent to was comment one, "we

17 note in your response that you plan to file an amendment

18 to this Form 10-K to address some of our comments.

19 Please tell us the changes you plan to include." And

20 your response includes "the company plans to add

21 financial statements for the years ending 2006 and

22 through 2009 and their corresponding quarterly financial

23 statements for the first three quarters of each year.

24 Was that done?

25 A I don't know if they were -- the work was done

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1 to prepare them. I don't know if they were -- I don't

2 remember if they were actually filed.

3 Q You don't remember if the financial statements

4 were filed?

5 A No. It says, "How many clients to add

6 financial statements for the years ending 2006, 2009, and

7 their corresponding quarterly financials." My

8 recollection is we filed a 10-K for 2009 if I'm

9 remembering correctly.

10 Q And was that --

11 A And then the Commission decided they wanted

12 quarterly statements in between, which at one point --

13 until we got to overly burdensome requirements. We were

14 just going to bite the bullet, do the work, and file

15 them.

16 Q So did BioElectronics ever submit an amended

17 Form 10-K for the year 2009 to the SEC?

18 A My recollection is we submitted several amended

19 10-Ks, the details of which I don't remember now.

20 Q Was it filed with the Commission as a finished

21 document?

22 A The quarterlies?

23 Q No, the annual, the amended 10-K that's being

24 referred to in the comment.

25 A I --

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1 MR. MORRIS: I think he's asked and answered.  
2 He's answered he doesn't recall.  
3 BY MR. ROGERS:  
4 Q Third bullet point says, "Include more detail  
5 of the bill and hold distributor agreements regarding  
6 eMarkets and YesDTC explaining that the distributors are  
7 the buyers." Do you see that sentence?  
8 A Yes.  
9 Q Okay. So it's your understanding that in the  
10 YesDTC and the eMarkets distributor agreement that the  
11 distributors were acting as buyers?  
12 A Yes.  
13 Q Okay. Why didn't you call them buyers then?  
14 A Because they owned the property.  
15 Q I'm sorry?  
16 A They bought property. They bought inventory.  
17 Q No. Why did you call them distributors if  
18 they're buyers?  
19 A Because distributors buy product from the  
20 company.  
21 Q Then why make the distinction if you're saying  
22 that they're functionally the same? Are you saying  
23 they're functionally the same?  
24 A Distributors and buyers? For our purpose,  
25 yeah.

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1 Q Okay. So why did you call them distributors  
2 then?  
3 A I don't know. I didn't write the sentence. I  
4 mean some lawyer thought it was --  
5 MR. MORRIS: Are they an end user of the  
6 product, or are they a distributor?  
7 THE WITNESS: They're distributors, but they  
8 buy and hold the -- they buy and resell. They're buyers  
9 and resellers. The distribution agreement is essentially  
10 a buy/sell agreement.  
11 BY MR. ROGERS:  
12 Q Okay. All right. Let's go to page 3 of 32 of  
13 the same letter. Actually it's probably better if we go  
14 to 2 of 32 because the comment is comment three that  
15 begins on the bottom of page two. And then the response  
16 runs from the bottom of page two onto page three.  
17 Comment three asks about shares that were issued with a  
18 legend. And it's -- the comment says, "Please expand  
19 your response to prior comment two to clarify your  
20 statements regarding certificates bearing the legends in  
21 most cases by identifying and specifying each transaction  
22 in which you issued securities with the legend and each  
23 transaction in which you issued securities without a  
24 legend and provide us your analysis if whether the  
25 removal of any legend occurred at a time when the

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1 securities remained restricted per Rule 144."  
2 And then the response that you gave includes a  
3 series of bullet points that make up -- or are on page  
4 three. You say, "The company has not but is mindful of  
5 investors that have held the securities for at least six  
6 months but less than one year. The company may remove  
7 the legend to sell the securities as long as they satisfy  
8 the current public information condition, a safe harbor  
9 exemption to sellers is summarized below." And my  
10 question is what current public information was available  
11 to allow BioElectronics to remove the legend?  
12 A I'm not sure of the question. What -- where is  
13 it public --  
14 Q I'm sorry? These are your words. You wrote  
15 the letter.  
16 A I don't understand your question. Sorry.  
17 Q Okay. Your letter --  
18 A Right.  
19 Q -- says, "The company may remove legends to  
20 sell the securities as long as they satisfy the current  
21 public information condition, a safe harbor exemption to  
22 sellers is summarized below." Do you see where I'm  
23 reading?  
24 A Yes.  
25 Q Okay. What does "current public information

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1 condition" mean?  
2 A I don't recall it at this time.  
3 Q Is it your understanding that BioElectronics  
4 removed legends from securities based on the exemption  
5 summarized here in points one through five?  
6 MR. MORRIS: Objection, vague as to time  
7 period.  
8 THE WITNESS: I'm -- again, I'm baffled by your  
9 question.  
10 BY MR. ROGERS:  
11 Q Yeah. I don't understand why you're having  
12 trouble with your own letter. That's causing me some  
13 pause.  
14 A Well, because I --  
15 MR. MORRIS: You're talking about a letter that  
16 he wrote in January of 2011?  
17 MR. ROGERS: Yes.  
18 THE WITNESS: Yeah.  
19 MR. ROGERS: That's the letter I'm talking  
20 about.  
21 MR. MORRIS: Was it -- did you draft this  
22 letter?  
23 THE WITNESS: No, some of the lawyers did.  
24 BY MR. ROGERS:  
25 Q And you signed it. And I'm asking you about

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1 your letter that you signed.

2 A I understand I signed it, but I relied on

3 counsel to prepare the letter. I'm not an attorney or

4 tax expert or an SEC regulator expert. Okay?

5 Q So you don't understand what current public

6 information condition is being referred to in your letter

7 of January of 2011?

8 A I assume that current public information -- if

9 I asked them, "What does that mean," I assume there's SEC

10 published regulations about when you can ask the transfer

11 agent to remove the legend. But, you know, the transfer

12 agent removes the legend not the company.

13 Q Does he do so with or without your request?

14 A He generally requires a request from the

15 company and an opinion letter that it's appropriate.

16 Q Why generally?

17 A That's what they do.

18 MR. MORRIS: And your experience then --

19 THE WITNESS: Yeah, my experience is you've got

20 to get an opinion letter, and you got to give them a

21 letter saying that the company's, you know, stock's okay,

22 and here's the opinion letter.

23 BY MR. ROGERS:

24 Q And --

25 A But the shareholders can go do that themselves.

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1 Q Can the shareholders produce the opinion

2 letter?

3 A They can have their own counsel do it, sure.

4 Q And does the company produce any documents that

5 are required by the transfer agent to remove the

6 restrictive legends?

7 A Not necessarily.

8 Q Does the company attest to when the shares were

9 issued?

10 A It speaks for itself.

11 Q Who signed the certificate?

12 A Well, they have -- the signature on the

13 certificate is the signature of the -- mine and whoever

14 the secretary is at the time.

15 Q Okay.

16 A But they're preprinted, you know.

17 Q Are you aware of any instance in which the

18 transfer agent has acted to remove legends without the

19 company's knowledge?

20 A I -- I think it's been done. I don't know any

21 specific instance, no. I can't --

22 Q Why do you think it's been done then?

23 A Because transfers -- you can remove legends.

24 Q Why do you think it's been done?

25 A Why? Because they don't have to -- you know,

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1 we sells shares into the market. People own their

2 shares. That's their property not the company's. The

3 company has no business interfering in it.

4 Q Are you aware of any instance in which the

5 transfer agent has removed a restrictive legend without

6 the company's knowledge?

7 MR. MORRIS: Asked and answered.

8 THE WITNESS: Yeah.

9 MR. ROGERS: I don't think he has answered it.

10 BY MR. MROSKI:

11 Q But let me -- don't speculate. If you know,

12 you know; if you don't, you don't.

13 A No, I don't remember. I don't recall any

14 specific instance.

15 MR. MROSKI: Okay. Thank you.

16 BY MR. ROGERS:

17 Q Okay. Let's go to page 13 of 32. Actually,

18 let's start on page 12 of 32. The comment is comment 15.

19 "We refer to your response to our prior comment 18 on

20 our letter dated July 29, 2010. We continue to have

21 concerns involving your bill and hold sales recognized

22 during fiscal 2009. In that regard please respond to the

23 following."

24 And then there's request A, B, C, and D. I'd

25 like to go down to D, which is "for both agreements,

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1 please provide documentation demonstrating the bill and

2 hold arrangements was requested by the buyer," to which

3 the response is "the company intends to revise its

4 terminology in the amended Form 10-K by removing the term

5 'bill and hold' since the term was used interchangeable

6 and for convenience." What does "interchangeable" and

7 "convenience" mean?

8 MR. MORRIS: Maybe if you read the rest of the

9 paragraph there --

10 MR. ROGERS: Sure.

11 MR. MORRIS: -- before you answer.

12 MR. ROGERS: Let's read it all. "The phrase is

13 not indicative of the accounting pronouncement definition

14 and was used to describe the type of agreement" -- I'm

15 sorry -- to describe the type of agreement of the

16 definition under accounting literature." There's a word

17 missing there, but the sentence is what it is.

18 "As such, management believes all requirements

19 have been met for revenue recognition as a distributor

20 agreement but not as a bill and hold transaction as

21 defined in FASB ASC 605.

22 BY MR. ROGERS:

23 Q Do you see where I'm reading?

24 A Yes.

25 Q Okay. So the question is in the first sentence

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1 what does "interchangeable" and "convenience" mean?  
2 A As a way -- my recollection is it's a way of  
3 describing the transaction. I never thought that it was  
4 bill and hold. I don't practice accounting, and I don't  
5 know exactly what FASB ASC 605 is, okay. But we had  
6 several memorandums discussing the requirements of what a  
7 bill and hold was, and it was not a bill and hold  
8 transaction. Given the brevity of life and the  
9 insignificance of the amounts involved, we later reversed  
10 it.  
11 Q So it's -- is it the company's position or is  
12 it your position that the bill and hold agreements  
13 described in the 2009 10-K for BioElectronics are not  
14 indeed bill and hold transactions?  
15 A I don't -- I figured, you know, it was -- as I  
16 recall there were several requirements about -- and we  
17 sent you a memorandum. We had outside accounting beyond  
18 the auditors who did a separate memorandum on the  
19 subject. And then --  
20 Q And I think if you go to page 14 you'll see  
21 that you lay out the seven criteria.  
22 A May I answer the question?  
23 Q You sure may. I was trying to help you, but go  
24 on.  
25 A Okay. What were you saying?

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1 Q Did you finish your answer?  
2 A No. I lost my train of thought. Sorry.  
3 Q Okay. Well, let me direct your attention to  
4 tab 18, which is a letter dated July 7, 2010, from  
5 BioElectronics Corp. to Russell Mancuso, U.S. SEC. On  
6 page 27 of 37 there is a memo, BioElectronics bill and  
7 hold memo, audit of 2009.  
8 A All right. What --  
9 Q Is that the memo that you're referring to that  
10 you sent to the SEC on the bill and hold agreement?  
11 A I really can't read this. I'm glad you come  
12 prepared.  
13 MR. MORRIS: Just for the record, staff has got  
14 a magnifying glass.  
15 MR. ROGERS: Got two of them, one for me, one  
16 for your witness.  
17 THE WITNESS: Well, I'm glad I'm not the only  
18 one that can't read it.  
19 MR. ROGERS: I am very sympathetic to that. █  
20 █.  
21 All right. I have handed the witness a  
22 magnifying glass so that he may --  
23 THE WITNESS: It's not clear. It's --  
24 BY MR. ROGERS:  
25 Q The question to you -- is that the bill and

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1 hold memo that you were referring to regarding the YesDTC  
2 and the eMarkets bill and hold transactions?  
3 A The memo appears to be -- I don't remember the  
4 specific format or -- I remember that we had outside  
5 accountants prepare the memorandums explaining the  
6 transaction. This appears to be -- include a copy -- a  
7 photocopy of some textbook or something, announcement or  
8 something. I can't read this, so --  
9 Q But I believe you were testifying that the two  
10 agreements that eMarkets and the YesDTC bill and hold  
11 transactions that were being discussed on -- in the  
12 January 17, 2011, letter to the SEC included a memo that  
13 was done justifying the reasons why it was believed they  
14 were bill and hold transactions. Is that correct?  
15 A I don't -- I -- no. I wouldn't say they were  
16 justifying that they -- justifying the accounting  
17 treatment was correct. That's the problem with, you  
18 know, this elusive term "bill and hold". I'm not sure  
19 what that -- I mean obviously it says, you know, it means  
20 you bill somebody and you're holding the product. But  
21 I'm not sure that that context is necessarily what  
22 happened.  
23 Q Okay. Well, let me direct your attention back  
24 to the -- tab five, which is the January 17, 2011, letter  
25 and page 13 of 32 and the response contained to item 15.

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1 A Whoa, whoa, whoa. You're way out.  
2 MR. ROGERS: Okay.  
3 MR. MORRIS: January 17, 2011, letter from  
4 BioElectronics.  
5 THE WITNESS: 27? Page 27? I'm sorry.  
6 BY MR. ROGERS:  
7 Q Tab five.  
8 A Right.  
9 Q Page 13 of 32.  
10 A Okay. All right.  
11 Q And what I'm really trying to get at here is  
12 are these bill and hold transactions, or are they not in  
13 the view of BioElectronics and you because this seems to  
14 be a response that says, "No, they weren't," which is  
15 different than what appears in the 2009 10-K.  
16 A I -- since I don't keep up on accounting  
17 literature and I don't read it, the accounting -- the  
18 term "bill and hold" -- I'm still not sure what that's  
19 supposed to mean, okay. Were the transactions correct,  
20 the property passed and paid for by the buyers? To me  
21 that's a correct transaction. There has been some  
22 controversy among accountants and lawyers as to what bill  
23 and hold was. My recollection is that subsequently when  
24 we -- Watkins Meegans, which is another accountant firm  
25 we brought in, decided "look, rather than argue about the

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1 issue -- it doesn't make any difference. It's not  
 2 material. Reverse the thing out and re-record it." So  
 3 is there confusion about what the transaction is? Yeah.  
 4 But, you know, there's a lot of confusion about  
 5 accounting rules and legal opinions.  
 6 Q Okay. So is it the company's position that the  
 7 2009 10-K mischaracterized the eMarkets and the YesDTC  
 8 bill and hold transactions?  
 9 A No.  
 10 Q Why not?  
 11 A Because they were viable justifiable  
 12 transactions, okay. What happened -- do you want me to  
 13 explain the transaction, or you just want me to answer  
 14 the question?  
 15 Q I didn't want to interrupt you. I had a  
 16 question, but I didn't want to interrupt you.  
 17 A All right. I'm sorry.  
 18 Q When you say, "Valid transactions," are you  
 19 referring to valid revenue recognition? Is that fair?  
 20 A Yes.  
 21 Q Okay. So it's the company's position that  
 22 these transactions were valid revenue, but they were  
 23 incorrectly termed bill and hold transactions. Is that  
 24 correct?  
 25 A Yes.

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1 BY MR. MROSKI:  
 2 Q You had mentioned that another accounting firm  
 3 had come in and recommended that you back out the  
 4 revenue. Is that --  
 5 A Restate the statement, yes.  
 6 Q Okay. Who was that firm?  
 7 A Watkins Meegans.  
 8 Q Can you spell it?  
 9 A Yeah. W-a-t-k-i-n-s -- and I think there's a  
 10 conjunctive -- & Meegans, M-e-e-g-a-n-s.  
 11 Q And where are they based?  
 12 A Bethesda.  
 13 Q Okay. And in what capacity do they provide  
 14 services to the company?  
 15 A They became the company's outside accountants -  
 16 - not auditors, just they did the compilations.  
 17 Q Okay. Do you remember what time period?  
 18 A Well, after we got rid of Walker -- and the  
 19 firm that recommended him didn't provide service, so it  
 20 was probably sometime around 2011 until about a year ago.  
 21 Q Were they replacing Chesapeake CFOs?  
 22 A No. Chesapeake CFOs came in later after  
 23 Watkins & Meegans left. The partner at -- the guy that  
 24 did the work went to work for another firm.  
 25 Q Okay.

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1 A And they didn't want to do compilations  
 2 anymore.  
 3 Q Okay. So just so I understand, they were  
 4 compiling the general ledger information to --  
 5 A And preparing the financial statement, right.  
 6 Q -- to prepare the financial statement?  
 7 A Right.  
 8 Q And how did that differ from what Chesapeake  
 9 CFOs was doing?  
 10 A It doesn't.  
 11 MR. MORRIS: Chesapeake replaced Watkins.  
 12 BY MR. MROSKI:  
 13 Q Chesapeake was after --  
 14 A Right.  
 15 Q Okay. Who was the -- who was kind of the head  
 16 person on the account for Watkins Meegans?  
 17 A Pete Ragone, R-a-g-o-n-e.  
 18 Q And why did he recommend that you reverse the  
 19 revenue?  
 20 A He said it wasn't worth the hassle. It's an  
 21 immaterial -- you know, the company's lost \$22 million.  
 22 What the hell difference does \$300,000 make?  
 23 Q Did he -- was it his position that from the  
 24 accounting standpoint it should be reversed?  
 25 A No, he said that it's a fussy rule. He -- and

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1 he said, you know, rather than just keep arguing about  
 2 it, just reverse it out. It doesn't make any difference.  
 3 Nobody cares. It's not material now.  
 4 BY MR. ROGERS:  
 5 Q I want to look at point C right above the one  
 6 we've been looking at.  
 7 A Are we on 15 again?  
 8 Q 13 of 30.  
 9 A I'm sorry, yeah.  
 10 Q The comment from the SEC is comment C. "Also  
 11 in regard to the YesDTC agreement, we see the company  
 12 terminated the agreement. Please tell us the date the  
 13 agreement was terminated and the business reason for the  
 14 termination. Please tell us why you did not include the  
 15 termination of the agreement in your third quarter 2010  
 16 Form 10-Q."  
 17 And the response was "the company terminated  
 18 the YesDTC agreement in August 2010 since the YesDTC was  
 19 unwilling to pursue further clearance to sell the product  
 20 in specific markets, including Japan, as described in  
 21 Section 1, Appointment and Acceptance. YesDTC, as the  
 22 distributor, has the option to terminate the remaining  
 23 portion of the contract if it could not easily obtain  
 24 regulatory approval." Do you see where I've read?  
 25 A Yes.

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1 Q Okay. Did the -- was the termination of the  
2 YesDTC agreement done unilaterally by the company, or was  
3 it a mutual agreement?  
4 A My recollection is we mutually agreed to just  
5 terminate it.  
6 Q It goes on. The response says, "YesDTC was  
7 unwilling to pursue further clearances to sell the  
8 product in specific markets, including Japan, as  
9 described in Section 1, Appointments and Acceptance."  
10 What clearances had YesDTC obtained prior to the  
11 termination?  
12 A I'm not sure what you're reading. I'm sorry.  
13 Q The response to question C on this page. "The  
14 company terminated the" --  
15 A Right.  
16 Q -- "YesDTC agreement in August 2010 since  
17 YesDTC was unwilling to pursue further clearance, that  
18 is, to sell the product in specific markets, including  
19 Japan, as described in Section 1, Appointment and  
20 Acceptance." So the question is what clearances had  
21 YesDTC obtained?  
22 A I think -- I don't remember exactly. I  
23 remember he wanted to go to Hong Kong. And I think he  
24 probably had -- I don't remember what the regulations in  
25 Hong Kong were. So he probably had some clearance in

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1 Hong Kong.  
2 Q How do you -- why do you think he did?  
3 A Because I remember that he was in Hong Kong  
4 working with a group there.  
5 Q Why do you think Hong Kong was relevant?  
6 A I mean I don't think it was relevant. They  
7 were just in Hong Kong talking to some --  
8 Q Okay.  
9 A -- direct response people.  
10 Q All right. Let me hand you what's been pre-  
11 marked as Exhibit 67. Take a minute to --  
12 A There's a couple of agreements here.  
13 Q I'm sorry?  
14 A There's more than one agreement.  
15 Q Great. We've also gotten part of the  
16 familiarization done. Why don't you go through the  
17 document and make sure that you're familiar with it, and  
18 then we'll talk about it.  
19 A All right.  
20 (The witness examined the document.)  
21 THE WITNESS: I assume these were two -- of the  
22 same document.  
23 BY MR. ROGERS:  
24 Q I believe they are. If there's some reason you  
25 think they're not, please tell me.

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1 A I mean --  
2 Q I think it's --  
3 A I mean short of going to check verbatim --  
4 Q I think it was an administrative error that was  
5 caused the first time I produced this document to a  
6 witness. I'm not going to take the second copy off and  
7 alter the exhibit. It's --  
8 A All right. So --  
9 THE WITNESS: Yes.  
10 BY MR. ROGERS:  
11 Q Okay. What is Exhibit 67?  
12 A It's the distribution agreement between  
13 BioElectronics Corporation and YesDTC.  
14 Q Okay. I want to call your attention to the  
15 second page, item three, Territory.  
16 A Right.  
17 Q "The distributor is hereby granted the right to  
18 sell their products in the territory. For purposes of  
19 this contract "territory" is defined as the country of  
20 Japan." That's why I was asking you why Hong Kong is  
21 relevant. The agreement between BioElectronics and  
22 YesDTC appears to only be for the territory of Japan.  
23 A Yeah, but frequently we will alter the  
24 territories. I mean we have to keep very tight control  
25 of what they're -- where they're allowed to sell.

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1 Q So if you're keeping tight control, wouldn't --  
2 would that be reflected in an agreement?  
3 A Only if I granted permission. I don't  
4 recollect giving permission to go into Hong Kong.  
5 Q Okay. So you don't think that YesDTC did go  
6 into Hong Kong?  
7 A No, I said they did. I mean he went to Hong  
8 Kong to negotiate with some people about doing  
9 distribution in Hong Kong. Hong Kong probably doesn't --  
10 well, I know it doesn't have the kind of regulations that  
11 you have in Japan.  
12 Q So is Hong Kong relevant to the distribution  
13 agreement between YesDTC and BioElectronics?  
14 A Yes.  
15 Q How?  
16 A Because we could have modified it. You know,  
17 when he was asking, if I recall it correctly --  
18 Q Did you modify it?  
19 A I just said no. I didn't do that.  
20 Q Okay, so you didn't modify it?  
21 A I didn't modify it.  
22 Q Okay. All right. Let me call your attention  
23 back to the first page here.  
24 A Sure.  
25 Q Under Appointment and Acceptance, the fourth

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1 paragraph down says, "The rights granted by company to  
2 distributor are made under the assumption that regulatory  
3 clearance to sell the company's products in Japan can be  
4 relatively easily obtained. Should distributor be unable  
5 to gain regulatory clearance within six months of  
6 contract execution, this agreement is voidable at the  
7 option of distributor."  
8 A Right.  
9 Q Is that the agreement that was made?  
10 A Yes.  
11 Q And the date on this contract is what?  
12 MR. MORRIS: 12/30/09 is the date on it.  
13 MR. ROGERS: I'm sorry. I need Mr. Whelan to  
14 testify.  
15 THE WITNESS: Yeah. I didn't sign it, so I  
16 don't  
17 -- I mean I -- we made the agreement effective that year,  
18 December 2000 (sic).  
19 BY MR. ROGERS:  
20 Q So for the next six months after the execution  
21 of the contract, the agreement was voidable at the option  
22 of the distributor, as the contract says?  
23 A Right.  
24 MR. ROGERS: Okay. Do you have anything more  
25 on this?

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1 BY MR. MROSKI:  
2 Q You said you had made the agreement effective  
3 that year. What did you mean by that?  
4 A That we paid for the product, and it -- we  
5 always have a condition preceding that. You have to make  
6 the first payment.  
7 Q Okay.  
8 A So we made the first payment.  
9 Q Is there -- why did Mr. Noel sign this on  
10 December 30, 2009, if the agreement itself is actually  
11 dated December 31st?  
12 A He signed it when?  
13 Q Do you see Mr. Noel's signature on the back?  
14 It's the third to the last page. It's 12/30/09 on the  
15 very first page of the distributorship agreement. It's -  
16 - the agreement's made as of the 31st of December. Do  
17 you see that?  
18 A I don't know. You have to ask him.  
19 Q Did you --  
20 A Or maybe he didn't know what day it was. I  
21 don't know.  
22 Q Did you at any time ask Mr. Noel to backdate  
23 his signature on this document?  
24 A No.  
25 Q Did you enter into this agreement in 2009, or

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1 did you enter into the agreement in 2010?  
2 A 2009.  
3 Q Was the cancellation of the agreement with  
4 YesDTC a result of their inability to get clearance in  
5 Japan, regulatory clearance in Japan?  
6 A That was my understanding.  
7 Q And what happened? Had any product been  
8 physically taken from YesDTC at that point?  
9 A He took some samples to send to Japan as I  
10 recall. I don't remember exactly, but he took some of  
11 that product to send into Japan I think it was.  
12 Q Okay. Was it a nominal amount?  
13 A It wasn't -- it was enough -- it was samples.  
14 I don't remember --  
15 Q Okay. So when the agreement canceled, was it  
16 necessary for YesDTC to send the product back to you?  
17 A I think they sent some of those samples back,  
18 but I don't think it was specific to it. The problem is  
19 if you don't have a license to be a distributor, you  
20 can't hold the property.  
21 Q Okay. And did they have a license to be a  
22 distributor?  
23 A No, they didn't get a license.  
24 Q Just with respect to Japan is what you're  
25 saying?

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1 A Right.  
2 Q Okay. So there -- it wasn't necessary for them  
3 to send the product back to you once the distributorship  
4 agreement was cancelled outside of the nominal amount of  
5 samples that you had mentioned?  
6 A We didn't -- the product -- we didn't send the  
7 product.  
8 Q Okay. So the product was in your warehouse the  
9 entire time?  
10 A Yes.  
11 Q Was it -- did YesDTC ever sell any product to  
12 the end user under the terms of this agreement?  
13 A They never got a license. They can't sell.  
14 Payment -- prepayment is in lieu of -- is the right to  
15 get the territory. Territories have value -- have  
16 significant value.  
17 Q For the product that was sitting in your  
18 warehouse pursuant to this distributorship agreement, who  
19 owned that product?  
20 A Until our agreement was terminated, YesDTC.  
21 Q Okay. And what was your understanding based  
22 on?  
23 A My understanding of --  
24 Q That they owned the product.  
25 A They paid for it.

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1 Q Okay. So payment to you represented --  
2 A Ownership.  
3 Q -- legal ownership of the product?  
4 A Yes.  
5 BY MR. ROGERS:  
6 Q I'm a little confused as to whether payment was  
7 for the territory or was it for the product.  
8 A I don't -- we give them the product as payment  
9 to get the territory. So they make -- all our agreements  
10 require an initial payment for the -- and I don't know --  
11 I didn't look at this one. But right now it says, "As a  
12 condition precedent to the effectiveness of the  
13 agreement, payment has to be made."  
14 MR. MORRIS: Do you separate the product in the  
15 warehouse, or is it all just kind of --  
16 THE WITNESS: No. No, we keep it separate.  
17 It's his product. If he got his license, we got it  
18 shipped.  
19 MR. MROSKI: Did you get a good -- are you  
20 comfortable with your answer? I don't --  
21 MR. ROGERS: Well, I'm not sure if -- I'm not  
22 sure I understand.  
23 BY MR. ROGERS:  
24 Q I think you've testified that money was  
25 exchanged in -- between YesDTC and BioElectronics.

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1 YesDTC sent money and, in return, got rights to territory  
2 and product. Is that correct?  
3 A Yes.  
4 Q Okay. So why at the termination of the  
5 agreement did BioElectronics gain title?  
6 A Because he could not take it back. He can't --  
7 Q How does that establish title for  
8 BioElectronics?  
9 A Because we agreed to terminate the agreement,  
10 to keep the product.  
11 MR. MORRIS: That was part of the cancellation  
12 --  
13 THE WITNESS: Yeah.  
14 MR. MORRIS: -- that you were entitled to the  
15 product?  
16 THE WITNESS: And he understood --  
17 BY MR. ROGERS:  
18 Q Why would he do that?  
19 A Because he had the opportunity to get -- Japan  
20 is the second best market for what he wanted to do. This  
21 agreement is written slightly different to protect --  
22 make sure we protect our intellectual property rights. I  
23 sent this agreement to Fish & Richardson, who are your  
24 patent attorneys and intellectual property specialists  
25 and had them modify this agreement to make it

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1 emphatically clear what the conditions of this agreement  
2 were and they were different than the standard agreement,  
3 all right? Getting those property rights are worth a lot  
4 of money.  
5 BY MR. MROSKI:  
6 Q When they returned the product -- when legal  
7 ownership of the product came back to BioElectronics, did  
8 you refund YesDTC's money for that initial purchase?  
9 A No.  
10 Q Why not?  
11 A Because that was the agreement, that he would -  
12 - that we gave him that opportunity for the initial  
13 payment, and we would not do that with anyone. We don't  
14 make that -- we don't get the clearance -- we have a  
15 similar agreement now in Peru. You know, you get the --  
16 you gave us a deposit. You don't get the clearances;  
17 we're not shipping that product to you. It's a violation  
18 of the laws.  
19 Q Okay. But again, just with respect to the  
20 portion related to the products -- because I don't want  
21 to conflate -- it seems like -- and correct me if I'm  
22 wrong. Money exchanged hands. Money flowed from YesDTC  
23 to BioElectronics, and that money bought the  
24 distributorship of rights for Japan and initial product?  
25 Is that correct?

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1 A Yeah. He would get -- I think it's 15,000  
2 units --  
3 Q Okay.  
4 A Upon clearance, we would give him 15,000 units  
5 to get started.  
6 Q And what do you mean "upon clearance"?  
7 A He has to get regulatory clearance from the  
8 Japanese food and drug administration.  
9 Q Okay. So were those 15,000 units not his until  
10 he obtained that clearance?  
11 A No, they were his.  
12 Q I'm sorry if I'm repeating myself, but it's --  
13 you're not saying it very clearly to me. You're saying  
14 he would get 15,000 units upon clearance -- is what you  
15 testified, right?  
16 A We would deliver them.  
17 Q Okay. So you would not deliver those units to  
18 him until he obtained that clearance?  
19 A Right, but it's still his property.  
20 Q Okay. And if he didn't obtain that clearance,  
21 what would happen?  
22 A He gave them back to us. We mentioned -- you  
23 know, I --  
24 Q Essentially you just wouldn't deliver them,  
25 right?



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1 A We would not deliver them.  
2 Q Okay.  
3 MR. MORRIS: And had returned whatever product  
4 he had, the samples or whatever.  
5 THE WITNESS: Right.  
6 BY MR. MROSKI:  
7 Q Okay. And so that initial payment he made to  
8 you included the payment for those 15,000 units?  
9 A We didn't -- the agreement was you give us --  
10 you buy \$150,000 worth of product, 15 units at \$10 (sic).  
11 I think we -- there was some negotiation on the price.  
12 We're not delivering that product to you until you have  
13 regulatory clearance.  
14 Q Okay.  
15 A Until you have authority to take that product.  
16 If you don't take that product and you don't get  
17 clearance, we're terminating the agreement. We're going  
18 to keep it. And you can't take it.  
19 Q And the \$150,000?  
20 A We'll keep the 150. We did keep \$150,000.  
21 MR. MORRIS: It's an option, right?  
22 THE WITNESS: Yeah. In it's -- in a word it's  
23 an option. It's just --  
24 BY MR. MROSKI:  
25 Q How do you record that \$150,000 upon

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1 cancellation of the agreement? What's the accounting for  
2 that?  
3 A We already recorded the income as I recall.  
4 Q I mean maybe it's -- I'm just asking  
5 specifically like what accounting treatment does that  
6 receive from you guys when the distributor's agreement's  
7 cancelled?  
8 A There is none. We already recorded the -- we  
9 already recorded the income.  
10 Q Did you record it as income or revenue?  
11 A Well, we record it as revenue. \$150,000 was  
12 recorded as sales.  
13 Q Okay. But now you've got -- was there any  
14 accounting entry for this inventory of 15,000 units that  
15 --  
16 A I don't remember specifically. Probably if we  
17 adjusted the inventory -- because we had more inventory.  
18 We're bringing back 15,000. It would be whatever some  
19 salvage value was on that inventory.  
20 Q Okay. When you entered into this agreement,  
21 did you have to produce the product for YesDTC that's  
22 called for by this agreement?  
23 A It's at the warehouse. We had --  
24 MR. MORRIS: You segregated it. You testified  
25 --

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1 THE WITNESS: Yeah, we segregated inventory for  
2 them. But we didn't produce it; it was already produced.  
3 It was in finished goods inventory.  
4 BY MR. MROSKI:  
5 Q Okay. So at the time that you entered into  
6 this agreement, you had already had product --  
7 A We had finished goods inventory, correct.  
8 MR. MROSKI: Finished goods. Okay.  
9 BY MR. ROGERS:  
10 Q I'm going to cut in here for just a second  
11 because I want to clarify something.  
12 A Sure.  
13 Q I think just a -- not too long ago you  
14 characterized this as an option. And I think that's  
15 different than a purchase. I want to know what you mean  
16 by "it's an option".  
17 MR. MORRIS: That was my characterization.  
18 MR. ROGERS: And he agreed to it.  
19 BY MR. ROGERS:  
20 Q So what did you mean by "it's an option"?  
21 A I didn't agree to it -- it was an option. I  
22 just didn't disagree with what he said.  
23 Q So you don't think it's an option?  
24 A Well, I don't know.  
25 MR. MORRIS: I --

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1 THE WITNESS: I'm not -- you're asking  
2 MR. MORRIS: That was -- I'm not an accountant.  
3 I didn't mean to suggest anything there. I was just --  
4 BY MR. ROGERS:  
5 Q Because I understand an option -- that's the  
6 right to purchase at a future date, not a purchase. So  
7 I'm trying to clarify -- and I don't want to hear later  
8 on that it was an option. So I want you to give me your  
9 testimony now as to whether it's an option or not.  
10 A My testimony is it's not an option.  
11 MR. MORRIS: His testimony -- he testified on  
12 this. I interjected option. That was a mistake. I  
13 shouldn't have.  
14 BY MR. ROGERS:  
15 Q So the -- your testimony is not that it's an  
16 option?  
17 A Correct.  
18 Q Thank you.  
19 You ready?  
20 MR. MROSKI: Yeah, I'm fine.  
21 MR. ROGERS: Okay.  
22 MR. MROSKI: Do you want to go on, or do you  
23 want to break?  
24 MR. ROGERS: I want to --  
25 MR. MORRIS: It's 12:45.

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1 MR. ROGERS: -- go on a little bit longer here,  
2 and then we'll take a break.  
3 BY MR. ROGERS:  
4 Q I want to turn your attention to --  
5 MR. MORRIS: Are you okay?  
6 THE WITNESS: Yes.  
7 MR. MORRIS: I don't want him testifying if  
8 he's tired. It's 12:45.  
9 MR. ROGERS: He just testified that he's okay.  
10 BY MR. ROGERS:  
11 Q Let's look at page 15 of 32, the same letter  
12 we've been looking at. The top of the page, the comment  
13 E is "for both the agreements please provide delivery  
14 schedules or other similar documents, e.g. purchase  
15 orders, that demonstrate a fixed delivery schedule was  
16 agreed upon at the date the agreement was executed.  
17 Please clarify the dates, any amount were delivered, and  
18 collections were received under the agreement."  
19 And then the first half of the response  
20 discusses YesDTC, and I want to discuss the eMarkets  
21 portion, which is the third paragraph, begins, "eMarkets  
22 distributes the veterinary product line."  
23 A Right.  
24 Q Do you see that -- "which includes devices  
25 encapsulated in surgical foam." Then below that, per

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1 Section 2.3, Initial Exclusivity Condition of the  
2 Agreement." The company and eMarkets initially agreed by  
3 an executed and signed agreement to have delivered" --  
4 and then their year-end delivery totals. 2010 has 10,000  
5 units; '11, 25, so on. And below that it says, "The  
6 schedule above was agreed and maintained until both  
7 distributors abandoned the inventory and forfeited all  
8 payments." So I want to be clear that eMarkets also  
9 abandoned the inventory and forfeited all payments.  
10 A That -- eMarkets didn't abandon the inventory  
11 or forfeit payments.  
12 Q They did not?  
13 A No.  
14 Q What happened with eMarkets?  
15 A The inventory -- I mean what happened with  
16 eMarkets inventory is different than my recollection what  
17 we sold to YesDTC. I mean they still have the inventory.  
18 Q Who still has the inventory?  
19 A eMarkets.  
20 Q And was it shipped to them?  
21 A No.  
22 Q So the inventory remains in the warehouse of  
23 BioElectronics; is that correct?  
24 A Yes.  
25 Q Okay. So during 2010 how many units were

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1 shipped to eMarkets?  
2 A I have no idea.  
3 Q Was it 10,000 units?  
4 A No.  
5 Q Was the revenue that was recognized by  
6 BioElectronics for the eMarkets agreement predicated on  
7 10,000 units being shipped to eMarkets?  
8 A Was the revenue -- the revenue booked? No.  
9 Q What was the revenue predicated upon?  
10 A The actual sale, the purchase of the abandoned  
11 inventory -- or outdated inventory that we sold to  
12 eMarkets.  
13 Q Okay. I'm going to hand you back what was the  
14 10-K itself. Did I leave that with you?  
15 A No.  
16 Q Okay. That's Exhibit 51. And I'm going to  
17 direct your attention to page 22 of 49 in the upper  
18 right-hand corner. Okay. That first paragraph at the  
19 top of the page  
20 -- we've looked at it already, but I want to revisit  
21 here. The final sentence says, "The specialized  
22 veterinary products sold to eMarkets includes  
23 approximately \$216,000 of revenue credited to bill and  
24 hold transactions and for which the related product is  
25 expected to be delivered during the fourth quarter of

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1 2010." So my question is what's the basis of the  
2 expectation of delivery during 2010?  
3 A I assume that it's the discussions with  
4 eMarkets, what they were going to sell.  
5 Q How did the \$216,000 number arrive? How was  
6 that determined?  
7 A They -- let me put this thing in context. It  
8 was inventory that we changed. She wanted to keep that  
9 inventory, and so she bought the remainder of the  
10 inventory that was in-hand, in which you had the -- it  
11 had a foam coating.  
12 Q Mm-hmm.  
13 A And we stopped using the foam coatings in that  
14 form of antennae. She thought that was better suited for  
15 the veterinary market, so she bought the inventory to  
16 have it.  
17 Q Okay. So she bought the inventory but didn't  
18 have it delivered --  
19 A Well, we --  
20 Q -- at the time of the purchase, correct?  
21 A Because we ship her orders.  
22 Q You ship her orders.  
23 A We finish packing it and ship it. We box it  
24 and put whatever additional affixing devices are  
25 included, and then we ship it to the customer and bill

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1 her for the -- for the shipment less the inventory that  
 2 she owns.  
 3 Q Well, what is the basis of the expectation that  
 4 the product will be delivered in the fourth quarter --  
 5 during the fourth quarter of 2010?  
 6 A I assume the lawyers and accountants and all  
 7 talked to her and said, you know, "What are you going to  
 8 be able to ship?"  
 9 MR. MORRIS: "Her" meaning markets? That was  
 10 eMarket's representative?  
 11 THE WITNESS: Yeah.  
 12 BY MR. ROGERS:  
 13 Q And "she" specifically being Mary Whelan?  
 14 A Yes. I mean the worst case is shipping the  
 15 inventory to her.  
 16 Q Why didn't you do that?  
 17 A Because it was more practical and better  
 18 customer service to do it the way we do it because we  
 19 always did it, just put the inventory together and do the  
 20 shipping, finish it.  
 21 Q Did you charge her for that?  
 22 A We do.  
 23 Q So back to the letter, page 15 of 32 of the --  
 24 under tab five, which is the January 17, 2011 letter.  
 25 The letter says -- and correct me if I'm wrong -- that

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1 eMarkets abandoned the inventory. Is that correct?  
 2 A That's what it says.  
 3 Q Okay. Did they abandon the inventory? Did  
 4 eMarkets abandon the inventory?  
 5 A I don't think "abandon" is the right term.  
 6 They didn't abandon it.  
 7 Q What did happen?  
 8 A It was still in the warehouse. I mean we ship  
 9 -- we shipped it out. We shipped components of that  
 10 inventory, the pieces of the inventory with the other  
 11 components to customers. They go along. I mean, you  
 12 know, the other alternative was just pack it up and ship  
 13 it to her. It's her inventory. She paid for it.  
 14 Q But you recognized the full revenue, correct?  
 15 A Because she bought it, yes.  
 16 MR. MORRIS: And have you shipped some of her  
 17 product to customers?  
 18 THE WITNESS: Yes.  
 19 BY MR. ROGERS:  
 20 Q How much was shipped by the end of 2010?  
 21 A I have no idea.  
 22 Q So what was -- again, what was the basis for  
 23 the estimation?  
 24 A Well, it could have been one of two things.  
 25 One, if he wanted to ship it, ship it to her.

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1 Q And which I don't understand why you didn't do  
 2 that.  
 3 A I just explained it, because we add other  
 4 components and box it and ship it for her and charge her  
 5 for doing it.  
 6 BY MR. MROSKI:  
 7 Q Okay. When you say you add other components,  
 8 what do you mean?  
 9 A Well, the veterinary product has coats that go  
 10 with it, adhesive strips that go with it, and we put in  
 11 directions for use and put it in the box and seal the  
 12 boxes.  
 13 Q Okay. So did you add those components after  
 14 you had entered into this agreement?  
 15 A Yes.  
 16 Q Okay. So were those components necessary to  
 17 make the product complete and ready for shipment?  
 18 A Yes.  
 19 Q Okay. And that was done. And did you -- when  
 20 did you recognize the revenue, before or after you added  
 21 these additional components?  
 22 A The addition -- it was two revenue conditions -  
 23 -  
 24 Q Mm-hmm.  
 25 A -- the inventory that she bought and then the

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1 additional devices as they were shipped or billed when  
 2 they were shipped to the individual customer.  
 3 MR. MORRIS: And you recorded additional  
 4 revenue from --  
 5 THE WITNESS: Right.  
 6 BY MR. MROSKI:  
 7 Q Okay. And was it your understanding that that  
 8 -- the accounting guidance allowed you to recognize the  
 9 initial revenue?  
 10 A We had comments on this issue ad nauseum.  
 11 Q Okay.  
 12 A So we had more lawyers and accountants looking  
 13 at what I considered to be a non-event. It's just not a  
 14 material event.  
 15 Q Okay. But essentially you were adding  
 16 additional components to these items to make them ready  
 17 for shipment and use?  
 18 A Finish them, yes.  
 19 MR. MROSKI: Okay.  
 20 BY MR. ROGERS:  
 21 Q Did eMarkets insure the inventory that you were  
 22 holding?  
 23 A I have no idea.  
 24 Q Did they take any steps to assert ownership of  
 25 the inventory?

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1 A Yeah, we keep it separate.  
2 Q How about YesDTC? Did they insure the goods  
3 that you were holding?  
4 A Again, I have no idea.  
5 MR. MORRIS: Did you keep their products  
6 separate from other inventory that belonged to  
7 BioElectronics?  
8 THE WITNESS: Yes.  
9 BY MR. MROSKI:  
10 Q The product for eMarkets -- before you finished  
11 it, were you -- did it have any value to the end user  
12 prior to the finishing, or could you sell it was it was  
13 prior to finishing it or -- for the end user, or did it  
14 need to be finished before it was ready for consumption,  
15 ready for use?  
16 A I mean you can -- I mean the transmitter is  
17 like this, but it's just a device. But can you use it?  
18 You could use it, but it's not finished in terms of  
19 fixing to the body.  
20 MR. MORRIS: So you could -- you'd tape it with  
21 medical product -- with medical tape, for example, to  
22 your body?  
23 THE WITNESS: Yeah, or put it into the coat,  
24 whatever.  
25 MR. MORRIS: Right. Or you could -- I mean I

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1 know what you do when you finish a product. You put it  
2 into some sort of Velcro strap to strap it onto the  
3 patient, right?  
4 THE WITNESS: Right.  
5 MR. MORRIS: But in this case the Velcro strap  
6 wasn't there, but it could have been taped to a patient  
7 and used that way, right?  
8 THE WITNESS: Yes.  
9 BY MR. MROSKI:  
10 Q Okay. But did the eMarket agreement call for  
11 that Velcro strap to be affixed? Did it call for it to  
12 be finished?  
13 A By -- when the customer orders it? Yeah. You  
14 don't ship it incomplete.  
15 MR. MROSKI: Okay.  
16 BY MR. ROGERS:  
17 Q I want to look at page 16 of 32, which I think  
18 is the next one. The bottom comment and response are the  
19 pair I want to look at. It's comment I. "In addition  
20 you indicate bill and hold transactions are currently  
21 immaterial as defined by SAV 99 to the company. Please  
22 tell us how you concluded that bill and hold  
23 transactions, which represent approximately 32 percent of  
24 sales in 2009 are immaterial."  
25 Your response is -- and I'll read the first

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1 sentence, and I'll let you fill it out. "The company  
2 believes the amount of inventory that was not forfeited  
3 was immaterial." Why are you answering about the amount  
4 of inventory that was not forfeited? I don't understand  
5 the answer and how it answers the question. So let me  
6 ask you this. Do you believe that 32 percent of the  
7 company's 2009 sales is immaterial to the results of the  
8 company?  
9 A Absolutely because this a development-stage  
10 company in the medical devices. Our nearest competitor  
11 spent \$120 million.  
12 BY MR. MROSKI:  
13 Q Are you saying it's immaterial to your  
14 competitor, or is it immaterial to BioElectronics?  
15 A To an investor. To an investor.  
16 Q Okay.  
17 A Anybody who bought the stock because we had  
18 \$300,000 or something in sales should be having their  
19 head examined.  
20 MR. MORRIS: What were your losses that year?  
21 THE WITNESS: \$2 million if I recall properly.  
22 I mean we lost \$22 million to date. We haven't spent  
23 anywhere near what other people spend in the medical  
24 device business, and we've gotten a heck of a lot more  
25 done.

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1 BY MR. ROGERS:  
2 Q The response to that comment goes on onto the  
3 next page, page 17 of 32. The three paragraphs there --  
4 I'd like you to read those and let me know if you  
5 disagree with any part of it.  
6 A Which paragraphs are we --  
7 Q The first three on the top of page 17 of 32.  
8 MR. MORRIS: And, Tom, it's almost 1:00. I  
9 think we ought to take a lunch break.  
10 MR. ROGERS: We'll get there soon. I  
11 understand.  
12 (The witness examined the document.)  
13 THE WITNESS: All right. So you told me just  
14 the first three before the comment.  
15 MR. ROGERS: Correct.  
16 THE WITNESS: Yeah. I don't see anything  
17 inconsistent in that.  
18 BY MR. ROGERS:  
19 Q So those are your positions on the issues  
20 described?  
21 A You're using a plural. My position -- what are  
22 my positions?  
23 MR. MORRIS: No. Yeah, that's covering pretty  
24 broad --  
25 BY MR. ROGERS:

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1 Q All right. Well, let's go through each one  
2 then. "Furthermore, since the company has completed all  
3 terms of the contract and all payments have been  
4 received." "If YesDTC does not take delivery of their  
5 entire order, they forfeit payment, and the company may  
6 resell the inventory." Is that correct?  
7 A Yes.  
8 Q Okay. "The contract with YesDTC was a  
9 distributor agreement similar to most other distributor  
10 agreements." In that sentence are you referring to most  
11 other distributor agreements in general or the ones  
12 signed by BioElectronics?  
13 A I'm talking about our -- what this is referring  
14 to, I assume, is our distributor agreements. It's  
15 similar. It's not exactly the same as I said. We sent  
16 this agreement to Fish & Richardson, which is our patent  
17 intellectual property lawyers because there are some  
18 different conditions in that agreement that are not in  
19 the standard agreement. We wanted to be explicitly clear  
20 and make sure that I had good legal counsel on the  
21 intellectual property rights and the agreement and what  
22 conditions that we could agree to that were preceding to  
23 the agreement, which included who the management of it  
24 was and the inventories and the intellectual property.  
25 Q Okay. The next sentence says, "The company's

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1 agreement with YesDTC was in the normal course of  
2 business with typical terms." I think you just told me  
3 that, if it wasn't, that it had different terms that had  
4 to be sent to an attorney. Is that correct?  
5 A The buy/sell conditions were similar. The  
6 protection of the intellectual property and our  
7 expectations of performance were slightly modified --  
8 were modified to meet the specific conditions. Rather  
9 than just make arbitrary decisions on my own, I sent it  
10 to Fish & Richardson, like I try to do with most legal  
11 things I don't understand, and make sure the language was  
12 clear and precise. They are the largest intellectual  
13 property law firm in the world. They get it.  
14 Q Next sentence, "at the time of the agreement,  
15 delivery was probably but also not required under the  
16 distributor agreement."  
17 A Right.  
18 Q We've looked at the YesDTC contract, and it  
19 required regulatory approval, which YesDTC did not have  
20 at the time the contract was signed. So why was delivery  
21 probable?  
22 A Because they could get it? They could get the  
23 clearance.  
24 Q They could get it, and that made it probable.  
25 Is that what you're telling me?

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1 A Yes.  
2 BY MR. MROSKI:  
3 Q But ultimately they didn't get it, did they?  
4 A No, they didn't get it.  
5 MR. MORRIS: If YesDTC would have thought they  
6 wouldn't get it, they wouldn't have paid \$150,000 or  
7 whatever, I assume.  
8 BY MR. ROGERS:  
9 Q And the next sentence, "and since he" --  
10 perhaps that means "the", but it says, "And since he  
11 title and privileges of ownership passed at the time of  
12 payment, and the signed agreement, the company is  
13 entitled to income at the time of agreement regardless of  
14 whether the distributor sells these goods and takes  
15 delivery." I'm going to ask you what are the privileges  
16 of ownership that were passed?  
17 A I don't know. It was his.  
18 Q So if he gets -- shown up and -- to take the  
19 inventory from you, would you have given it to him?  
20 A If he had the license to accept it.  
21 Q So he would have to show you the license to  
22 sell it in Japan in order for you to take -- in order for  
23 him to  
24 take --  
25 A Yeah. There's specific conditions in the

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1 agreements that say they cannot sell -- resell outside  
2 the territory. Unless he had a license to resell it, he  
3 could not take delivery from us.  
4 Q Thank you. Next paragraph, "historical  
5 performance of these distributor agreements have been  
6 reliable as the company had many similar distributor  
7 agreements. Revenue was recognized when the distributor  
8 took ownership to the inventory, which was at the date of  
9 the agreement." Specifically what other distributor  
10 agreements are you referring to?  
11 A We have at least 75 other distributor  
12 agreements that are similar.  
13 Q Name 10 for me, your top 10.  
14 A Well, Paylex in Spain.  
15 Q What year?  
16 A I -- oh, I don't remember the year. It's --  
17 Paylex actually came after this. I can't remember the  
18 dates, but we have -- I can tell you where we have  
19 agreements. We have agreements in Spain, Italy, Korea,  
20 Singapore, Germany, the U.K. We had agreements back then  
21 in Canada. And we have agreements in Colombia, Ecuador,  
22 Guatemala, Peru, Chile, Saudi Arabia, Morocco, Bolivia.  
23 Q Okay. I'm asking --  
24 A That's our business.  
25 Q Did you book revenue on those distributor

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1 agreements at the time they were signed or at the time  
2 that the products were shipped?  
3 A Most of the time the agreements require that  
4 they make advanced payment. When we get the payment, we  
5 book the revenue, and we ship it because they -- they  
6 ordered shipment. Conditions -- they take their payments  
7 when they ship it to them or have shipped it to them.  
8 Q How about the agreement for regulatory approval  
9 has not been obtained? When do you book the revenue for  
10 those?  
11 A I don't understand your -- repeat it please?  
12 Q Are there distributor agreements where  
13 regulatory approval is required prior to shipment? Other  
14 than the YesDTC agreement, when did you book revenues for  
15 those?  
16 A Most of the time they get the -- they go get  
17 the revenue, you know, or they already have a clearance  
18 like in  
19 -- we have clearances around the world. If somebody  
20 calls and asks for a product in Spain, Portugal or -- you  
21 know, we can ship it to them. We have clearance. Japan  
22 is one of the few countries that has inordinate clearance  
23 requirements. We still don't have it done.  
24 MR. ROGERS: Okay.  
25 Do you want to jump in? Go ahead.

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1 MR. MROSKI: Give me one second.  
2 MR. ROGERS: All right. It is 1:06 -- 1:07.  
3 Why don't we go ahead and take a lunch break. How long  
4 do you think you'll need?  
5 MR. MORRIS: We're just going to go next door.  
6 We'll get back as promptly as we can. I don't know,  
7 1:45, 2:00.  
8 MR. ROGERS: Let's shoot for 1:45. All right.  
9 We are off the record.  
10 (Whereupon, at 1:07 p.m., a luncheon recess was  
11 taken.)  
12 A F T E R N O O N S E S S I O N  
13 MR. ROGERS: All right. We are back on the  
14 record at 2:11.  
15 BY MR. ROGERS:  
16 Q I am going to go back to the series of letters  
17 which I -- let me look it -- is Exhibit 83. And we are  
18 continuing under tab five, and I want to call your  
19 attention to page 9 of 32. Let me know when you've  
20 gotten there.  
21 A I'm there.  
22 Q Comment six -- the comment was, "Please expand  
23 your response to prior comment seven to tell us, for each  
24 of your security issuances to IBEX how you ensured that  
25 you had a valid exemption from registration if you did

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1 not implement procedures to ensure that IBEX did not  
2 distribute your securities publicly. If you did  
3 implement such procedures, we would expect that you would  
4 have the information necessary to respond to prior  
5 comment seven. Therefore, we reissued comment seven."  
6 The response to that comment was, "The company  
7 was advised by legal counsel that securities were  
8 exempt." What exemption was the company relying on, Mr.  
9 Whelan?  
10 A What legal exemption?  
11 Q Yes.  
12 A You're asking me to cite a legal number or an  
13 opinion or a regulation?  
14 Q I'm asking you what exemption the securities  
15 met to avoid registration.  
16 MR. MORRIS: I'll object to --  
17 THE WITNESS: I --  
18 MR. MORRIS: It calls for a legal conclusion.  
19 THE WITNESS: Yeah. We got opinion from  
20 counsel that the transactions were proper. And  
21 frequently, if not all the time, opinion letters were  
22 issued.  
23 BY MR. ROGERS:  
24 Q Were you aware of what exemption was being  
25 used?

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1 A No.  
2 Q Why not?  
3 A Because I relied on counsel.  
4 Q And you're the president of the company and the  
5 CEO, but you never inquired as to what exemption was  
6 being cited?  
7 A The specific exemption in the law?  
8 Q Right. Yes.  
9 A No. I'm not a lawyer.  
10 Q How else would you know if it actually met the  
11 exemption?  
12 A Because I rely on counsel.  
13 Q Okay.  
14 BY MS. ZUKIN:  
15 Q But you thought to get the opinions of counsel  
16 before issuing the securities?  
17 A He -- I don't remember each one of the  
18 transactions, but he would issue opinion letters. There  
19 are written opinion letters on the transactions.  
20 BY MR. ROGERS:  
21 Q All right. Let's go to the next sentence.  
22 MR. MORRIS: How many lawyers did you talk to  
23 about the IBEX transactions? Was it just one lawyer that  
24 you got?  
25 THE WITNESS: No, we had at least a dozen

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1 lawyers that were --

2 BY MR. ROGERS:

3 Q On every transaction you had --

4 A No.

5 Q -- you would consult 12 lawyers?

6 A No. On -- no. At different times there were

7 different lawyers who looked at the transactions. And

8 they

9 -- you know, part of the audit committee looked at the

10 transactions, and they were sure -- everybody was assured

11 they were proper.

12 Q But you yourself never asked the one exemption

13 they were citing?

14 A The law?

15 Q Right.

16 A No.

17 MR. MORRIS: Well, they -- did they tell you

18 what exemption they were providing. I know obviously the

19 opinion letter is --

20 THE WITNESS: The opinion letter, I think,

21 says, "Rule 144," or something like that. But --

22 BY MR. ROGERS:

23 Q Why do you think that?

24 A Because that's what I remembered.

25 Q Because you read the letter?

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1 A Oh, I read the letters.

2 Q Okay. The next sentence -- "therefore,

3 procedures to distribute securities publicly were

4 restricted to sophisticated investors and family members

5 IBEX was a sophisticated investor and solely owned by

6 relatives of the chief executive officer. The company

7 took procedures to comply with the exemption

8 requirements. We have no reason to believe that the

9 transfer agent or any investor had violated any of the

10 exemption requirements."

11 So that first -- well, the second sentence, the

12 first one that I read in this sequence -- "therefore, the

13 procedures to distribute securities publicly were

14 restricted to sophisticated investors and family

15 members." So how did BioElectronics know that the

16 distribution of the securities were restricted to

17 sophisticated investors and family members?

18 A I'm not sure I'm reading what you're saying.

19 Q Feel free to use the magnifying glass.

20 MR. MORRIS: Oh, the magnifying glass.

21 THE WITNESS: No, I can read it. I just --

22 where are you reading, the comment six?

23 MR. ROGERS: The response to comment six.

24 THE WITNESS: Oh, the response.

25 (The witness examined the document.)

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1 THE WITNESS: It says, "We have no reason to

2 believe that the transfer agent or any investor had

3 violated any of the exemption requirements to comply with

4 the exemption."

5 BY MR. ROGERS:

6 Q Okay. I appreciate that answer, but that's not

7 what I asked, okay?

8 A What did you ask me?

9 Q So let's go back.

10 A Yeah.

11 Q "Therefore, the procedures to distribute

12 securities publicly were restricted to sophisticated

13 investors and family members." See that sentence?

14 A Yeah. The company distributed it. When we

15 sold securities, it was either a sophisticated investor

16 or a family member.

17 MR. MORRIS: Did you think that's accurate when

18 you submitted it?

19 THE WITNESS: Yes. Yeah. That's accurate

20 statement.

21 BY MR. ROGERS:

22 Q The question is what did you do to make sure it

23 was accurate.

24 A Did I go check on -- what -- before we issued

25 the securities, we knew who we were going to issue them

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1 to.

2 Q How did you know that?

3 A We asked them. Or we had a registration -- not

4 a

5 -- one of those forms.

6 MR. MORRIS: A representation letter?

7 THE WITNESS: Representation letter, whatever

8 it was.

9 BY MR. ROGERS:

10 Q So the procedure was you sent them a

11 representation letter?

12 A We sent a -- I want to make sure --

13 MR. MORRIS: No, a --

14 THE WITNESS: Yeah. I mean we sent them a form

15 that they filled out that told us they were -- that they

16 met the sophisticated investor requirement.

17 BY MR. ROGERS:

18 Q Okay. I haven't seen that letter. And

19 pursuant to my subpoena, why haven't I seen that?

20 A I assumed it wasn't asked for.

21 Q I am asking for it now.

22 A Well, I'll send it to you.

23 Q And it's part of the subpoena. It is

24 absolutely responsive to the subpoena.

25 A I'll send it to you.

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1 Q When?

2 A When I get back to the office.

3 Q Okay. If I don't receive it in two weeks, is

4 it fair for me to assume you don't have it? I want a

5 deadline.

6 A Yeah, we have it.

7 Q Okay. When am I going to get it?

8 A In fact, this week probably.

9 Q Okay. So if I don't get it this week, is it

10 safe to assume that you don't have it?

11 A Is it safe to assume I don't have it? No. I

12 may

13 -- can't find it.

14 Q I don't want to get strung out on this. If you

15 have it, you'll give it to me; if you don't have it, you

16 won't.

17 A Well, I know we have -- I know --

18 Q What I'm trying do is get a commitment out of

19 you that you're going to give it to me.

20 A Yeah. Some of these things are years old. I

21 don't know if we have them all.

22 Q So you don't know if you have them.

23 A I don't know. I know when we -- the procedure

24 when we were selling securities directly to a

25 sophisticated investor -- we got representation letters

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1 from them saying that, you know, they were sophisticated

2 investors. Where all they are now I have no idea. I'll

3 --

4 Q Sir, did you participate in the sales of

5 securities to sophisticated investors as you've

6 characterized them?

7 A Yes.

8 Q How so?

9 A We had -- I forget the word for the form. We

10 had the forms, and we had the lawyers review that were --

11 we were sure they were in compliance with the securities

12 laws, and we issued the securities to them.

13 Q Did you talk to the investors?

14 A Did I talk to investors? Yes.

15 MR. MORRIS: Objection, vague and --

16 MR. ROGERS: Sir, that was the question, and he

17 gave me an answer.

18 BY MR. ROGERS:

19 Q All right. Let's move on to the next sentence.

20 "IBEX was a sophisticated investor and solely owned by

21 relatives of the chief executive officer." So how do you

22 know that IBEX was a sophisticated investor?

23 A Based on their qualifications and what their

24 net worth was.

25 Q How did you certify that?

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1 A I didn't certify it. I just --

2 Q So you knew what your daughter's net worth was?

3 A I think we had some idea of what it was.

4 Q How did you have that idea?

5 A Well, she owned a lot of stock in the company.

6 Q What was her source of income?

7 A She -- for a long time she had a job, worked as

8 an accountant.

9 Q Where?

10 A Oh, I don't -- I mean one of the companies. I

11 think it was Wolf Furniture. I don't even think that's

12 the right name. And she worked for some accounting firm

13 at one point.

14 Q So she was an accountant for a furniture store

15 and an accountant where?

16 A I didn't say a -- it was a furniture company.

17 Q Okay.

18 A And she worked for some accounting firm.

19 Q Did she have a source of wealth other than her

20 income?

21 A I don't know.

22 MR. MORRIS: Was she married?

23 THE WITNESS: Yeah, she's married.

24 BY MR. ROGERS:

25 Q Okay. And what did you do to verify that she

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1 had income or assets as part of her married life?

2 A What did I do to verify?

3 Q Yes. How did you -- how did you know that?

4 A I don't recall right now. But she apparently

5 had enough assets.

6 Q Next sentence says, "The company took

7 procedures to comply with the exemption requirements."

8 And what were those procedures?

9 A Reliance on a counsel, got an opinion letter

10 from lawyers. We never did anything without getting the

11 opinion letters.

12 Q And how was the opinion letter generated? What

13 were the steps from your point of view, not the

14 attorneys?

15 MR. MORRIS: Do you understand?

16 I mean objection, vague.

17 BY MR. ROGERS:

18 Q Do you understand?

19 A No.

20 Q Okay. Did the attorney have the knowledge to

21 complete a opinion letter on his own?

22 A I think you ought to ask -- I don't know.

23 Q Did the --

24 A I didn't practice law.

25 Q Did an attorney ask you for the information



1 that was made part of the opinion letter? Sir, I've read  
 2 these opinion letters. I know what they say. So either  
 3 the attorney is lying by saying he got the facts from the  
 4 company, or I'm having problems with your testimony.  
 5 A Well, if the -- if the lawyer said he got the  
 6 facts from the company, I assume he got them from the  
 7 company, got them from me or somebody else, but most  
 8 likely he got them from me.  
 9 Q Okay. So you gave the attorney the information  
 10 that was used to produce the opinion letter?  
 11 A No.  
 12 MR. MORRIS: Objection, mischaracterizes his  
 13 testimony.  
 14 BY MR. ROGERS:  
 15 Q What's your answer?  
 16 A My answer is -- you're asking me an absolute  
 17 question, okay? It was all -- depends on what letter  
 18 you're talking about, when, where, and what it was about.  
 19 Q Okay. Next sentence, "We have no reason to  
 20 believe that the transfer agent or any investor had  
 21 violated any of the exemption requirements." Is that  
 22 sentence true? Actually, no. My question is did you  
 23 take any steps to convince yourself of that.  
 24 A We had -- we had plenty of lawyers that were  
 25 reviewing the documents and issuing the opinion letters.

1 001228 sequentially to 31. The document is a letter from  
 2 Alexander E. Kuhne, P.C. Who is Mr. Kuhne?  
 3 A One of the attorneys that represented the  
 4 company.  
 5 Q Okay. The final sentence of the first  
 6 paragraph says, "We provide this opinion at the request  
 7 of the company and affirm that the subject securities are  
 8 eligible for DTC book entry, delivery, settlement, and  
 9 depository services." So when Mr. Kuhne spoke to the  
 10 company, who did he speak to?  
 11 A I'm not sure that I understand. Where is he  
 12 referring to that he spoke to the company?  
 13 Q Are you finished reading it? I'll explain it  
 14 to you again.  
 15 A Yeah, please.  
 16 Q I'd like to have your attention this time. In  
 17 the first paragraph, the final sentence -- I'll read it  
 18 again. "We provide this opinion at the request of the  
 19 company to confirm that the subject securities are  
 20 eligible for DTC book entry, delivery, settlement, and  
 21 depository services. Do you see that sentence?  
 22 A Yes.  
 23 Q Okay. So when Mr. Kuhne spoke to the company,  
 24 who did he speak to?  
 25 A Most likely it was me.

1 MR. MORRIS: At the time that you wrote that,  
 2 did you think that was accurate?  
 3 THE WITNESS: Yes.  
 4 MR. MORRIS: Did you have any reason --  
 5 THE WITNESS: It says --  
 6 MR. MORRIS: -- to believe what you wrote that  
 7 day was inaccurate?  
 8 THE WITNESS: Yeah. It says, "We have no  
 9 reason to believe." I have no reason to believe it's --  
 10 was inaccurate then or not accurate now.  
 11 BY MR. ROGERS:  
 12 Q Well, what steps did you take to give yourself  
 13 that reason to believe?  
 14 A We've paid in exorbitant amounts for legal  
 15 amounts constantly, you know. And we relied on counsel.  
 16 MR. ROGERS: We're going to go off the record  
 17 at 2:25.  
 18 (A brief recess was taken.)  
 19 MR. ROGERS: Okay. We are back on the record  
 20 at 2:30.  
 21 BY MR. ROGERS:  
 22 Q Before we went off the record, we were  
 23 discussing attorney opinion letters. I'm going to hand  
 24 you what's been pre-marked Exhibit 63. All right.  
 25 Exhibit 63 is a four-page document, Bates stamped RSX

1 Q Thank you. Can I have my document back?  
 2 Thanks. I'm going to hand you what's been pre-marked as  
 3 Exhibit 61. Exhibit 61 is a two-page document Bates  
 4 stamped RSX 000887 and 88. It is a letter from Alex E.  
 5 Kuhne, P.C. I think we've already established who Mr.  
 6 Kuhne is. Just below -- it's part of the first  
 7 paragraph, but the first paragraph is broken up by an  
 8 indented line. So at the bottom of the first paragraph,  
 9 the very first -- very last sentence says, "This opinion  
 10 letter relies upon the representation of the shareholder  
 11 and issuer and a review of the applicable documentation  
 12 provided to this firm by the same."  
 13 So when Mr. Kuhne went to the company to get  
 14 the appropriate documentation, where did he -- who did he  
 15 speak to?  
 16 A At five years ago I have no idea at all.  
 17 Q Who would it be?  
 18 A Could have been Sherry Mercer, who was doing  
 19 accounting at that time.  
 20 Q Did Ms. Mercer have the approval to speak for  
 21 the company on these matters?  
 22 A I don't think she was speaking for the company.  
 23 I think she was -- he was probably asking for some  
 24 information. She gave it to him.  
 25 Q In 2008 who were the officers of BioElectronics

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1 Corporation?  
2 MR. MORRIS: If you remember.  
3 THE WITNESS: I -- yeah, I'm not sure. I mean  
4 the only --  
5 BY MR. ROGERS:  
6 Q It's your company. You're the only one who  
7 runs this place. Are you really telling me you don't  
8 remember 2008?  
9 A That's not a correct statement. Don't tell me  
10 what I do and don't do, okay? I'll answer your  
11 questions.  
12 Q Sir, your credibility is at issue here today.  
13 A What?  
14 Q Your credibility is at issue here today.  
15 A Well, my credibility is not an issue with me.  
16 Q Okay.  
17 A Okay? I know who I am. I don't lie, and I  
18 don't deceive, and I don't take anything that belongs to  
19 anyone else, okay?  
20 Q And you are perfectly reasonable in making that  
21 judgment for yourself. But you do understand that we're  
22 going to make judgments for ourselves.  
23 A Well, hopefully you can come to the right  
24 conclusion.  
25 Q Thank you. So you're not going to tell me --

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1 A You asked me who the officers are. I don't  
2 remember exactly --  
3 MR. MORRIS: He wants to know who did Kuhne --  
4 Lex Kuhne speak to in March 2008 about the certificate  
5 removal for Fred Ventura, the legend removal on Fred  
6 Ventura's certificate.  
7 THE WITNESS: No, no, it's --  
8 MR. MORRIS: And I know it's -- I mean I --  
9 THE WITNESS: Yeah, that's -- it's Third  
10 Millennium. I just don't know. I mean he could have  
11 spoken to Sherry. He could have spoken to Ricky -- not  
12 likely.  
13 BY MR. ROGERS:  
14 Q Okay. Can I have my document back?  
15 MR. MORRIS: Do you recall having a  
16 conversation with him about --  
17 THE WITNESS: No.  
18 BY MR. ROGERS:  
19 Q All right. Let's look at comment seven  
20 directly below the comment we've been looking at on page  
21 9 of 32. The comment says, "We have reviewed your  
22 response to comment eight from our letter dated September  
23 3, 2010. If you do not know whether the funds provided  
24 to your company by the entities related to your chief  
25 executive officer's daughter are proceeds from the resale

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1 of your securities, please tell us how you determined  
2 that those entities are complying with the applicable  
3 limitations on the resale of the securities received by  
4 those entities and how you determined that the exemption  
5 claim to for issuances of your securities to those  
6 entities are available."  
7 The response is, "The company has no reason to  
8 believe and the daughter has not indicated whether  
9 resales have occurred. The stock transfer agent has a  
10 fiduciary responsibility to restrict such sales and act  
11 in the best interest of the company." Do you see where  
12 I'm reading?  
13 A Yes.  
14 Q Great. Okay. I want to look at that first  
15 sentence of the response. "The company has no reason to  
16 believe, and the daughter has not indicated whether  
17 resales have occurred." Do you see that sentence?  
18 A Yes.  
19 Q Okay. I'm going to hand you what's been marked  
20 Exhibit 31, and I'm going to tell you ahead of time  
21 you're going to need the magnifying glass.  
22 A Well, I can read this actually.  
23 Q You can read it without the magnifying glass?  
24 A Yeah.  
25 Q Okay.

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1 A Thank you.  
2 Q Why don't you go ahead and read it? It's a one  
3 page document, and I will read into the record its  
4 description. It's a one-page document Bates stamped SEC-  
5 BIO-MKW-E-0004891. It's an email from Kelly Lorenz,  
6 subject, "Board resolution, consent to borrow money from  
7 IBEX for 8/2009."  
8 (The witness examined the document.)  
9 THE WITNESS: All right. I read it.  
10 BY MR. ROGERS:  
11 Q All right. This is an email from Kelly Lorenz.  
12 I think we've covered this, but let's just make sure.  
13 Who is Kelly Lorenz?  
14 A Kelly is Kelly Whelan now since the divorce.  
15 Q So that's your -- that's your daughter?  
16 A Yes.  
17 Q And she's the one who is the sole member of  
18 IBEX LLC, correct?  
19 A I'm not sure at that time whether Kelly -- it  
20 says, "Kelly Lorenz." She was probably still married to  
21 Bill Lorenz.  
22 Q Okay. So what is it you're not sure of, that  
23 Kelly Lorenz was involved with IBEX or that she was the  
24 sole member? What is it that you're not sure of?  
25 A Whether she was the sole member.

1 Q Okay. But she was involved with IBEX LLC in  
2 some sort of controlled way?  
3 A Yes.  
4 Q Okay. The email address for Kelly Lorenz is  
5 klorencz@bielcorp.com.  
6 A Right.  
7 Q What is that email address?  
8 A That's a corporate email address, Bielcorp.  
9 Q So she was using a BioElectronics Corporation  
10 email address?  
11 A Yes.  
12 Q And the date is November 20, 2009, and the  
13 email is to Mary Whelan and Richard Staelin. And, again,  
14 I think we've covered this, but Mary Whelan and Richard  
15 Staelin are the other two board members other than  
16 yourself; is that correct?  
17 A Currently. I'm not sure in 2009 if there were  
18 others. I don't -- I just don't remember.  
19 Q Okay. But Mary Whelan was a member of the  
20 board of directors --  
21 A Yes.  
22 Q -- in 2009? And Richard Staelin was a member  
23 of the board of directors in 2009?  
24 A Yes.  
25 Q And he may have been the chairman of the board

1 BY MR. ROGERS:  
2 Q Okay. Do you see the box down below the  
3 sentences that I've just read?  
4 A Yes.  
5 Q It's a box that says, "Secondary note  
6 convertible at .019." And there's a series of entries  
7 here, "Loan from IBEX, 5 million shares at 5 cents to  
8 Yaron Jacobi." Do you know who Mr. Jacobi is?  
9 A No.  
10 Q Second entry is, "Loan from IBEX, 2 million  
11 shares to Joe Noel at 2 cents." Do you know who Mr. Noel  
12 is?  
13 A Yes.  
14 Q Who is he?  
15 A He did investor relations work for the company  
16 at various times.  
17 Q Okay. Do you know why Mr. Noel received two  
18 cents a share, and Mr. Jacobi received five cents a  
19 share?  
20 A Better negotiator, I assume.  
21 Q Okay. Third line is, "Loan from IBEX, 2  
22 million shares to Kong at 2 cents." Do you know who Kong  
23 is?  
24 A I assume that's Dr. Kong.  
25 Q Okay. Who is Dr. Kong?

1 in 2009, correct?  
2 A He may have. I just don't remember.  
3 Q All right. So the text of the email says,  
4 "Rick and Mary, IBEX LLC has loaned Biel" -- and what is  
5 she referring to by -- when she types B-i-e-l?  
6 A BioElectronics.  
7 Q Okay -- "\$519,920 during August of 2009." So  
8 August was the eighth month. November is the 11th. This  
9 email is being sent three months after the loans were  
10 made. "This loan needs to be evidenced by a promissory  
11 note. I have IBEX's attorney writing a promissory note  
12 with the following terms, 24 months at 8 percent,  
13 principal and interest due at 8/31/11, convertible at  
14 IBEX's option to common shares of Biel at the conversion  
15 price of 1.9 cents. Total shares will be 27,364,210.  
16 The rationale for the conversion price is that  
17 IBEX sold 14 million shares for \$519,920, average share  
18 selling price of 3.7" -- I'm sorry -- ".037, half of  
19 which is 1.9 cents rounded. See chart below." So Mary  
20 Whelan and Richard Staelin in November of 2009 knew that  
21 IBEX was selling shares. Did you know in August -- or  
22 November of 2007 that IBEX was selling shares?  
23 MR. MORRIS: November 2009.  
24 MR. ROGERS: 2009. Thank you.  
25 THE WITNESS: Not necessarily.

1 A She did some clinical work, research work, and  
2 she was a friend or associate of Joe Noel.  
3 Q Okay. And the fourth entry is, "Loan from  
4 IBEX, 5 million shares at 2 cents, Joseph Simone." Do  
5 you know who Joseph Simone is?  
6 A No.  
7 Q Okay. Do you see on the far right hand side of  
8 the box we've been looking at there's a Bloomberg close  
9 price?  
10 A Right.  
11 Q Uh-huh. And the price for Mr. Jacobi --  
12 corresponding to Mr. Jacobi's five cents is a Bloomberg  
13 close of 7.85. Do you see that?  
14 A Yes.  
15 Q Do you understand what this entry is conveying?  
16 A The 7 1/2 cents -- or 7 85ths?  
17 Q So the Bloomberg close on the date of the loan  
18 was 7.85 cents, and Mr. Jacobi got the shares at 5 cents.  
19 Is that what you take it to be?  
20 A I don't really know for sure, but I would  
21 assume that probably it could be correct.  
22 Q Do you know if this promissory note that's  
23 referenced here in the prose up top was assigned by  
24 BioElectronics?  
25 A You mean the \$519,000 note?

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1 Q Yes.

2 A Yeah. I think that's correct.

3 Q You think it was?

4 A Yes.

5 Q Okay. All right. Let me hand you what's been

6 marked Exhibit 68. Just take a minute and look at that,

7 and I will read into the record that Exhibit 68 is a

8 four-page document Bates stamped SEC-BIO-MKW-E-0010187

9 sequentially through 90.

10 (The witness examined the document.)

11 BY MR. ROGERS:

12 Q Are you ready for the question?

13 A Yes, please.

14 Q Is -- does this document signify the

15 transaction we've been looking at that -- or we've been

16 discussing in Exhibit 31? The amount in Exhibit 68 of

17 the convertible promissory note is \$519,920. Do you

18 believe that this note represents the transaction that

19 was being discussed in Exhibit 31?

20 A It would appear to, but the dates are different

21 for some reason.

22 Q They are different. The date on the

23 convertible note is August 1, 2009. And yet the date

24 that the note is being discussed with the board members

25 by your daughter is November 20th. So it does appear

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1 that this Exhibit 68 has been backdated. Is there a

2 reason for you to think that it hasn't been?

3 MR. MORRIS: Objection.

4 THE WITNESS: I don't think they just -- it may

5 be erroneous dated, but I don't think it was deliberately

6 backdated.

7 BY MR. ROGERS:

8 Q Okay. Let's go back to the 10-K. Do you still

9 have the 10-K in front of you?

10 A No.

11 THE WITNESS: No.

12 MR. ROGERS: Okay. So you do. That is exhibit

13 -- give me a crib note here -- 51.

14 MR. MORRIS: 51.

15 BY MR. ROGERS:

16 Q All right. So let's look at Exhibit 51. I

17 think this note turns up in a couple different places.

18 Page 25 of 49, top of the page. It's the paragraph --

19 A Page 45?

20 Q 25 to 49.

21 A Okay.

22 Q Okay. The text is, "Additionally, on August 1,

23 2009, we entered into a convertible promissory note

24 agreement with IBEX for \$519,920 with simple interest at

25 8 percent per annum." Do you think that statement

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1 corresponds to the transaction being discussed in Exhibit

2 31? 31 was the email from Kelly Lorenz at that point to

3 Mary Whelan and Rick Staelin.

4 A There's some inconsistency in the date, but

5 they're all in August. I don't get the issue. I mean is

6 this statement correct? Is that what you're --

7 Q Is which statement correct?

8 A The 10-K.

9 Q The 10-K. That's what I'm trying to figure

10 out. It sure looks to me like in Exhibit 31 we're seeing

11 that IBEX sold shares and then told IBEX what the terms

12 were going to be, that the contract was then written up,

13 backdated, and then declared in the 10-K here.

14 A I wouldn't say it was backdated.

15 Q What would you say it was?

16 A It may be a date error. The reason that this

17 is -- this note was written --

18 Q Mm-hmm.

19 A -- is because she had the right to put the

20 \$500,000 in the revolving note. And rather than do that,

21 which would be -- I don't want to say improper, but it

22 would not reflect the current market conditions. That

23 revolving note -- the conversion price was driven down by

24 the behavior of L&H Financing Group that took the stock

25 from 40 cents a share down to a tenth of a cent. And she

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1 had an agreement with the board that her notes would get

2 converted at the price of the next investor. Whatever

3 that price was, that was her conversion price on hers,

4 okay. She --

5 Q So the board knew that she was selling shares.

6 That's how they knew that there was going to be a

7 conversion price, correct?

8 A No. They have nothing to do with one another.

9 The note --

10 MR. MORRIS: No. You -- go ahead. I'm sorry.

11 THE WITNESS: The terms of the note, okay, were

12 negotiated with a large, independent, very sophisticated

13 board of directors. Those terms --

14 BY MR. ROGERS:

15 Q Who -- what board of directors are you

16 referring to?

17 A I'm referring to when we had a full independent

18 board. We had Asher Perry, who was an experienced

19 venture capitalist, had been the chief venture capitalist

20 for the Lucent Corporation, okay.

21 Q Uh-huh.

22 A We had Doug Watson, who was the chairman and

23 president of Novartis, a \$30 billion company. We had

24 Chuck Conway, who was the president of CVS and Kmart,

25 okay? Now that sure as heck -- competent, experienced

1 people. They negotiated the terms.  
 2 Q When?  
 3 A She could -- back when the notes were --  
 4 MR. MORRIS: The note -- the loan --  
 5 MR. ROGERS: Let him testify.  
 6 BY MR. ROGERS:  
 7 Q When did they negotiate this loan with the --  
 8 A That was --  
 9 Q -- these terms with Kelly Whelan?  
 10 A The agreement was my investment, which was also  
 11 --  
 12 Q Who is "my"?  
 13 A Me and my wife, okay?  
 14 Q Okay.  
 15 A When we -- all the compensation that we had  
 16 into the company was to be converted at a price, okay?  
 17 Q So there's -- no shares were to be sold?  
 18 A No. Nobody said anything about --  
 19 Q What are you converting then?  
 20 A The note.  
 21 MR. MORRIS: And she has --  
 22 BY MR. ROGERS:  
 23 Q Into what?  
 24 MR. MORRIS: Does Kelly have an agreement prior  
 25 --

1 company. That loan was reflected -- that liability is  
 2 reflected in the revolver note, okay?  
 3 MR. ROGERS: Mm-hmm.  
 4 THE WITNESS: The agreement with the board was  
 5 --  
 6 MR. MORRIS: And that was 2005 when the  
 7 revolver note was --  
 8 THE WITNESS: Yeah. And there were loans  
 9 before that, you know, 2003 and maybe even earlier, okay.  
 10 Those loans --  
 11 MR. MORRIS: What's the size of the revolver --  
 12 MR. ROGERS: Let him finish.  
 13 MR. MORRIS: He's not describing the revolver  
 14 note.  
 15 MR. ROGERS: I would like to hear what he has  
 16 to say. Go ahead.  
 17 THE WITNESS: I don't remember the exact amount  
 18 on it, how much -- but it was -- like a million dollars,  
 19 okay? The agreement --  
 20 BY MR. ROGERS:  
 21 Q So loans were made.  
 22 A The loans were made, and the agreement with the  
 23 board was they were loans.  
 24 Q Mm-hmm.  
 25 A And they would have a conversion price at the

1 THE WITNESS: It -- they --  
 2 MR. MORRIS: Does Kelly have an agreement prior  
 3 to August -- November 2009 when this email is written?  
 4 THE WITNESS: Yes.  
 5 MR. MORRIS: Okay. Why don't you describe that  
 6 agreement?  
 7 THE WITNESS: Okay. That agreement says that  
 8 she gets her -- it's the original revolving note that we  
 9 was talking about, okay?  
 10 MR. MORRIS: And when was that entered into?  
 11 THE WITNESS: 2005. But there were loans prior  
 12 to that where we weren't documenting other than they were  
 13 loans. There weren't notes on them, okay? I was owed  
 14 and St. John was owed a small fortune.  
 15 MR. ROGERS: Uh-huh.  
 16 THE WITNESS: Okay? Rather than have somebody  
 17 try to say we got a preferred deal, right, the agreement  
 18 with the board was we would get the same deal the first  
 19 time a sophisticated investor came in and had the  
 20 conversion right. That's how the revolver evolved.  
 21 MR. MORRIS: Yeah. I don't think he  
 22 understands a revolver. Describe the revolver.  
 23 THE WITNESS: Oh. I'm sorry. The -- revolver  
 24 is kind of a misnomer. There was an accumulation of  
 25 loans that IBEX and Kelly and her husband had made to the

1 option of the note holder.  
 2 Q So in this case --  
 3 A And it -- and --  
 4 Q In the case of IBEX it would be at the option  
 5 of IBEX?  
 6 A Yes, solely at the option of IBEX.  
 7 MR. MORRIS: And at the same price you gave LH  
 8 Capital, correct?  
 9 THE WITNESS: Right.  
 10 BY MR. ROGERS:  
 11 Q So IBEX is now acting as a brokerage firm.  
 12 They are distributing shares.  
 13 A No, they're not.  
 14 Q What are they doing?  
 15 A They're making loans to the corporation.  
 16 Q In return for what?  
 17 A Notes.  
 18 Q Okay.  
 19 A Yeah.  
 20 Q How do you eat a note? What is a note good  
 21 for? What happens when the loan comes due?  
 22 A Well, if the corporation has the cash, it will  
 23 pay the note. Or in the case that we had to do now, we  
 24 renegotiated those notes.  
 25 Q So when you renegotiated, what were those

1 terms?  
 2 A Based -- the same formula. It was the same  
 3 formula, half of what the closing price was at the time.  
 4 Q And so if the company doesn't have cash to  
 5 repay these loans, what happens?  
 6 A Either the company declares bankruptcy, right,  
 7 or the company renegotiates the loans.  
 8 Q So the loans are continually pushed forward,  
 9 and no new money is coming in? Is that what you're  
 10 testifying to?  
 11 A No. The notes -- the notes are due and  
 12 payable. Is that the issue we're talking about now?  
 13 Q The --  
 14 A Okay.  
 15 Q The notes are due and payable.  
 16 A Okay. So the notes can't be paid. So the note  
 17 holder --  
 18 Q The notes can't be paid with cash.  
 19 A Right. Well, it can't be paid with stock  
 20 because the company doesn't have the option.  
 21 Q Okay.  
 22 A So the company either has cash to pay the  
 23 notes, or it goes out of business.  
 24 Q So where does IBEX get the shares?  
 25 A It doesn't get the shares. It just holds the

1 of letters.  
 2 A Do you want this back?  
 3 Q Yeah, I do. Thank you. And I want -- let's do  
 4 this right. Tab 10 is a letter from BioElectronics to  
 5 Timothy Buckmiller and Leigh Ann Schultz at the SEC's  
 6 Division of Corporate Finance, dated November 15, 2010.  
 7 Do you see that letter?  
 8 A Yes.  
 9 Q All right. I want to direct your attention  
 10 first to page 39 of 39, the last page of the letter.  
 11 There's a signature there. It says, "Sincerely, Andrew  
 12 J. Whelan." Did you sign this document?  
 13 A I don't particularly remember this document.  
 14 Q Do you believe it came from someone else?  
 15 A I have no reason to believe that either.  
 16 Q Okay. Then I want to look at page 20 of 39.  
 17 Oh no. Hold on. I'm sorry. How about 28 of 39?  
 18 A I'm there.  
 19 Q Okay, comment eight, "Please tell us whether  
 20 the entities related to your chief executive officer's  
 21 daughter obtained the money that they provide to you by  
 22 selling your securities. And the response says, "The  
 23 company cannot respond to the affairs of the shareholders  
 24 or other stakeholders." Do you have any idea if your  
 25 daughter was selling shares, BioElectronics shares, in

1 note.  
 2 Q IBEX is selling shares. We just looked at  
 3 Exhibit 31.  
 4 A It converted. It probably converted some of  
 5 the notes.  
 6 Q So -- and they converted the notes into what?  
 7 A Stock.  
 8 Q Thank you. So IBEX has stock, and they sold it  
 9 as per Exhibit 31, correct?  
 10 A That's what they -- that's what they're saying,  
 11 yes.  
 12 Q Thank you. That's all I have on that issue.  
 13 Thank you. Can I have my exhibits back please? Does  
 14 your wife, through St. John's, own any BioElectronics  
 15 Corp. stock?  
 16 A Yes.  
 17 Q Has she ever filed a -- under Form -- a Form 3,  
 18 4 or 5 with the Commission reflecting her share  
 19 ownership?  
 20 A I think so, yes.  
 21 Q How about your daughter, Kelly Whelan?  
 22 A At some point Walker went through and filed a  
 23 bunch of forms. I don't know what forms they were but  
 24 whatever the form was.  
 25 Q Okay. I want to look at tab 10 of the series

1 order to provide the money that she was loaning to  
 2 BioElectronics Corp.?  
 3 A Some of I know she sold to -- a mortgage on a  
 4 house. She took other things that she had and cashed in  
 5 bank accounts. I'm really proud of her. She has guts.  
 6 MR. MORRIS: And at the time you wrote that  
 7 statement, did you believe it to be accurate?  
 8 THE WITNESS: Absolutely. I -- you know, I  
 9 wrote the -- I mean I didn't submit anything to the  
 10 Securities Commission that was inaccurate. And at the  
 11 time I relied on counsel to assure me that we were in  
 12 compliance with security laws.  
 13 BY MR. ROGERS:  
 14 Q I'm going to go back to page 20 of 39. It's  
 15 the same letter in case I wasn't clear.  
 16 A Yeah.  
 17 Q There's a comment here based upon comment F.  
 18 "Based on the documentation you provided in support of  
 19 the bill and hold sales, it appears Joseph Noel is  
 20 president of YesDTC." And then in the response it says,  
 21 "Mr. Noel is president of YesDTC, and he owned 27 million  
 22 and 28 million shares as of December 31, 2009, and July  
 23 15, 2010. The word "respectively" is not in that  
 24 sentence, but I think what you're meaning to say there is  
 25 on December 31st he owned 27 million and on July 15,

1 2010, he owned 28 million. Is that your understanding?  
 2 A I think that's a fair understanding.  
 3 Q Do you know where he obtained those shares?  
 4 A Specifically? No.  
 5 Q What did he do for the company?  
 6 A He did investor relations, but he was also very  
 7 helpful in helping with strategic planning. And -- yeah.  
 8 Probably that's the best way to describe it, strategic  
 9 planning.  
 10 MR. ROGERS: Okay. I'm going to have -- let's  
 11 do two at once. What are we up to?  
 12 THE REPORTER: 84.  
 13 MR. ROGERS: 84.  
 14 (SEC Exhibits 84 and 85 were  
 15 marked for identification.)  
 16 MR. ROGERS: All right. I'm going to hand you  
 17 two documents that have been marked Exhibits 84 and 85.  
 18 That's 85. No. I'm so sorry. Sorry to keep you  
 19 waiting.  
 20 THE WITNESS: Okay.  
 21 MR. ROGERS: Okay. Exhibit 84 is a one-page  
 22 letter from IBEX dated April 6, 2010. And Exhibit 85 is  
 23 a letter from IBEX dated February 12, 2010, both to  
 24 Joseph Noel. Why don't you take a minute to read these  
 25 two letters, and I'm going to ask you some questions.

1 Q Why would she pay somebody for the benefit of  
 2 BioElectronics Corp.?  
 3 A Because she's a major -- a major shareholder.  
 4 Q Why would IBEX pay and not BioElectronics?  
 5 A Because she's the major shareholder or one of -  
 6 - yeah, I think she probably is the major shareholder.  
 7 Q Do you see the last sentence of the second  
 8 paragraph? "IBEX LLC acquired the shares as a conversion  
 9 of debt due to IBEX LLC from BioElectronics Corp.?"  
 10 A Right.  
 11 Q Do you dispute that statement?  
 12 A I have no reason to. I don't know where she  
 13 had those shares.  
 14 Q You don't know where IBEX got the  
 15 BioElectronics shares that stated a conversion of a debt  
 16 due to --  
 17 MR. MORRIS: He has no reason -- do you have  
 18 any reason to believe that's not true?  
 19 MR. ROGERS: If that's your answer, that's your  
 20 answer. We'll weigh whether that's credible or not.  
 21 MR. MORRIS: I just -- I think he misunderstood  
 22 it. I think he's saying he didn't -- what's your answer?  
 23 BY MR. ROGERS:  
 24 Q Are you not aware of the specific transaction,  
 25 or are you not aware that --

1 (The witness examined the document.)  
 2 MR. ROGERS: While you're reading them, I'll  
 3 just say for the record Exhibit 84 has got a Bates stamp  
 4 of SEC-BEL-0201, and Exhibit 85 has a Bates stamp of SEC-  
 5 BEL-0208.  
 6 BY MR. ROGERS:  
 7 Q Okay. You ready? Sorry. You looked up at me.  
 8 A Yes, I read them.  
 9 Q Okay. Exhibit 84 and Exhibit 85 state that  
 10 each letter is a confirmation of a third-party payment  
 11 arrangement for services rendered to BioElectronics Corp.  
 12 by Mr. Noel. What -- what was the third-party payment  
 13 arrangement that's being referred to here?  
 14 A I assume she -- I use "assume". But she was  
 15 paying Noel to do IR.  
 16 Q For who?  
 17 A For her, for the shareholders.  
 18 Q Well, it says, "Render to BioElectronics  
 19 Corp.," not, "Render to IBEX."  
 20 A Well, she --  
 21 Q And the phrase "third-party payment".  
 22 A She would -- we didn't engage, well, on a  
 23 consistent basis. It was somewhat sporadic. And she  
 24 probably hired him at some time for the benefit of the  
 25 shareholders.

1 A I'm not aware of the specific --  
 2 (The witness examined the document.)  
 3 THE WITNESS: If that's what she said, I guess  
 4 that's what she said.  
 5 MR. MORRIS: Do you have any reason to believe  
 6 that that's inaccurate?  
 7 THE WITNESS: No -- or accurate, either or.  
 8 BY MR. ROGERS:  
 9 Q Did you ever talk to Mr. Noel about the  
 10 services he was providing to BioElectronics Corp.  
 11 regardless of who was paying him?  
 12 A Ad nauseum.  
 13 Q Okay. And what was the agreement you had with  
 14 him to pay him?  
 15 A Only I -- different agreements with him at  
 16 different times for different services.  
 17 Q Did you ever pay him in cash?  
 18 A I think so.  
 19 Q Why?  
 20 A Why?  
 21 Q Yeah, why do you think that?  
 22 A Because -- if I had cash.  
 23 Q Okay. And you think the record's going to  
 24 substantiate that?  
 25 A I don't know. At this time -- this is about

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1 decades ago, it seems. What's the date? 2010?  
2 Q 2010.  
3 A I don't know.  
4 Q Okay. If that's your testimony, that's your  
5 testimony.  
6 A Do you want this back?  
7 MR. ROGERS: Yeah.  
8 Did you have any questions on these?  
9 MS. ZUKIN: No.  
10 MR. ROGERS: No.  
11 BY MR. ROGERS:  
12 Q All right. Let's go to tab 17, which is a July  
13 17, 2010, letter from BioElectronics Corp. to Tim  
14 Buckmiller. The second page has a signature purporting  
15 to be yours. Did you sign this document?  
16 A I don't particularly remember it, but if I --  
17 if it was submitted to the Securities and Exchange  
18 Commission, I would have signed it.  
19 Q All right. I want to look at page 11 of 32.  
20 It's the middle of a spreadsheet, essentially, I believe,  
21 the third page, which starts on page 9 of 32, that's  
22 headed, "BioElectronics Corp. securities issued for  
23 services rendered from April 14, 2006, through December  
24 31, 2009. And I want to look specifically at page 11 of  
25 32. Are you there?

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1 A Yes.  
2 Q Okay. There are a series of entries for a  
3 gentleman by the name of Robert McGuire.  
4 A Yes.  
5 Q Who is Robert McGuire?  
6 A Consultant to the company.  
7 Q And what did he consult on?  
8 A Management, some distribution agreements,  
9 solicited distribution agreements.  
10 Q What does that mean? I don't -- I'm not  
11 following.  
12 A Well, he fell in love with the company and the  
13 -- well, more so the products. And he would invite  
14 people to be distributors. He had a lot of -- he has a  
15 very broad network of contacts, and he's an extremely  
16 astute business guy. So frequently I would call Bob and  
17 talk to him about deals.  
18 Q Okay. The spreadsheet on page 11 of 32 lists  
19 his name on an account -- just because I don't want to  
20 guess, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,  
21 16 times on the -- with a date range of July 30, 2009,  
22 through August 19, 2009, with -- which all but one of  
23 those being issued on -- wait a minute -- all but one of  
24 those entries being dated August 19, 2009. Do you see  
25 that --

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1 A Yes.  
2 Q -- the third column, the sale date?  
3 A Right.  
4 Q What does "sale date" mean?  
5 A I'm not sure. I assume that's the date they  
6 were issued.  
7 Q Now on the far right-hand side there, there is  
8 a column that says, "Notes." And for all of Mr.  
9 McGuire's entries, the note is "Equity Incentive Plan  
10 Rule 7014". What does that refer to?  
11 A I don't know about the specific rule, but we  
12 have a formal equity incentive program for employees,  
13 consultants.  
14 Q And you think he's getting paid under that  
15 plan?  
16 A Yes.  
17 Q And is that -- do you think, or do you know?  
18 A I mean sitting here now I don't know for sure,  
19 but what -- that's what it says. He got -- compensation  
20 came from the equity incentive plan.  
21 Q Okay. On July 30th, the first entry for him,  
22 he received 9,200,000 shares. And then all the entries  
23 on August 19th are for the same amount, 1,231,000 shares.  
24 Actually not -- they're not all the same amount. They  
25 are similar, but they're not the same. Do you know why

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1 the shares were issued in so many different certificates?  
2 Weren't they all issued as one?  
3 A I guess, you know, my assumption is yes for  
4 different certificates.  
5 Q Did you talk to him about it?  
6 A No, I don't specifically remember talking about  
7 that.  
8 Q Who at BioElectronics had contact with Robert  
9 McGuire?  
10 A Most of the time either it would be me or  
11 Sherry who was --  
12 Q All right. The column headed "Service  
13 Rendered" -- do you see that? It's the second to the  
14 last moving from the left to the right. Look at the top  
15 of the spreadsheet.  
16 A You said it was "Relationship"?  
17 Q It says -- after "Relationship", there's  
18 another column that says, "Services Rendered".  
19 A Oh, okay. Yes.  
20 Q What's being signified there?  
21 A I'm not sure, but I'm assuming that's the entry  
22 -- that valuation put on the security to record it in a  
23 ledger.  
24 MR. MORRIS: There's a dollar sign there, so is  
25 that --



1 THE WITNESS: Yeah. Yeah, that's what I'm  
2 saying. I'm assuming that's the value of the stock.  
3 BY MR. ROGERS:  
4 Q Well, the market share is different for  
5 different people. I'm sorry. The market price per share  
6 is different for different people. And it goes from less  
7 than two-tenths of one cent for Simon Jacobson at the top  
8 to as high as 8.4 cents for Mr. McGuire. How is the  
9 market price share determined?  
10 A I assume they went back and looked at the  
11 trading price at that date and --  
12 Q That's a huge swing in your share price in a  
13 short period of time.  
14 A We had some phenomenal swings in the price.  
15 Q Uh-huh. Do you know what was causing those  
16 swings?  
17 A Shorting.  
18 Q So the price always went down?  
19 A Like I told you earlier, when L&H came in, the  
20 stock was 40 cents a share. They drove it down to one-  
21 tenth of a cent.  
22 Q And what time period was that?  
23 A From into -- 2005 and they walked away, sold  
24 out, probably 2009.  
25 Q Okay. So were they still involved here in

1 22,092,250 (see below) plus five days ending 5/1,  
2 2,077,500 plus seven days ending 5/12, 6,643,000, for a  
3 total due of 30,812,750. Nice day today. Reminds me of  
4 a few days ago -- few years ago. I'd like to see those  
5 prices on this share activity. Bob."  
6 A He's talking about -- I assume he's talking  
7 about the market there, and he's saying, you know, "I  
8 think I'm owed 22 million shares for the work I'm doing."  
9 Q Okay. Let's look at the second email here.  
10 And then before we do --  
11 A This is two -- I got one.  
12 Q Yeah. There's a second one down below. See?  
13 There's an indent down below the one we just discussed?  
14 A Oh. From -- okay. I see.  
15 Q Yeah. And this one says, "Hi Andy. I'm only  
16 sending the two-week totals from 12/29/08 through  
17 4/24/09. I have a four-inch stack of daily activity,  
18 which I'm sure you neither need nor want." And then  
19 there's a series of dates and totals after those dates.  
20 And down at the bottom it says, "Total owed,  
21 22,092,250." Do you know what's being discussed here?  
22 A Well, it's the same number, total owed.  
23 Q It is the same number. What's being discussed  
24 here?  
25 A I assume he's talking about daily stock

1 2009?  
2 A Probably.  
3 Q The price just seems to be going up, up, up  
4 when you did that chart. That's not --  
5 MR. MORRIS: I don't think that -- was your  
6 price rising at that time or falling at that time?  
7 THE WITNESS: Probably going up.  
8 MR. ROGERS: I'm going to hand you what's been  
9 marked as Exhibit 11.  
10 Mr. Morris, I think you have some original  
11 documents in front of you. We'll work that out at the  
12 end, but let's keep in mind that needs to be done.  
13 BY MR. ROGERS:  
14 Q All right. Exhibit 11 is a one-page document,  
15 no Bates stamp. It's a series of emails from  
16 RMMSR@aol.com to Andrew.Whelan@actipatch.net. That's the  
17 top one I should say.  
18 A Yes.  
19 Q And then there's another one below that. Have  
20 you had a chance to review?  
21 (The witness examined the document.)  
22 THE WITNESS: Yes.  
23 BY MR. ROGERS:  
24 Q What's being discussed here? The subject is,  
25 "Buy recap." And the first email says, "Andy, I'm owed

1 activity. I mean --  
2 Q Okay. Why would he tell you the daily stock  
3 activity?  
4 A Because he would monitor what the activity was  
5 in the stock, and he would tell me, you know, what he  
6 thought was going on.  
7 Q And was he expecting 22,092,250 shares from  
8 you? Is that why he's saying, "Owed"?  
9 A No. He could say they're owed. I didn't pay  
10 them.  
11 Q Okay. That's your testimony. May I have my  
12 document please? Now let's look at Exhibit 12. And  
13 Exhibit 12 is a three-page document Bates stamped SEC-  
14 BIOE-0002648 sequentially through 50. Take a minute to  
15 look at it. Then I'm going to ask you some questions  
16 about it.  
17 (The witness examined the document.)  
18 BY MR. ROGERS:  
19 Q You ready?  
20 A Yes.  
21 Q The second page, the one Bates stamped SEC-  
22 BIOE-0002649 -- at the bottom there's an email from  
23 RMMSR@aol.com to Neilad@yahoo.com. Do you know who that  
24 Neilad@yahoo.com belongs to?  
25 A Yes. It's --

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1 Q I'm sorry.  
2 A -- Adrian Nieland.  
3 Q And who's he?  
4 A A consultant in --  
5 Q He's a consultant.  
6 A Yes.  
7 Q And what does he consult on?  
8 A Same things as McGuire. He does -- he's the  
9 president of the Greyhound Association there.  
10 Q Where?  
11 A So he -- in Maryland. So he tried to get  
12 eMarkets -- I mean he had products sold. He did some  
13 testing. He tried to set up different distributors. He  
14 would tell people about the stock, get people interested  
15 in it.  
16 Q All right. The email text that we've been  
17 looking at says, "Adrian, my today total is 293,000. I'm  
18 going in with" -- I'm going to assume -- "w/0.015 bid on  
19 Monday for 300K-plus shares. I want to break this and  
20 move up into the twos." Do you know what he's referring  
21 to there?"  
22 A I assume he's talking about the price of the  
23 stock, but I don't know. He said he's going to go and  
24 buy stock.  
25 Q Where you aware that Mr. Nieland --

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1 A Nieland --  
2 Q -- Nieland was trading in BioElectronics  
3 stocks?  
4 A Trading? He's buying -- he owns shares. I  
5 know he owns shares. We paid him some shares.  
6 Q Okay. And why did you pay him shares?  
7 A For consulting services.  
8 Q And how much did you pay him for consulting  
9 services?  
10 A I don't remember now.  
11 Q Did you pay him for manipulating the stock  
12 price?  
13 A Absolutely not.  
14 Q I remind you that you're under oath. I'm going  
15 to ask you again. Did you reward Mr. Nieland with shares  
16 after he purchased shares on the open market?  
17 A No.  
18 MR. ROGERS: That contradicts other testimony.  
19 Can I have my document back please? Let me hand you  
20 Exhibit 10. Exhibit 10 is a one-page document Bates  
21 stamped SEC-BIOE-0002668. Why don't you take a minute  
22 and look at it. I'm going to ask you some questions.  
23 (The witness examined the document.)  
24 THE WITNESS: All right.  
25 BY MR. ROGERS:

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1 Q You ready to go? The top email is addressed to  
2 Anisse.Rice@actipatch.net. Who is Annise Rice?  
3 A She was administrator at the company.  
4 Q What company?  
5 A BioElectronics.  
6 Q Okay. But -- and the email address here is  
7 actipatch.net. Is actipatch.net a BioElectronics email  
8 address?  
9 A Yes. It was.  
10 Q Do you know what Mr. McGuire is asking for in  
11 that top email to Annise?  
12 A Yeah. He says, "Please give me the delivery  
13 status on these shares."  
14 Q Okay. And he's referring to the email below,  
15 correct?  
16 A I assume so, yes.  
17 Q And he's talking about -- and in the second  
18 paragraph of that second email, "Last shares received  
19 were 1.3 million times 4, which should have been  
20 1,540,875 times 4. Therefore 240,875 times 4 is still  
21 owed plus current two weeks ending 11/14 and additional  
22 1,450,000. Therefore, 1,450,000 divided by 4 equals  
23 362,500 plus previous 240,875 equals 603,375 each to the  
24 following," and then gives a series of names. Do you  
25 know why he thinks he's owed these shares? Or are these

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1 shares? I should ask that.  
2 A We paid McGuire compensation for his consulting  
3 services. At times he thought there was some relation to  
4 that -- to volumes, which I totally ignored.  
5 Q I'm sorry. Volumes of what?  
6 A Stock, to trading. No one individual had any  
7 impact on the amount of trading that was done in that  
8 stock.  
9 Q So you were aware that Mr. McGuire was trading  
10 in BioElectronics stock?  
11 A That he was trading? No, I don't think he was  
12 trading. He was buying shares, I assume, and selling  
13 shares on his own account. But I have no direct --  
14 Q So if he was buying and selling, how is that  
15 not trading. What is the distinction there you're  
16 making?  
17 A Because of who he's doing it for. I mean  
18 traders do -- as my understanding, do deals for --  
19 they're brokers and dealers.  
20 Q But you are testifying that you knew that Mr.  
21 McGuire was buying and selling BioElectronics stock?  
22 A He said that he was buying and selling -- he  
23 was buying, mostly buying -- BioElectronics stock. Was  
24 he trading it? I don't think that's what he was doing.  
25 And I

1 -- you know, and I was indifferent to the fact that -- if  
2 he was buying and selling as long as he was doing the  
3 consulting work. I don't -- there's no way that has any  
4 impact on the volumes.

5 Q Okay. So what tangible results did Mr. McGuire  
6 produce in his consulting work that you paid him for?

7 A He talked -- he talked to me and helped me  
8 manage the company.

9 Q So talking to you and helping you manage the  
10 company was why you paid him the shares?

11 A Yes.

12 Q No other reason?

13 A Correct. The idea that somebody would affect  
14 the volume, one person, is just ludicrous.

15 Q Were you aware that Mr. Nieland was also buying  
16 and selling shares of BioElectronics Corp. stock?

17 A He said he bought shares, and he says he still  
18 owns shares.

19 Q And what were you paying him for?

20 A Consulting.

21 Q And what did he do to earn the consulting  
22 money?

23 A The same thing I just told you. He worked on  
24 trying to get distributors. He did -- at one point they  
25 actually did some clinical trial for a veterinary -- with

1 Q Right. Okay. Let's look at the second to the  
2 last page, which is Bates stamped 242.

3 A All right.

4 Q Is that your signature on this page or a copy  
5 of your signature on this page?

6 A It appears to be, yes.

7 Q Did you sign this agreement between  
8 BioElectronics and eMarkets?

9 A It appears I did.

10 MR. ROGERS: Thank you. That's all on that.

11 I'm going to show you what's been marked as Exhibit 69.

12 Take a few minutes. Familiarize yourself with the  
13 document. Then I'll ask you some questions. While

14 you're doing that I'm going to put on the record that  
15 this is a five-page document Bates stamped CBH0015443  
16 sequentially -- actually, they all have the same Bates  
17 stamp on them, all five pages.

18 (The witness examined the document.)

19 BY MR. ROGERS:

20 Q Ready to go?

21 A Yeah.

22 Q And I want to ask you about the third page.

23 It's a -- it's headed, "IBEX LLC Check Register 2009".

24 And I'll tell you I obtained this document from Cherry,  
25 Bekaert & Holland as part of the audit done on

1 a veterinary group in Ireland. He still promotes the  
2 company.

3 Q So you paid him to promote the company?

4 A No, I paid him for consulting. I'm not paying  
5 him now, so he can do what he wants to do.

6 Q I'm going to hand you what's been marked  
7 Exhibit 18. When you've -- when you're ready to answer a  
8 question, let me know.

9 (The witness examined the document.)

10 THE WITNESS: This is a standard agreement.

11 BY MR. ROGERS:

12 Q I'm sorry?

13 A It's a standard distribution agreement.

14 Q Well, specifically it purports to be a  
15 distribution agreement between BioElectronics Corp. and  
16 eMarkets group. Do you see that on the first page?

17 A Yeah. I mean why are you describing it as  
18 "purports".

19 Q I would like you to testify as to what it is,  
20 not me.

21 A All right. It's a distribution agreement  
22 between BioElectronics and eMarkets.

23 MR. MORRIS: Dated February --

24 THE WITNESS: Yeah, 9th, 2009.

25 BY MR. ROGERS:

1 BioElectronics, okay? And do you see the second entry  
2 there dated July 2, 2009, \$100,000?

3 A Yes.

4 Q I'm sorry -- 48. That's the -- it's after the  
5 third entry, but let's look at that one, 7/2/2009,  
6 100,000, sale of Biel shares to J. Stein. And it's one  
7 of three that have a description on there of "sale of  
8 Biel shares to J. Stein". Do you know who J. Stein is?

9 A He's an investor that came to the company. I  
10 met him.

11 Q Okay. So you are aware that Mr. Stein invested  
12 in the company. And how did he invest in the company?

13 A My understanding, he bought shares from IBEX.

14 Q So he bought shares from IBEX, and you were  
15 aware that he was buying shares from IBEX at the time he  
16 was buying them?

17 A Not at particular times. He came to the  
18 company. He introduced himself. I told him about the  
19 company, and he kept asking how things were going. And  
20 he conducted himself like he was an investor.

21 Q Okay. And do you know how he became aware of  
22 BioElectronics Corp.?

23 A He's in that group I call The Rabbis". He's a  
24 Hasidic Jew in New York. We have -- at that time  
25 probably most of our investors were -- shareholders

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1 rather -- were in that community in Brooklyn.

2 Q Okay. So when Mr. Stein came to your company

3 and you told him about the company, how -- did he walk in

4 by himself, or did he come with somebody else?

5 A My recollection of that -- he called me and

6 asked if he could come in.

7 Q Okay.

8 A And then he -- he showed up.

9 Q But he bought the shares through IBEX?

10 A We -- I don't know. Apparently he bought those

11 shares from IBEX.

12 MR. MORRIS: You know that from this document,

13 but do you know that --

14 THE WITNESS: I don't know how many total

15 shares he bought. My understanding -- but I have no -- I

16 didn't ask him for his financial statement. He was a

17 substantive investor.

18 BY MR. ROGERS:

19 Q So he's a substantive investor, and you didn't

20 ask him for his financial statement?

21 A Well, I did sell him anything.

22 Q Who did sell him something?

23 A Well, this says that IBEX did.

24 Q Okay. Down lower, the same page there, there's

25 a note, several of them, six, I believe, "Holiday Stock

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1 Transfer," \$160, \$125, \$80, 75, 50, \$275, \$135.

2 Actually, no, not 135. I went too far -- just stopping

3 at 275. Do you see those transactions?

4 A Yes.

5 Q Is Holiday Stock Transfer the transfer agent

6 for BioElectronics Corp.?

7 A It was at one time.

8 Q Was it in 2009?

9 A I don't remember.

10 Q Do you know if IBEX uses a transfer agent?

11 A Does IBEX use a transfer -- I don't know.

12 Q Let's turn the page. The next page is a box.

13 Inside the box it says, "Secondary note convertible at

14 .019. And I think that's the same box we looked at

15 earlier in Exhibit 31, which described the loans.

16 Actually, it described the loan that became the \$519,920

17 IBEX loan to BioElectronics. Does that look familiar to

18 you?

19 A Only to the extent we looked at it before.

20 Q Okay. Did you provide this document to the

21 BioElectronics Corp. auditors?

22 A Specifically? I have no idea at all at this

23 point.

24 MR. ROGERS: Do you have anything else on this?

25 MS. ZUKIN: No.

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1 MR. ROGERS: Can I have the document back?

2 Let's mark a new exhibit.

3 (SEC Exhibit 86 was marked

4 for identification.)

5 MR. ROGERS: I'm going to hand you what's been

6 marked Exhibit 86. Exhibit 86 is a four-page document

7 Bates stamped SEC-BIOE-0004250 sequentially through 53.

8 Just take a few minutes and look at that, and then I want

9 to ask you some questions.

10 For the record, Ms. Zukin is leaving us.

11 (The witness examined the document.)

12 MR. ROGERS: Let's go off the record at 3:46.

13 (A brief recess was taken.)

14 MR. ROGERS: All right. We are back on the

15 record at 3:48.

16 BY MR. ROGERS:

17 Q Mr. Whelan, have you had a chance to look at

18 Exhibit 86?

19 A Yes.

20 Q First page of the exhibit says, "Invoice

21 BioElectronics Corp.," billed to YesDTC, shipped to

22 YesDTC. Do you see where I'm looking?

23 A Yeah.

24 Q Why don't you tell me what is this document?

25 A So it's what it says. It's the invoice.

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1 Q Okay. For what?

2 A For \$150,000.

3 Q And what's the description?

4 A 15,000 Model 240 12-centimeter units at \$10

5 each.

6 Q Okay. So is this the only invoice for YesDTC?

7 A I don't remember that --

8 Q Well --

9 A I mean only as an absolute. I don't know any

10 reason to believe it's not or it isn't, is or isn't.

11 Q Here's what's confusing me.

12 A Pardon me?

13 Q Here's what's confusing. BioElectronics Corp.

14 declared \$150,000 worth of revenue for the YesDTC

15 agreement. Am I correct on that?

16 A Yes.

17 Q Okay. But the description here says that the

18 153,000 was just for the product, not for the right to

19 sell in Japan. So how do we account for that?

20 A Why --

21 Q That's what I was asking about on the other

22 invoice.

23 A Why -- why do you have to account for it? We

24 billed them for \$150,000 of the purchase -- of the

25 product that he purchased, okay?

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1 Q But I believe we've also talked today a lot  
2 about the idea that the money given by YesDTC to  
3 BioElectronics Corp. was for the purchase of the right to  
4 sell in a territory as well as the product. So what I  
5 see here is an invoice only for product, and I'm curious  
6 how do we get that as of December 31, 2009, the intent  
7 was to accept \$150,000 for product and the right to sell  
8 in territory. Or was that evolved later?  
9 A No. It's in the agreement, okay? Do you want  
10 me to pull the --  
11 Q Well --  
12 A Do you want to pull the agreement out and we'll  
13 go through the agreement?  
14 Q We've gone through the agreement. But the  
15 description here says, "For product 240-12 centimeter  
16 unit."  
17 A Right.  
18 Q Why doesn't it say for a product and the right  
19 to sell in Japan?  
20 A Because that's covered in the agreement.  
21 Q But that's not the invoice you sent them.  
22 A So what? He knew what the invoice was for.  
23 Q Okay.  
24 A You know, we had enough lawyers and  
25 accountants. We didn't need one to right a law opinion

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1 about every invoice.  
2 Q This sure seems like common sense. If you're  
3 billing somebody for two things and you only put one on  
4 there --  
5 A I'm billing them for the product. What is  
6 confusing about that?  
7 Q Because you've testified that you were billing  
8 him -- you charged him \$150,000.  
9 A No, I didn't -- I didn't --  
10 Q Your testimony --  
11 MR. MORRIS: I think his testimony was --  
12 THE WITNESS: You're misrepresenting my  
13 testimony.  
14 MR. MORRIS: -- the agreement required that he  
15 buy the product. He got the agreement, and then he was  
16 required to buy the product, which he bought.  
17 THE WITNESS: What's confusing?  
18 BY MR. ROGERS:  
19 Q Okay. So this is the only invoice?  
20 A I don't know if it's the only invoice. I mean  
21 he did a lot of things with us.  
22 Q Sir, here's why I think I'm okay relying on  
23 that, because I've sent you two subpoenas upon which  
24 responsive documents should have been sent. And this is  
25 what I got. I didn't get another one. This is what I

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1 got. So I'm asking you are you withholding documents?  
2 Are you -- did you not do a proper search?  
3 A I already told you.  
4 Q What's missing?  
5 A I told you I did not -- I did not withhold  
6 documents other than documents that were related  
7 specifically to client legal counsel, okay?  
8 Q Which you've never provided --  
9 A I'm not going to.  
10 Q -- a privilege log for.  
11 A You --  
12 MR. MORRIS: I represent to you I'll have that  
13 by the end of next week.  
14 MR. ROGERS: There's a timeliness issue to  
15 privilege logs. You could provide it to me next week,  
16 but whether it's timely or not is another issue.  
17 BY MR. ROGERS:  
18 Q Was there anything else in this document you'd  
19 like to tell me about?  
20 A No.  
21 MR. MORRIS: Is it possible there was another  
22 invoice that was lost or destroyed or --  
23 MR. ROGERS: Sir, I didn't give you permission  
24 to ask your client questions. I'm asking the questions.  
25 Thank you.

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1 MR. MORRIS: Well, it's obvious you want a  
2 clear record.  
3 MR. ROGERS: I'm not done.  
4 MR. MORRIS: I'm just trying to make the record  
5 clear. But if you want to steer it --  
6 BY MR. ROGERS:  
7 Q Let's go to page three.  
8 MR. MORRIS: -- and deprive him of his  
9 attorney-client privilege rights, then, you know --  
10 THE WITNESS: Is that the one that says,  
11 "Netflix"?  
12 BY MR. ROGERS:  
13 Q Yes. Yes. There are page three and four.  
14 Bates stamped page 4252 and 4253 are Yahoo email it looks  
15 like. And there is a email from Joe Noel to A. Whelan.  
16 Correct me if I'm wrong. And I don't know who Esther Ko  
17 is. Who is Esther Ko?  
18 A She was a -- an accountant who preceded Walker  
19 coming in to do legal and accounting work on the SEC.  
20 She's a very experienced SEC accountant and manager, and  
21 she did -- she wrote the memo about the bill and hold  
22 transactions and did the research.  
23 Q All right. So this first email on page three  
24 from Joe Noel says, "Esther, we are headed to Japan late  
25 next week to discuss actual expected sales figures, but

1 our plan is to use all 15K units by the end of the year  
 2 and probably place an additional order for more units  
 3 during 2010. Please feel free to call me if you need any  
 4 additional info." Why was Mr. Noel sending this email?  
 5 A Obviously he's responding to some email from  
 6 Esther Ko.  
 7 Q I think that's down below.  
 8 A Pardon?  
 9 Q I think it's down below.  
 10 A Oh. All right.  
 11 Q Okay. At this point in March 22, 2010, had Mr.  
 12 Noel given you any indication that he had received  
 13 regulatory approval to sell the product in Japan?  
 14 A Here's the issue with the regulatory issue. He  
 15 -- Joe Noel believed that the product would be classified  
 16 -- I don't remember exactly which way it was. It was one  
 17 or two. They came out to be two -- or it could have been  
 18 three. However that scheme is there's a lower scheme  
 19 that doesn't require rigid clearance. And he believed  
 20 initially that he could get the product based on, in my  
 21 understanding, the legal accounts that he had in Japan,  
 22 that he could get the product cleared relatively quickly  
 23 and start sales. It turned out he could not get that  
 24 ideal classification of the product, and that's why, you  
 25 know, it became much more difficult.

1 Q I'm not finished.  
 2 A I apologize. Please go ahead.  
 3 Q I'm not going to give you an explanation. I'm  
 4 going to leave it at that's one way of interpreting the  
 5 facts.  
 6 A Well, it would be incorrect.  
 7 Q Thank you. I'm going to hand you what's been  
 8 marked Exhibit 20.  
 9 (The witness examined the document.)  
 10 BY MR. ROGERS:  
 11 Q Have you looked -- you --  
 12 A Yes.  
 13 Q Okay. What's being discussed in these series  
 14 of emails?  
 15 A I don't know. I don't know. Apparently I  
 16 wrote it. "Your grandnieces and nephews" -- I don't know  
 17 what the hell that's about. This is what I told you  
 18 before, okay. The \$519,000 note could have been in the  
 19 revolver note. The -- it covered under the 2 million.  
 20 The 2 million was not exhausted, okay?  
 21 MR. MORRIS: You're talking about the January  
 22 1, 2005 --  
 23 THE WITNESS: Note. Right.  
 24 BY MR. ROGERS:  
 25 Q This is the August 2009.

1 So he -- he obviously believed -- he wrote a  
 2 check. "Here's the money." He bought the product. He  
 3 went to Japan. He obviously believed he was going to get  
 4 it done.  
 5 Q That's one way of interpreting the facts.  
 6 A It's not one way of -- what do you mean it's  
 7 one way of interpreting the facts? It is the facts.  
 8 What do you think, the guy's a moron or I'm a moron? He  
 9 put down \$150,000 to buy a product. We went to Japan.  
 10 He paid consultants. What is that a misinterpretation of  
 11 facts? Those are facts. He went to Japan. Are you  
 12 saying he didn't go to Japan?  
 13 Q I'm not disputing that he went to Japan.  
 14 A Are you disputing what the classifications are?  
 15 Q No.  
 16 A Then what -- what do you mean that's one way to  
 17 interpret the facts?  
 18 Q I think --  
 19 A It's the facts.  
 20 Q -- it's curious that Mr. Noel gave you \$150,000  
 21 on December 31st, the last day of your calendar year.  
 22 A That's because you don't understand the value -  
 23 -  
 24 Q I'm not finished.  
 25 A -- of what we gave him.

1 A No.  
 2 Q Look at the bottom of the first page.  
 3 A He's correct.  
 4 Q No. Look at the bottom of the first page. It  
 5 says, "IBEX is a note payable that was due on August 31,  
 6 2011, for \$519,920."  
 7 A Right. Let me try one more time if I may.  
 8 MR. MORRIS: See, this is not clear.  
 9 THE WITNESS: Okay? She had a note  
 10 outstanding, one note.  
 11 BY MR. ROGERS:  
 12 Q She had a few notes outstanding.  
 13 A No. And when this note was written, she had  
 14 the revolver note.  
 15 Q Okay. There was a revolver note.  
 16 MR. MORRIS: Tell him when the revolver note  
 17 was --  
 18 THE WITNESS: The \$2 million note --  
 19 MR. MORRIS: When was the revolver note entered  
 20 into?  
 21 THE WITNESS: The 2 million -- January of 2005  
 22 as I remember, okay?  
 23 BY MR. ROGERS:  
 24 Q That's the date on the document.  
 25 A That's the date on the document, correct. The

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1 -- that note -- when she gave the company additional  
 2 funding, could have been put in that note. The market  
 3 price -- that's the note that -- where the company was  
 4 abused by L&H Financial, drove the stock down from 40  
 5 cents to a tenth of a cent, okay. So she happened to  
 6 make out on that because she had that prior agreement  
 7 with the board.  
 8 Now she has -- she's making an additional loan,  
 9 okay? It's not conscionable to her, I assume, and to me  
 10 for her to come in and put that money in that old  
 11 agreement when the market conditions have changed so  
 12 dramatically. So she says, "I'll take another note.  
 13 Give me another note, and it will have a much higher" --  
 14 10 times it looks like -- "conversion rate."  
 15 MR. MORRIS: So it's -- the new note is more  
 16 favorable to BioElectronics than the old note, correct?  
 17 THE WITNESS: And the investors, right. So  
 18 nobody's mistreating the investors here. Get that out of  
 19 your head. I've been working on this company for 12  
 20 years, okay? I haven't had pay or anything. I've been  
 21 totally dedicated. I don't have one dime that belongs to  
 22 anybody else in this world or any shareholder. And she  
 23 was being magnanimous, like I said here, and taking that  
 24 other note. Now that note became due and payable.  
 25 BY MR. ROGERS:

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1 Q Two years later.  
 2 A Okay. Now she had -- this company has one  
 3 choice, go bankrupt or renegotiate the note with them.  
 4 She took the same formula that had been agreed with the  
 5 independent board years ago and applied that, the  
 6 interest, to the conversion price and took another note,  
 7 okay? She's at risk for these monies --  
 8 Q Okay.  
 9 A -- these investments.  
 10 Q We got to go back to the 10-K.  
 11 A Good. I don't think I made myself clear enough  
 12 on that.  
 13 MR. MORRIS: Yeah. This is a point of  
 14 confusion. I -- this is yours.  
 15 THE WITNESS: Thanks.  
 16 MR. ROGERS: I'm giving you 51 back.  
 17 THE WITNESS: Thanks.  
 18 MR. ROGERS: Do you still have a copy?  
 19 MR. MORRIS: I don't know.  
 20 MR. ROGERS: Do you want to go off the record  
 21 and talk to your client?  
 22 MR. MORRIS: No, we're good.  
 23 THE WITNESS: No, no. We're good. Thank you.  
 24 We had a long discussion yesterday just so you know. On  
 25 page --

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1 MR. MORRIS: I --  
 2 THE WITNESS: -- 45 of 49 it talks about the  
 3 note.  
 4 MR. ROGERS: Yeah, it pops up a few different  
 5 pages. I'll just make sure that you're not --  
 6 MR. MORRIS: 23. 45 and 23, yeah. 24 out of  
 7 49, 45 out of 49, 24 out of 49 --  
 8 BY MR. ROGERS:  
 9 Q The -- page 24 of 49 --  
 10 A Yes.  
 11 Q -- "Liquidity and Capital Resources" is the  
 12 heading.  
 13 A Right.  
 14 Q Second paragraph --  
 15 A Says --  
 16 Q "Since our inception on" -- and then the third  
 17 sentence, "We present these notes payable as long-term  
 18 liabilities in our financial statements as holders of  
 19 these notes, who are related parties, have no current  
 20 intention to pursue repayments of these amounts."  
 21 A Right.  
 22 Q And what notes are being referred to in this  
 23 paragraph?  
 24 A The shareholder notes because shareholder --  
 25 they're generally classified as shareholder notes.

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1 Q Right, but how about the IBEX notes? Are they  
 2 being referred to her?  
 3 A Shareholder notes, yes.  
 4 Q So the answer is, yes, that we are referring to  
 5 the IBEX notes in this paragraph?  
 6 A No. We're referring to all the notes. There's  
 7 notes to St. John's. There's notes to Mary. There's  
 8 notes to Rick.  
 9 Q Okay. And within that set there are loans from  
 10 IBEX, correct?  
 11 A Yes.  
 12 Q Okay. So this paragraph could pertain to the  
 13 IBEX loans, correct?  
 14 MR. MORRIS: What paragraph are we --  
 15 THE WITNESS: Yeah.  
 16 MR. ROGERS: The second paragraph.  
 17 THE WITNESS: We present these notes as long-  
 18 term, right.  
 19 BY MR. ROGERS:  
 20 Q All right. And it says, "We present these  
 21 notes as long-term liabilities in our financial statement  
 22 as the holder of these notes, who are related parties,  
 23 have no current intention to pursue repayment of these  
 24 amounts." And if that's true, why do you keep telling me  
 25 that the note was going to cause the company to go

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1 bankrupt?  
2 A Because the sentence says, "We present these  
3 notes as long-term." That's the accounting presentation  
4 of the notes.  
5 Q But don't you have to believe that that's true?  
6 A It is true.  
7 Q But if the --  
8 A But the -- it -- we present -- they're as long-  
9 term liability. When an investor -- like I borrowed a  
10 half a million dollars and -- well, we borrowed, and I  
11 guaranteed it, and my wife guaranteed it -- half a  
12 million dollars from BXM Bank, okay? We present the  
13 financial statements. Those notes -- the ones that are  
14 due in the current portion are due as current  
15 liabilities. The other are all long-term, okay? The  
16 intent is not to go collect them and collapse the  
17 company. But it's not inconsistent to renegotiate the  
18 conversion price.  
19 Q Why would the company renegotiate the  
20 conversion price?  
21 A Because it can't pay the -- it can't make the  
22 cash payment.  
23 Q Why would you be worried about that if you're  
24 not concerned that the --  
25 A Because you're misconstruing "present".

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1 Q How should I construe it?  
2 A As a way that financial statements are  
3 presented.  
4 Q So is it --  
5 A You have to look at the financial statements on  
6 how they're on there.  
7 Q Right. So --  
8 A And that's what -- you know, this thing was  
9 written by accountants and lawyers, more damn lawyers  
10 than I've ever wanted to pay for, okay? These statements  
11 are correct statements. They were presented in that  
12 manner. That's what they're saying. "We presented those  
13 statements as long-term liabilities."  
14 MR. MORRIS: When you --  
15 THE WITNESS: It specifically said they're  
16 shareholder loans. They're not to Joe Blow. They're not  
17 to L&H Financial, who's going to come in, ruin -- short  
18 the stock and ruin the company.  
19 BY MR. ROGERS:  
20 Q Wouldn't they be shareholders too?  
21 A No, they're note holders.  
22 MR. MORRIS: When you reconfigured the note  
23 with IBEX --  
24 THE WITNESS: Right.  
25 MR. MORRIS: -- did you reconfigure it more

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1 favorable to BioElectronics or more favorable to IBEX?  
2 THE WITNESS: BioElectronics because what IBEX  
3 agreed to was to take the same formulation that had been  
4 agreed to on all the other notes.  
5 MR. MORRIS: It had better terms prior to the  
6 renegotiation?  
7 THE WITNESS: Yeah. I mean -- better terms.  
8 There was nobody else out there who was going to -- where  
9 were we going to get \$600,000 or something to pay off the  
10 note?  
11 BY MR. ROGERS:  
12 Q You're saying that you have no -- that --  
13 A Present. It doesn't say -- it says, "We  
14 present them." That's the accountants and the lawyers  
15 speaking.  
16 Q So you're saying you present things that aren't  
17 the way they are?  
18 MR. MORRIS: Well, it says, "Current."  
19 THE WITNESS: No, that's not --  
20 MR. MORRIS: I think the key word there is  
21 "current" as well.  
22 THE WITNESS: Yeah.  
23 MR. MORRIS: I mean it could change.  
24 THE WITNESS: Yeah. We present the notes as  
25 long-term liabilities.

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1 BY MR. ROGERS:  
2 Q Okay.  
3 A Okay.  
4 Q Well, you have to believe then that --  
5 A Well, what's your definition of long-term?  
6 Q I'm not testifying. I'm not going to give you  
7 an answer to that. I am going to ask you the question  
8 again --  
9 A Well, you --  
10 Q -- what you mean by "no current intention to  
11 pursue repayment of these amounts."  
12 A You're proffering an answer of -- present -- it  
13 says, "We present these notes as long-term liabilities."  
14 MR. MORRIS: And you're saying IBEX at that  
15 time had no current intent as of December 2009. Does  
16 that -- that could change obviously in January -- or  
17 2009.  
18 THE WITNESS: Any day of the week IBEX can come  
19 in and take all the assets of the corporation and go sell  
20 them to somebody else, okay?  
21 BY MR. ROGERS:  
22 Q Do you believe that?  
23 A What?  
24 Q Do you believe that?  
25 A That she would do it? No. She --



1 Q No. You -- do you believe that they could come  
2 in there and --  
3 A Absolutely.  
4 Q Okay. So why did you make the statement that  
5 "the company believes there is no current intention to  
6 seek repayment of" --  
7 A Because there is no current intention to go out  
8 and destroy the company or cheat the shareholders out of  
9 their just due, okay? We've -- I've worked for years on  
10 this company. She's worked on things. She's gone -- an  
11 inordinate amount of risk to keep the company. Every law  
12 firm that we went in there with said, you know, "Just  
13 close the company out. Take the assets and restart it."  
14 Okay. The lien's on everything, okay?  
15 The idea that we're in here defending ourselves  
16 is incomprehensible to me. Nobody has been more --  
17 worked harder and accomplished more than we have.  
18 Nobody. The nearest thing that we have to a competitor  
19 has gone to \$120 million and did exactly that. That's  
20 exactly what -- they took -- they went in there. They  
21 put a note in place, and they closed down the company and  
22 took all the assets and left.  
23 Q Okay.  
24 A Okay. We're not doing that. And that -- so I  
25 do get annoyed with this. And this is uncalled for.

1 Q And below that, I think, is your automatic  
2 email signature.  
3 A Correct.  
4 Q Okay. Who is Seth Fireman?  
5 A He's a guy at Goldstrand Investments that I had  
6 a meeting with who said that he could finance the company  
7 and had all these great contacts and shareholder  
8 communication. He's just another of hundreds of people I  
9 tried to get financing from over the years.  
10 Q And did you end up obtaining financing from  
11 Seth Fireman?  
12 A No.  
13 Q Why not?  
14 A I don't remember his specific terms, but they  
15 were unacceptable.  
16 Q So the terms were unacceptable?  
17 A Right.  
18 Q And you say there were other people willing to  
19 finance BioElectronics, correct? I think that's what you  
20 testified.  
21 A I said --  
22 Q Tell me --  
23 A There were other people that I've talked to. I  
24 haven't -- other than most of the money came from, you  
25 know, the insiders, shareholders and a few other people.

1 There is not one thing that I have or did that's  
2 contradictory, unfavorable to those shareholders.  
3 Q I feel good about bringing you in there. I got  
4 to tell you.  
5 A Good.  
6 Q Can I have the document back? Can I have  
7 Exhibit 28 as well?  
8 A Sure.  
9 Q Thank you. Okay. Let's go at Exhibit 56.  
10 Exhibit 56 is a one-page document Bates stamped SEC-BIO-  
11 MKW-E-0012000. When you're ready, let me know and we'll  
12 talk about it.  
13 A This is --  
14 Q All right. The document is an email from  
15 Richard Staelin to you and Mary Whelan in which Mr.  
16 Staelin asks, "Do we have any proposal from them. And  
17 the email in which it is responding to is an email from  
18 Andrew Whelan to Richard Staelin and Mary Whelan, subject  
19 "Investors," saying, "Board members Seth Fireman and Neil  
20 Rock of Goldstrand Investments are prepared to move ahead  
21 and finance BioElectronics. Additionally, they will help  
22 us with shareholder communications and developing  
23 institutional market support." And then there's the  
24 contact information for Seth Fireman.  
25 A Right.

1 And most of the time we just struggled to raise  
2 financing. We're a cutting edge company. We've created  
3 a unique device, and it's -- you know, hopefully over the  
4 next few months it'll come to fruition.  
5 Q Okay. So -- and is it safe to say that Seth  
6 Fireman's offer wasn't as good as the existing financing  
7 you were getting?  
8 A We don't have any existing financing.  
9 Q Yes, you do.  
10 A What?  
11 Q IBEX.  
12 A We --  
13 Q St. John's.  
14 A -- a loan from IBEX, yeah.  
15 Q So that's what I'm referring to.  
16 A So I'm looking -- we're always looking for  
17 other sources of equity, financing, or debt. Like I told  
18 you, we got -- XM Bank loaned us \$500,000 recently.  
19 Q Okay.  
20 MR. MORRIS: Yeah, but I think the question was  
21 was Seth's terms -- the terms that were offered by Seth  
22 Fireman or his company -- were they more favorable or  
23 less favorable than the terms you were getting from IBEX?  
24 THE WITNESS: I don't remember the specific --  
25 but if they were even equal or somewhere close, I would

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1 have probably taken them. We have an insatiable appetite  
 2 for capital.  
 3 MR. ROGERS: Can I have my exhibit back please?  
 4 THE WITNESS: Sure.  
 5 BY MR. ROGERS:  
 6 Q I hope this doesn't break your heart, but this  
 7 might be the last document.  
 8 A Oh.  
 9 Q Exhibit 55.  
 10 (The witness examined the document.)  
 11 BY MR. ROGERS:  
 12 Q You ready?  
 13 A Yes.  
 14 Q Okay. Exhibit 55 is a three-page document  
 15 Bates stamped non-sequentially RSX001225, RSX00398, and  
 16 RSX001594. The first page of the document is headed,  
 17 "BioElectronics Corp. Unanimous Consent of Directors in  
 18 Lieu of Meeting."  
 19 A Yes.  
 20 Q And then the second line -- the first "whereas"  
 21 says, "Whereas the corporation presently has authorized  
 22 750 million shares of common stock per issuance of par  
 23 value." Slightly below that a few whereases down, it  
 24 says, "Be it therefore resolved that the board of  
 25 directors increases the authorized common shares of the

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1 corporation to 1 billion, par value one-tenth of one  
 2 cent." Do you see what that -- do you see that there?  
 3 A Yes.  
 4 Q And the date on this is June 18, 2009. Did the  
 5 board of directors authorize this resolution?  
 6 A I don't believe -- I would assume so.  
 7 Q Okay. Let's go to the second page. The second  
 8 page is a document headed "BioElectronics Corp. Unanimous  
 9 Consent of Directors in Lieu of Meeting." And in the  
 10 first whereas in this one it says, "Whereas the  
 11 corporation presently has authorized one billion shares  
 12 of common stock per issuance, par value" -- now we have  
 13 one-one hundredth of a cent. Then below there it says,  
 14 "Be it resolved that the board of directors increases the  
 15 authorized common shares of the corporation to 1.5  
 16 billion, par value one-one hundredth of a cent. Do you  
 17 see that?  
 18 A Yes.  
 19 Q Okay. Did the board authorize this resolution?  
 20 A Yeah. The authorized shares is increased to --  
 21 I think it's 4 billion.  
 22 Q And the third page is headed, "BioElectronics  
 23 Corp. Unanimous Consent of Directors in Lieu of Meeting."  
 24 First whereas -- "whereas the corporation presently has  
 25 authorized 2.5 billion shares of common stock for

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1 issuance, par value one-one-hundredth of a cent, be it  
 2 resolved that the board of directors increases the  
 3 authorized common shares of the corporation to 3 billion  
 4 shares par value, one-one hundredth of a cent." And the  
 5 date on this one is July 12, 2012. I neglected to say  
 6 that the second document wasn't dated.  
 7 But in the space of three years -- and I'm  
 8 going to say three weeks -- you can dispute with me  
 9 whether that's accurate or  
 10 -- I think it's close enough. The company has gone from  
 11 1 million authorized shares to 3 billion authorized  
 12 shares. Why did the company need 2 billion additional  
 13 shares over that time?  
 14 A Because the market price of the stock went down  
 15 dramatically.  
 16 Q Why does that mean you had to issue more  
 17 shares?  
 18 A We issued some shares to shareholders -- I mean  
 19 to -- for conversions and -- not for conversion but for -  
 20 - probably sold some stock and all and, you know, at the  
 21 current prices.  
 22 Q So the company needed more shares in order to  
 23 sell to finance itself?  
 24 A Or it converted notes or whatever it was doing.  
 25 Q And to convert those notes it used shares?

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1 A In some cases, yes.  
 2 Q Okay. And where does it stand -- what is the  
 3 share total currently?  
 4 A 3,300,000-and -- 3,300,000-something.  
 5 MR. MORRIS: Did you ever consider reversing  
 6 the shares?  
 7 THE WITNESS: We considered it. It doesn't  
 8 make any difference.  
 9 MR. ROGERS: I have no more questions for you  
 10 here.  
 11 THE WITNESS: Good. Thank you.  
 12 MR. ROGERS: I would like that document back,  
 13 and I want to get the documents back in front of your  
 14 attorney. Your attorney knows that whenever I end these  
 15 things, I always ask -- and I will ask this time too.  
 16 THE WITNESS: You want this?  
 17 MR. ROGERS: Mr. Morris, do you have any  
 18 clarifying questions you would like to ask at this time?  
 19 MR. MORRIS: Yes. I'm going to have a couple.  
 20 I just need about five minutes, and then we'll be back  
 21 on the  
 22 -- we can go off the record.  
 23 MR. ROGERS: Are you asking to go off the  
 24 record?  
 25 MR. MORRIS: Yes, please.

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1 MR. ROGERS: Okay. Let's go off the record at  
2 4:25.  
3 (A brief recess was taken.)  
4 MR. ROGERS: All right. We are back on the  
5 record at 4:35. And before I give you a chance to ask  
6 questions, Mr. Morris, I just want to check with your  
7 client.  
8 I want to remind you you are still under oath.  
9 THE WITNESS: Thank you.  
10 BY MR. ROGERS:  
11 Q During the break did your attorney discuss with  
12 you -- well, I'm not going to ask you a question. I take  
13 that back.  
14 Mr. Morris, I have to trust that you're not  
15 coaching your client and that during the time that we  
16 were off the record you weren't composing questions and  
17 telling your client what the answers to those questions  
18 should be.  
19 MR. MORRIS: My client's under oath. He's  
20 going to tell you the truth. I would never suggest or in  
21 any way support perjury. So I think that's what you can  
22 take comfort in.  
23 MR. ROGERS: Okay. And I also have to trust  
24 that you're not coaching your witness how to answer these  
25 questions. That said, ask your questions.

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1 MR. MORRIS: So you understand Mister --  
2 MR. ROGERS: Whelan.  
3 MR. MORRIS: -- Whelan -- thank you -- that --  
4 THE WITNESS: It's late in the day.  
5 MR. MORRIS: Yeah -- you need to answer these  
6 questions truthfully and honestly?  
7 THE WITNESS: Yes.  
8 MR. MORRIS: Same as if you were in a court of  
9 law. Do you understand that?  
10 THE WITNESS: Yes.  
11 MR. MORRIS: In regard -- earlier we talked  
12 about eMarkets and the product that was purchased by  
13 eMarkets from BioElectronics. Do you remember that  
14 discussion?  
15 THE WITNESS: Yes.  
16 MR. MORRIS: And there was some discussion  
17 about whether or not the product was finished as of  
18 December 31, 2009. And do you remember that discussion?  
19 THE WITNESS: Yes.  
20 MR. MORRIS: Okay. And I don't want to -- can  
21 you describe what you meant by that testimony earlier?  
22 Was the product finished?  
23 THE WITNESS: Yeah. It's -- it's encapsulated  
24 in foam, and it can be applied directly to --  
25 particularly in veterinary patients -- I mean

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1 veterinarians. We sell to veterinarians, and they just  
2 put their own tape on and use it. It's finished.  
3 MR. MORRIS: So the product could be used at  
4 the state it was in on December 31, 2009?  
5 THE WITNESS: Yes.  
6 MR. MORRIS: And what did you do when -- by  
7 finishing the product -- what was involved in that?  
8 THE WITNESS: Well, most of the orders that she  
9 gets -- they go out in a box, in a retail box, which is  
10 really unnecessary for that market. So we put a coat or  
11 adhesives depending on what that product is. But for  
12 like a horse, they just go out with the directions for  
13 use in a clear plastic bag.  
14 MR. MORRIS: So it could have been shipped and  
15 used as of December 31, 2009?  
16 THE WITNESS: Yes.  
17 BY MR. ROGERS:  
18 Q But was it?  
19 MR. MORRIS: Yeah. My next question -- yeah,  
20 that was my next question.  
21 BY MR. ROGERS:  
22 Q But in actuality an additional step was taken  
23 with the product. It was put in a bag and instructions  
24 were included, and then it was shipped. Is that correct?  
25 A No, it -- well, some of it's already boxed

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1 because I looked at it yesterday as a matter of fact.  
2 Some of it's already boxed.  
3 MR. MORRIS: Different topic.  
4 THE WITNESS: Is that -- I'm sorry.  
5 MR. MORRIS: Different topic. Yeah. That's  
6 all I have on that. We also looked at the BioElectronics  
7 Form 10-K that was filed with the SEC on December 31,  
8 2009, I think. Do you recall that?  
9 THE WITNESS: Yes.  
10 MR. MORRIS: And at the time you filed that  
11 document, did you believe it to be accurate?  
12 THE WITNESS: Absolutely. You know, not only  
13 did I think it was accurate, I vetted it with legal  
14 counsel we had at the time to be sure that it was  
15 complying with the law -- and voluntarily. So, you know,  
16 we didn't have an obligation to report. If we thought we  
17 were doing anything improper or wrong, we wouldn't have  
18 gone and filed it at the SEC.  
19 MR. MORRIS: Okay. And -- okay. Where do you  
20 work?  
21 THE WITNESS: All the time BioElectronics.  
22 MR. MORRIS: Do you work for St. John's?  
23 THE WITNESS: No. St. John's gets paid. I  
24 work -- do my work at BioElectronics.  
25 MR. MORRIS: Okay. I just wanted to clarify

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1 that. That was confusing. Did Mr. McGuire ever tell you  
 2 that he wanted BioElectronics to issue stock to him in  
 3 exchange for him making market purchases in  
 4 BioElectronics stock?  
 5 THE WITNESS: Did he tell me that? Yes.  
 6 MR. MORRIS: And did you agree to do that?  
 7 THE WITNESS: No.  
 8 MR. MORRIS: Why not?  
 9 THE WITNESS: It didn't make any sense.  
 10 MR. MORRIS: And you also testified that Bob  
 11 McGuire was a consultant to the company. That's a pretty  
 12 general term. Can you be more specific about what  
 13 consulting work he did other than talk to you on the  
 14 phone about business in general?  
 15 THE WITNESS: McGuire has had a lot of  
 16 experience in medical devices and the medical field.  
 17 He's owned a couple of companies -- you know, a major  
 18 investor. And he -- so he would introduce us to  
 19 different people, and he would go and talk to  
 20 distributors like in Spain. I remember one trip he went  
 21 to Spain, Germany. I think he went to France too --  
 22 Italy -- and talked to investors. You know, I know he  
 23 went to Ireland because he met with --  
 24 MR. ROGERS: With Nieland.  
 25 THE WITNESS: Yeah, Nieland.

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1 MR. MORRIS: So you believe he traveled  
 2 internationally to at least four countries?  
 3 THE WITNESS: Yeah, to promote the company and  
 4 our products. And he has -- you know, like I said, he  
 5 has a lot of experience. It's not --  
 6 MR. MORRIS: Okay. That's all I have. I don't  
 7 have any other questions.  
 8 MR. ROGERS: All right. If we need to talk to  
 9 you again, we'll do so through your attorney. I think we  
 10 discussed on the record there are several documents that  
 11 I'm still looking for from you, and I think your attorney  
 12 wrote down what those are. And he'll provide them to me  
 13 quickly.  
 14 All right. We are off the record at 4:42.  
 15 (Whereupon, at 4:42 p.m., the proceedings were  
 16 concluded.)  
 17 \* \* \* \* \*  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 PROOFREADER'S CERTIFICATE  
 2

3 In The Matter of: BIOELECTRONICS CORPORATION  
 4 Witness: Andrew Whelan  
 5 File Number: HO-11713-A  
 6 Date: November 26, 2013  
 7 Location: Washington, D.C.  
 8

9 This is to certify that I, Nicholas Wagner,  
 10 (the undersigned), do hereby swear and affirm that the  
 11 attached proceedings before the U.S. Securities and  
 12 Exchange Commission were held according to the record and  
 13 that this is the original, complete, true and accurate  
 14 transcript that has been compared to the reporting or  
 15 recording accomplished at the hearing.  
 16  
 17 \_\_\_\_\_  
 18 (Proofreader's Name) (Date)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 REPORTER'S CERTIFICATE  
 2

3 I, Beth Roots, reporter, hereby certify that the  
 4 foregoing transcript of 223 pages is a complete, true and  
 5 accurate transcript of the testimony indicated, held on  
 6 November 26, 2013, at Washington, D.C. in the Matter of:  
 7 BIOELECTRONICS CORPORATION.  
 8  
 9 I further certify that this proceeding was recorded by  
 10 me, and that the foregoing transcript has been prepared  
 11 under my direction.  
 12  
 13  
 14 Date: \_\_\_\_\_  
 15 Official Reporter: \_\_\_\_\_  
 16 Diversified Reporting Services, Inc.  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

**EXHIBIT 2: Investigative Testimony Transcript of  
Kelly Whelan**

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of: )  
4 ) File No. HO-11713-A  
5 BIO ELECTRONICS CORPORATION )

6

7 WITNESS: Kelly Anne Whelan

8 PAGES: 1 through 107

9 PLACE: Securities and Exchange Commission

10 100 F Street, N.E., Room 4

11 Washington, D.C.

12 DATE: Thursday, February 21, 2013

13

14 The above-entitled matter came on for hearing,  
15 pursuant to notice, at 10:08 a.m.

16

17

18

19

20

21

22

23

24

Diversified Reporting Services, Inc.

25

(202) 467-9200

Page 2

1 APPEARANCES:  
 2  
 3 On behalf of the Securities and Exchange Commission:  
 4 THOMAS B. ROGERS, ESQ.  
 5 U.S. Securities and Exchange Commission  
 6 100 F Street, N.E.  
 7 Washington, D.C.  
 8 (202) 551-4776  
 9  
 10 On behalf of the Witness:  
 11 STANLEY C. MORRIS, ESQ.  
 12 Corrigan & Morris, LLP  
 13 201 Santa Monica Boulevard, Suite 475  
 14 Santa Monica, CA. 90401-2212  
 15 (301) 394-2800  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 4

1 PROCEEDINGS  
 2 MR. ROGERS: We are on the record at 10:08  
 3 a.m. on February 21st, 2013 at the Securities and  
 4 Exchange Commission's Washington, D.C. office located at  
 5 100 F Street, N.E., Washington, D.C. 20549.  
 6 The Commission has issued a formal Order of  
 7 Investigation in this matter which you were shown prior  
 8 to the opening of the record. The formal order empowers  
 9 me to administer the following oath.  
 10 Whereupon,  
 11 KELLY ANNE WHELAN  
 12 was called as a witness and, having been first duly  
 13 sworn, was examined and testified as follows:  
 14 EXAMINATION  
 15 BY MR. ROGERS:  
 16 Q Please state your name, full name, date of  
 17 birth, and social security number for the record.  
 18 A Kelly Anne Whelan, [REDACTED], [REDACTED]-  
 19 [REDACTED]  
 20 Q Okay, my name is Tom Rogers. I'm an attorney  
 21 for the or in the Enforcement Division of the U.S.  
 22 Securities and Exchange Commission. For the purposes of  
 23 this proceeding, I am an officer of the Commission.  
 24 This is an investigation by the United States Securities  
 25 and Exchange Commission entitled In the matter of Bio

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1 CONTENTS  
 2  
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 5  
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1 Electronics Corp., File No. HO-11713. We are  
 2 investigating whether there have been violations of  
 3 certain provisions of the federal securities laws.  
 4 However, the facts developed in this investigation might  
 5 constitute violations of other federal or state, civil  
 6 or criminal laws.  
 7 Q Prior to the opening of the record, you were  
 8 provided with a copy of the formal Order of  
 9 Investigation in this matter. The formal order will be  
 10 available to you during the investigation, during this  
 11 proceeding excuse me for your examination during  
 12 this proceeding.  
 13 Have you had an opportunity to review the  
 14 formal order?  
 15 A Yes.  
 16 Q Do you have any questions about the formal  
 17 order?  
 18 A No.  
 19 Q Prior to the opening of the record, you were  
 20 provided with a copy of the Commission's supplemental  
 21 information form, Form 1662, which has been pre-marked  
 22 as Exhibit 38. I'm going to hand that to you right now.  
 23 Q Have you had an opportunity to read Exhibit  
 24 No. 38?  
 25 A Yes.

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1 Q Do you have any questions concerning Exhibit  
2 38?  
3 A No.  
4 Q If I can have that back, thank you. Ms.  
5 Whelan, are you represented by counsel here today?  
6 A Yes.  
7 MR. ROGERS: Would counsel please introduce  
8 himself for the record?  
9 MR. MORRIS: Yes, Stanley Morris of the law  
10 firm of Corrigan & Morris. I represent Kelley Whelan  
11 here today as her personal attorney.  
12 If it's okay with you, Tom, I just have a  
13 couple of preliminary remarks I would like to make.  
14 MR. ROGERS: Absolutely.  
15 MR. MORRIS: We've requested confidential  
16 treatment of a number of documents in this matter that  
17 we have previously been submitted. At this time, I  
18 would like to request that the transcript be marked  
19 request for confidential treatment as well as any the  
20 exhibits that are entered here on the record.  
21 In addition, we appreciate the staff providing  
22 us with the Form 1662. I've discussed this with my  
23 client and a couple of observations and objections.  
24 First, the 1662 discloses that the staff is at liberty  
25 to distribute the testimony as well as other documents

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1 provided by Ms. Whelan. We don't acquiesce to that. We  
2 hereby object to the public dissemination of her  
3 testimony today and other records.  
4 I understand that the staff is not at liberty  
5 to alter the 1662, and is not going to do that. We are  
6 here to testify and we'll proceed with that objection on the  
7 record.  
8 Further, I would like to also formally request  
9 an opportunity, should the staff reach a conclusion that  
10 charges are warranted, that we have an opportunity to  
11 submit a Wells statements and finally my understanding  
12 is at this point, the staff has not reached such a  
13 conclusion and is still in the fact-finding part of its  
14 investigation, and you know, with that understanding, we  
15 are prepared to move forward.  
16 MR. ROGERS: Okay, thank you. Mr. Morris, are  
17 you representing anyone else here today?  
18 MR. MORRIS: Today I'm not representing anyone  
19 else, no. In this matter, I represent Mr. McGuire and  
20 Mary Whelan as well.  
21 MR. ROGERS: Okay.  
22 BY MR. ROGERS:  
23 Q Ms. Whelan, have you taken any medication that  
24 might affect your ability to understand and respond to  
25 my questions today?

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1 A No.  
2 Q Is there any reason that you cannot give full  
3 and complete testimony today?  
4 A No.  
5 Q Okay. Let's have Exhibit 39 marked please.  
6 (SEC Exhibit No. 39 was marked  
7 for identification.)  
8 Q I hand one to your attorney as well while the  
9 court reporter is numbering it. You are certainly  
10 welcome to look at it.  
11 Why don't you take a minute to take a look at  
12 it and when you are ready --  
13 A It's the same thing, right?  
14 Q It should be a copy of what I've handed your  
15 attorney, yes.  
16 A Okay.  
17 Q But I want to make sure that you have had a  
18 chance to look at this and every document that I hand  
19 you today before you answer any questions. Make sure  
20 you have established what it is you are looking at.  
21 (Pause.)  
22 Q Are you ready to go?  
23 A Uh-huh.  
24 Q Okay. Exhibit 39 is a letter addressed to you  
25 and dated September 30th, 2011 requesting documents to be

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1 produced voluntarily. Is Exhibit 39 a copy of the  
2 letter pursuant to which you produced documents to the  
3 SEC?  
4 A I believe it is.  
5 Q Is there any reason for you to think it isn't?  
6 A No.  
7 Q Okay.  
8 A Other than I don't have the one that I I  
9 don't have my original, but it appears to be.  
10 Q Did you produce all the documents requested in  
11 the letter?  
12 A I believe that I did.  
13 Q Please describe the search you performed.  
14 A I went through my files, made copies of all  
15 the documents that I had that were on this list and  
16 requested. I did a search of my e-mail. I did the best  
17 that I could. I'm not very IT savvy so I did the best  
18 that I could do and produced everything that was  
19 requested.  
20 Q Did anyone help you?  
21 A No.  
22 Q Do you have multiple offices?  
23 A Yes.  
24 Q Did you search all of the offices?  
25 A Yes.



Page 10

1 Q Where are they, each office, just roughly?  
2 I'm not asking you for an address.  
3 A Leesburg, Virginia.  
4 Q Okay.  
5 A And Ashburn, Virginia which is my residence as  
6 well.  
7 Q So one is a home and one is a business office?  
8 A Yes.  
9 Q And you searched both those locations?  
10 A Yes.  
11 Q Do you carry any electronic devices that could  
12 have had documents on them?  
13 A I'm not sure I understand the question.  
14 Q Smart Phone, Blackberry, something that would  
15 have e-mails or communications or documents?  
16 A Not that wouldn't have been on my computer as  
17 well, no. You mean separate from? No. I don't think  
18 they will final store something separately on the  
19 computer.  
20 Q Okay, let me ask you this then. Did you  
21 search your phone?  
22 A No.  
23 Q Did you search all of the computers that you  
24 had during the time period for the documents requested?  
25 A Yes.

Page 11

1 Q Were any documents withheld for any reason?  
2 Did you withhold any documents because of  
3 attorney/client privilege?  
4 A No.  
5 Q Any privilege issues in production that  
6 prevented you from producing otherwise responsive  
7 documents?  
8 A No.  
9 Q The point of that question was to broaden out  
10 the attorney/client privilege into any privilege. Does  
11 that change your answer?  
12 MR. MORRIS: I just want to I think I should  
13 real quickly talk about the privilege issue. Is that  
14 something we could do?  
15 MR. ROGERS: Yes. Let's go off the record at  
16 10:17.  
17 (A brief recess was taken from 10:17 a.m.  
18 until 10:18.)  
19 MR. ROGERS: We are back on the record at  
20 10:18.  
21 BY MR. ROGERS:  
22 Q All right, you have had a chance to confer  
23 with your attorney. Has your answer changed at all?  
24 A Yes.  
25 Q And how so?

Page 12

1 A I do have communications with Alex Kuhne as  
2 the attorney for IBEX, and also with Mark Flannigan, who  
3 is also an attorney with IBEX that may have not been  
4 produced.  
5 Q Okay.  
6 MR. MORRIS: And do you want to explain on the  
7 phone?  
8 THE WITNESS: On the phone, I don't really  
9 that text obviously didn't understand, the only e-mails  
10 on my phone are replicated. It's just a g-mail account  
11 so it's coming through to the phone so it is not I  
12 don't have an ability to make a separate document that  
13 I'm aware of.  
14 BY MR. ROGERS:  
15 Q Let me ask you this. I know on one of my  
16 personal e-mail accounts, if I download it on my Ipad,  
17 it will not go to my computer as well. Does that occur  
18 with your g-mail account?  
19 A No.  
20 Q No?  
21 A No.  
22 Q Are you sure?  
23 A Yes, because it shows in both places.  
24 Q Okay.  
25 A And I don't have an Ipad. I don't.

Page 13

1 Q That's all that I have for that document. Can  
2 I have it back please?  
3 A Yes.  
4 Q I'm going to give you something to help you  
5 figure out what that all means. I will hand a copy to  
6 your attorney what is going to be Exhibit 40.  
7 (SEC Exhibit No. 40 was marked  
8 for identification.)  
9 Q While it is being marked, I will go ahead and  
10 put on the record that Exhibit 40 is a subpoena issued  
11 to you in this investigation requesting your testimony.  
12 As soon as you have it you've been handed it and it is  
13 being handed to you now. Would you take a second to  
14 look at it and I'm going to ask you a question or two  
15 about it.  
16 (Pause.)  
17 Q Are you ready?  
18 A Uh-huh.  
19 Q Is Exhibit 40 a copy of the subpoena pursuant  
20 to which you are appearing here today?  
21 A Yes.  
22 Q Thank you. That's all I have with that one,  
23 thanks. Ms. Whelan, have you discussed with anyone  
24 other than your attorneys and that's important, other  
25 than your attorneys what your testimony would be here

Page 14

1 today?

2 A I have discussed it with Mary Whelan in

3 conversation with Mr. Morris.

4 MR. MORRIS: It is, it is --

5 MR. ROGERS: Okay, again, I'm not asking you

6 about Mr. Morris.

7 MR. MORRIS: I was present. If you had

8 conversations when I wasn't present, then you can discuss

9 those.

10 THE WITNESS: Did I have conversations when he

11 was not present? No.

12 BY MR. ROGERS:

13 Q With anyone?

14 A Possibly Mary when you were on the other line,

15 yes.

16 Q And Mary being Mary Whelan?

17 A Mary Whelan, yes.

18 Q And what did you discuss?

19 A What we believed might be the nature of what

20 was being investigated.

21 Q When did this conversation take place?

22 A I don't have the direct date. Sometime

23 between the time we were both subpoenaed to today.

24 Q Was it yesterday?

25 A I did discuss with her yesterday, yes.

Page 15

1 Q When?

2 A 6:00 o'clock, 5:00 o'clock.

3 Q In the evening?

4 A Yes.

5 Q Okay, and what did you discuss?

6 A We discussed the nature of her testimony here.

7 Q What did she say?

8 A On yesterday's date. She said that she

9 thought that it was that it went well, and that she

10 had demonstrated that Heal Fast was a real business and

11 it is, and basically things of that nature.

12 Q Okay. Have you had any discussions with

13 anyone else?

14 A No.

15 Q How about Andy Whelan?

16 A No.

17 Q Andrew Whelan? Does it change your answer?

18 A No, no.

19 Q I wasn't sure how to refer to him and I think

20 I was too familiar and I always ask. Before we begin

21 the substantive questioning today, I would like to

22 review with you additional procedures to be followed

23 during the testimony.

24 First, this proceeding is being conducted on

25 the record. If you would like to go off the record,

Page 16

1 please let me know and if appropriate, we will go off

2 the record. Please understand that the court reporter

3 will only go off the record at the SEC's staff's

4 direction.

5 You are under oath, and so you must answer

6 truthfully and accurately. Do you understand that

7 providing false testimony could subject you to criminal

8 sanctions?

9 A Yes.

10 Q The court reporter is taking down everything

11 said today so it is important that you speak clearly

12 because the proceedings are being sound-recorded.

13 Please keep your voice up and respond to all questions

14 verbally rather than with gestures.

15 A Okay.

16 Q Okay? I think we've already had that problem

17 once or twice, so if you could do me the courtesy of

18 saying yes or no or actually speaking, that would be

19 helpful.

20 We both cannot speak at the same time so

21 please wait for me to finish my questions before you

22 start to answer, and I will give you the same courtesy.

23 If you do not understand any question that I

24 ask you, please ask me to clarify it or rephrase it in

25 some fashion so that you can understand it.

Page 17

1 Do you understand these procedures?

2 A Yes.

3 Q Do you have any questions about the

4 procedures?

5 A No.

6 Q Prior to today, you were asked to complete a

7 background questionnaire. I would like to have that

8 marked as Exhibit 41 for the record.

9 (SEC Exhibit No. 41 was marked

10 for identification.)

11 Q I will hand a copy of that to you and your

12 attorney, and put it between you and your attorney, and

13 then once it is marked, I will hand it to you and we

14 will talk about it.

15 A I'm sorry.

16 (Pause.)

17 A Are we ready?

18 Q That's what I want to know from you.

19 A Okay, yeah, I'm ready.

20 Q I'm ready to ask questions, I just need to

21 know that you've had a chance to look at the document

22 and you are ready to answer.

23 A Yes.

24 Q Okay, so that's just going to happen all day.

25 As I hand you a document, I'm going to wait for you to

Page 18

1 give me a verbal clue, not just a look.  
2 A Okay, so you would like me to say I'm ready.  
3 Q Yes.  
4 A Okay.  
5 Q That would be very helpful. Do you recognize  
6 the document?  
7 A Yes.  
8 Q And what is the document?  
9 A It is a background questionnaire that I was  
10 asked to complete as part of the testimony here is my  
11 understanding.  
12 Q Did you complete the document?  
13 A Yes, I did.  
14 Q Okay, are the answers provided accurate?  
15 A I believe that they are.  
16 Q Are they complete answers to the questions  
17 asked?  
18 A They are as complete as I was able to answer  
19 them. I know that there are some portions in here  
20 regarding my employment history and educational  
21 background that I didn't have all the information  
22 available, and was concerned that I didn't have the time  
23 on correct for employment history, so I went back to I  
24 believe 1990-ish on my employment history, but I would  
25 have had similar positions and responsibilities in other

Page 19

1 jobs.  
2 Q Okay.  
3 A And my educational background, I did not have  
4 a complete list of all of the CPE courses that I have  
5 completed as part of my CPA licensing.  
6 Q Okay.  
7 A So I had available the last I have to keep  
8 on record whatever is auditable by the State of Maryland  
9 as part of my proving that I have completed the courses,  
10 and I did complete courses through the I want to say  
11 maybe, it should be on here.  
12 The Maryland just says yes, for certifiable  
13 public accountants has an on-line system for completing  
14 CPE. I do not re-join the Maryland Association of  
15 Certified Public Accountants, because I didn't feel the  
16 need to continue to be a member, so I have access to the  
17 on-line system at this point.  
18 I assume if I were audited by the Maryland  
19 State Board, they would give me the record of the  
20 classes that I had completed there, but I didn't have  
21 the actual record.  
22 Q Okay, let me ask you a couple of pointed  
23 questions. Did you completely answer Question 12?  
24 A Question 12 is regarding securities accounts.  
25 I answered this as individually as jointly during the

Page 20

1 last three years as Kelly Lorenz and/or Whelan, not as  
2 any entity that I controlled.  
3 Q And how about Question 13?  
4 A The answer to 13 as entities that I  
5 controlled.  
6 Q Okay, but the question is --  
7 A I hope that was correct.  
8 Q I think it is actually, but the question to  
9 you is --  
10 A Are they complete? Yes, sir.  
11 Q -- are they complete?  
12 A Yes, I believe they are.  
13 Q And Question 14?  
14 A I believe Question 14 is also correct. I  
15 don't have any control over anything other than my own  
16 finances.  
17 Q Okay, and the entities that you control,  
18 correct  
19 A Correct.  
20 Q How about Question 15?  
21 A I believe that is complete. In the last three  
22 years, I believe that is the only time that I have, yes.  
23 Q And how about Question 16?  
24 A I believe this is complete.  
25 Q How about 17?

Page 21

1 A It's a savings account for my minor child. I  
2 believe that's also complete. I assume I have control  
3 over that since she is a minor.  
4 Q I can't answer that question for you if you're  
5 asking me.  
6 A I've got well, that's why I listed it here,  
7 and she is a minor and --  
8 Q Okay. Did you withhold any information when  
9 you were answering the questions?  
10 A No.  
11 Q Is there anything you would like to add at  
12 this point?  
13 A No.  
14 Q Okay, I will note just for the record that  
15 there is a handwritten note at the bottom of each page.  
16 A About confidential treatment.  
17 Q It addresses confidential treatment. That's  
18 all I have for that exhibit. Thank you. All right,  
19 that was the canned portion of the proceedings. Now we  
20 get to the substantive questions. Let's start with are  
21 you aware of a company named Bio Electronics Corp.  
22 A Yes.  
23 Q How?  
24 A My father is the president of that company,  
25 it's a public company.

Page 22

1 Q Are you involved in the operations of that  
 2 company?  
 3 A No.  
 4 Q Have you ever been involved in the operations  
 5 of that company?  
 6 A I have been involved as a consultant to that  
 7 company, but not as an officer or director.  
 8 Q Have you ever done any accounting work for  
 9 that company?  
 10 A I've done bookkeeping work, yes.  
 11 Q Have you ever provided any financing for that  
 12 company?  
 13 A I've made loans to that company, yes.  
 14 Q When did you first become associated with Bio  
 15 Electronics?  
 16 A 2003.  
 17 Q What did you do in 2003 for them?  
 18 A I did some book work for him. My father  
 19 requested me to do, I believe it was a NetSuite system  
 20 that he wasn't able to manipulate well and had asked for  
 21 assistance with that project.  
 22 I did some work with the suggestions on the  
 23 product itself and the name of the product, the  
 24 packaging for the product, kind of a variety of  
 25 different things.

Page 23

1 Q And you made a distinction here that you  
 2 didn't work for the company. How did you get  
 3 compensated?  
 4 A I was given stock as part of compensation in  
 5 2003, and that's the only compensation that I received  
 6 at that time.  
 7 Q So was there an employment agreement?  
 8 A No.  
 9 Q Was there a consulting agreement?  
 10 A No.  
 11 Q Was there any agreement at all?  
 12 A I don't believe so, no.  
 13 MR. MORRIS: You mean a written agreement I  
 14 assume now?  
 15 MR. ROGERS: Yes, I do mean a written  
 16 agreement.  
 17 THE WITNESS: Written? No.  
 18 BY MR. ROGERS:  
 19 Q Was there an oral agreement?  
 20 A There was an agreement that I would be  
 21 compensated in some manner, but it wasn't specified.  
 22 Q Who did you make that agreement with?  
 23 A Andrew Whelan.  
 24 Q And what was discussed?  
 25 A That I would be compensated in some manner.

Page 24

1 It wasn't specified.  
 2 Q Were you working somewhere else at that point?  
 3 A Yes, I was.  
 4 Q And what were you doing?  
 5 A I was the controller for Belfort Furniture.  
 6 Q Was that a full-time job?  
 7 A Yes, it was.  
 8 Q Did you ever hold a title in association with  
 9 bio Electronics Corp.?  
 10 A No.  
 11 Q Do you own any part of Bio Electronics Corp.?  
 12 A As far as do I currently own stock in the  
 13 company?  
 14 Q Sure, yes.  
 15 A Yes.  
 16 Q How many shares?  
 17 A I don't know.  
 18 Q Give me a ballpark.  
 19 A I actually don't know.  
 20 Q Okay. Let me clarify that question to see if  
 21 it changes, and ask some related questions. How many  
 22 shares do you own of Bio Electronic Corp. in your  
 23 individual name?  
 24 A I believe I don't have any in my individual  
 25 name at this point.

Page 25

1 Q Okay. How many shares do you believe you own  
 2 in another name?  
 3 A Shares currently issued that I have currently?  
 4 Q I don't understand your distinction.  
 5 A Well, you are asking about shares that I have  
 6 right now, correct?  
 7 Q Yes.  
 8 A Today?  
 9 Q Yes.  
 10 MR. MORRIS: Do you know?  
 11 THE WITNESS: Yeah, I don't know.  
 12 BY MR. ROGERS:  
 13 Q How are they titled?  
 14 A They are titled to IBEX LLC.  
 15 Q Do you think it's more than ten?  
 16 A Ten?  
 17 Q Ten shares?  
 18 A Ten shares? Yes.  
 19 Q Do you think it's more than 100 shares?  
 20 A Yes.  
 21 Q Do you think it's more than 1,000 shares?  
 22 A Yes.  
 23 Q Do you think it's more than 10,000 shares?  
 24 A Yes.  
 25 Q Do you think it's more than 100,000 shares?

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1 A Yes.  
2 Q Do you think it's more than a million shares?  
3 A Yes.  
4 Q Do you think it's more than ten million  
5 shares?  
6 A I don't know.  
7 Q Okay. Is it fair to say that it is somewhere  
8 in the range of over one million shares?  
9 A Is it over one million shares?  
10 Q Yes.  
11 A Yes.  
12 Q How many shares of Bio Electronic Corp. do you  
13 think have been issued to you over the years, either in  
14 individual name or other?  
15 A I don't know.  
16 Q Is it more than one million?  
17 A Yes.  
18 Q Is it more than ten million?  
19 A Yes.  
20 Q Is it more than 50 million?  
21 A Yes.  
22 Q Is it more than 100 million?  
23 A I don't know.  
24 Q And have you sold shares of Bio Electronics  
25 Corp. over the years?

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1 A Yes.  
2 Q How many do you think you've sold?  
3 A Over a hundred million.  
4 Q Okay. So you think you've sold over a hundred  
5 million and you currently have over one million, but you  
6 don't know if it's ten million?  
7 A Correct.  
8 Q So is it fair to say you've sold about nine of  
9 every ten that you've received?  
10 A During what time period?  
11 Q Any time period?  
12 A I think that would be fair, yes.  
13 Q What was the reason for those sales?  
14 A Why did I decide to sell the shares that I  
15 had?  
16 Q Yeah.  
17 A I wanted to have cash.  
18 (Pause.)  
19 Q We're going to look at what's being marked  
20 Exhibit 42.  
21 (SEC Exhibit No. 42 was marked  
22 for identification.)  
23 Q Exhibit 42 is a one-paged document with the  
24 Bates stamp of ASHER-0000138, and once you've been  
25 handed it, take a minute and look at it, and if you can

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1 give me an audible cue that you're ready.  
2 A I am.  
3 Q Okay, do you recognize the document?  
4 A It appears to be a document that I created.  
5 Q What is it?  
6 A It's a statement that I'm the sole member of  
7 IBEX and that I reside in Ashburn, Virginia, while my  
8 father, Andrew Whelan resides in Urbana with my mother.  
9 Q Is that your signature? Does that appear to  
10 be your signature?  
11 A Yes.  
12 Q Okay, is there any reason for you to think  
13 it's not your signature?  
14 A No.  
15 Q Has anyone else ever been a member of IBEX?  
16 A No.  
17 Q Does anyone else work for IBEX?  
18 A No.  
19 Q Are there any consultants for IBEX?  
20 A No.  
21 Q Have attorneys been hired for IBEX?  
22 A Have attorneys been hired for IBEX?  
23 Q Yes.  
24 A Yes.  
25 Q And who are those attorneys?

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1 A Mark Flannigan and Lex Kuhne.  
2 Q Okay. What state does Mr. Flannigan live in?  
3 A Maryland.  
4 Q Does he work in Maryland as well?  
5 A Yes, he does.  
6 Q Do you know the city?  
7 A Baltimore, Towson.  
8 Q Towson? Do you know the street address?  
9 A Pennsylvania Avenue, I believe it's [REDACTED]. I believe  
10 it is 100 East Pennsylvania Avenue.  
11 Q I'm really going to push you now. Do you know  
12 his phone number offhand?  
13 A I do. Do I? I believe it's [REDACTED].  
14 Q I'm sorry, one more time because I'm going to  
15 write that down?  
16 A [REDACTED]  
17 Q Okay.  
18 A [REDACTED]  
19 Q [REDACTED]  
20 A [REDACTED], I believe that's correct.  
21 Q [REDACTED], okay. I won't hold you to that one, I  
22 promise.  
23 A Okay.  
24 Q I was pushing you on that, I really was. When  
25 did Mr. Flannigan first work for IBEX?

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1 A 2009.

2 Q And why was he hired?

3 A I hired him to write the notes between Bio

4 Electronics and IBEX, and I hired him to file my

5 personal tax returns, and tax returns for IBEX.

6 Q How about Mr. Kuhne, what services did he

7 provide and in what time frame?

8 A He has issued legal opinions on behalf of

9 IBEX. I don't recall specific time or dates for those,

10 but I believe those documents have been produced, the

11 legal opinions that he produced for me.

12 Q I'm done with this document, came I have it

13 back please?

14 A Yes.

15 Q We're going to do two at once here. Can I

16 have you mark two documents here, 43 and 44.

17 (SEC Exhibit No. 43 and 44 were

18 marked for identification.)

19 Q I don't want to throw something on top of

20 something that you're reading.

21 MR. MORRIS: This going to be 43 and 44 you

22 said?

23 MR. ROGERS: I think it will be most helpful

24 to discuss them together.

25 (Pause.)

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1 BY MR. ROGERS:

2 Q I hand you 43 and the court reporter is doing

3 the process of marking 44. While they are being marked,

4 let me just go ahead and put on the record that Exhibit

5 43 is a seven-paged document with Bates stamps of SEC-

6 BIOE-0001798 consecutively through 804. Ms. Whelan, you

7 are being handed a document.

8 And Exhibit 44 is a ten-paged document with

9 Bates stamps of SEC-BIOE-0001778 sequentially through

10 87.

11 (Pause.)

12 A All right.

13 Q Thank you. That's what I was waiting for.

14 Okay, can you identify Document 43 for me?

15 A Document 43 is a loan agreement.

16 Q Exhibit 43. It is a loan agreement.

17 A It is a loan agreement between IBEX, LLC and

18 Bio Electronics Corporation.

19 Q And Exhibit 44, can you identify that for me?

20 A It is a promissory note between IBEX, LLC and

21 Bio Electronics Corporation.

22 Q Is there any relationship between the two?

23 A They are one in the same, as far as it's one

24 agreement.

25 Q They are related to the same transaction.

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1 A Correct.

2 Q Let me direct your attention to the last page

3 of Exhibit 43.

4 MR. MORRIS: I'm sorry, what was that number?

5 MR. ROGERS: Exhibit 43.

6 THE WITNESS: Exhibit 43, the last page.

7 BY MR. ROGERS:

8 Q Do you see down at the bottom there, there is

9 a signature by Kelly Lorenz?

10 A Yes.

11 Q Is that your signature?

12 A Yes, it is.

13 Q And I think you touched on this to begin with

14 but let's just make sure there's no confusion. At some

15 point in the past, you went by the name Kelly Lorenz.

16 A While I was married, I used the name Lorenz,

17 that was my married name, yes.

18 Q Okay, and you now go by Kelly Whelan.

19 A Yes, I changed my name back to Whelan.

20 Q Okay. I have been deep in these documents for

21 a long time, so if I at any point call you Lorenz, I

22 apologize now.

23 A I'll I won't like it, but I'll answer.

24 Q Okay, all right. I want to do the same

25 exercise on the document, Exhibit 44. Go to the second

Page 33

1 to the last page on this one. There is a signature

2 there, by Kelly Lorenz.

3 A Correct.

4 Q Is that your signature?

5 A Yes, it is.

6 Q Can you describe the transaction that these

7 two documents relate to?

8 A There are multiple transactions associated

9 with these documents, so --

10 Q Why don't you tell me about the framework of

11 the agreement, and then we can talk about individual

12 transactions that may have flowed from that agreement.

13 Does that make sense?

14 A Not completely.

15 Q Okay.

16 A Can you get more specific?

17 Q Well, reading these documents, in fact, the

18 heading on Exhibit 44 is a revolving convertible

19 promissory note, and it has an amount of \$2 million, and

20 I guess what I'm asking you, first of all, do you agree

21 with that?

22 A That it that that's what it says?

23 Q Yes.

24 A Yes.

25 Q Okay, and is that indeed what the relation,

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1 what the agreement was?  
2 A No, I don't believe that that is a good  
3 description of what the relationship truly was.  
4 Q Okay, why don't you give me a description of  
5 what you believe the relationship truly was?  
6 A Well, I made loans to Bio Electronics  
7 Corporation, and I subsequently converted those loans to  
8 shares at various times, and this document is supposed  
9 to memorialize those transactions into a binding  
10 agreement on paper between Bio Electronics Corporation  
11 and IBEX, and I hired Mark Flannigan to prepare these  
12 documents and create these documents, and explain to him  
13 the nature of the transactions, how they occurred, when  
14 they had occurred.  
15 I had provided him with the details of the  
16 transactions, when they occurred, how they occurred, and  
17 these are the documents that he created.  
18 Q Okay, and I think earlier you said --  
19 A And I think the title to this document implies  
20 that there is ability for Bio Electronics to drawdown a  
21 loan at any time they would like, and I that is not the  
22 case.  
23 Q Okay. And I think earlier you stated that you  
24 first hired Mr. Flannigan in 2009, is that correct?  
25 A That's correct.

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1 Q And was it Mr. Flannigan that helped you put  
2 together these documents?  
3 A Yes. Well, he wrote them.  
4 Q He wrote them.  
5 A I did not write them, he wrote them.  
6 Q And I guess what I'm trying to verify is Mr.  
7 Flannigan did this work for you in 2009?  
8 A Correct.  
9 Q Okay. Now, the date on both of these  
10 documents is January 1st, 2005.  
11 A That's correct.  
12 Q Do you know why there is that discrepancy if  
13 they were written in '09, why are they dated in '05?  
14 A I believe we dated at the time that the first  
15 transaction occurred.  
16 Q Okay. And why did you do that?  
17 A I don't really know. I think it's just that's  
18 the date that was on it. There is no reason why it  
19 couldn't be dated at some other time because it's  
20 memorializing something that hadn't previously occurred.  
21 Q Okay. Can you tell me how the loans that were  
22 actually undertaken between IBEX and Bio Electronics  
23 differed from the agreement as stated here?  
24 A How did they differ?  
25 Q Yeah.

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1 A Well, I think, as I said, I think this  
2 agreement implies that there was a revolving line of  
3 credit available to Bio Electronics, and there was not.  
4 Q Okay, and what was the relationship then? If  
5 that description isn't accurate, what would be accurate?  
6 A I made a series of loans to Bio Electronics  
7 Corporation at various times between 2005 and 2009, and  
8 I made a series of conversions on those loans between  
9 2005 and 2009.  
10 Q Did all the loans were all the loans exactly  
11 the same in amount and terms other than was each loan  
12 structured exactly the same? That's my question.  
13 MR. MORRIS: Do you understand the question?  
14 Maybe ask him to explain what he means by structured.  
15 THE WITNESS: Yeah, I'm not sure I understand,  
16 do you mean did they have the same interest rate?  
17 MR. ROGERS: Sure.  
18 THE WITNESS: Did they have the same  
19 conversion terms? What --  
20 BY MR. ROGERS:  
21 Q All of those things would be a difference, so  
22 if any if the term is different, if the amount is  
23 different, if the conversion terms are different, that's  
24 what I'm asking about, and I would like to know about  
25 those.

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1 A I believe the intent was that they would be  
2 the same.  
3 Q The same in terms of amount?  
4 A The same not necessarily the amount, but the  
5 interest rate would be the same, the terms under which I  
6 expected to be able to convert those loans would be the  
7 same.  
8 Q Okay. There are in Exhibit 44, Paragraph  
9 2.7, conversion price, there is --  
10 A I'm looking at Exhibit 42.  
11 Q I'm sorry, 44. Exhibit 44, excuse me.  
12 A Exhibit 44, okay.  
13 Q The second page on the second page, it begins  
14 on the bottom of the second page and runs into the third  
15 page, 2.7 conversion price.  
16 A Uh-huh.  
17 Q And lays out the terms for a conversion. Is  
18 these the terms that were used for the actual loans?  
19 A You mean you are talking about Section 2.7, is  
20 this the conversion price that was used on each and  
21 every conversion?  
22 Q Yes.  
23 A No, it was not.  
24 MR. MORRIS: And 2.7 is also a page, it's two  
25 pages, a page and a little bit.

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1 MR. ROGERS: I'm sorry, folks, I thought I  
2 said that it began on the bottom the second page and ran  
3 on to the third.

4 MR. MORRIS: Now, if you know the answer,  
5 that's fine. I was going to say I need a minute to read  
6 it but --

7 BY MR. ROGERS:

8 Q Does that change your answer, Ms. Whelan?  
9 A Does I'm sorry, does what change my answer?  
10 Q The discussion with your attorney or the  
11 statement by your attorney, because I believe you had  
12 answered that the terms differed from what's stated  
13 here.

14 MR. MORRIS: On some loans. Initially he was  
15 asking you was every single loan, did it have the same  
16 conversion price, same out of loan, same term of the  
17 loan, you know, were all that was, when he used the word  
18 structured, I think that was explained to mean was  
19 everything exactly the same, and I don't know where we  
20 are in your answer with that, but you should maybe take  
21 him through --

22 THE WITNESS: I think this document doesn't  
23 really demonstrate the intent, so while I hired Mr.  
24 Flannigan to complete this document for me, in  
25 retrospect, it would appear it is not a very good

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1 document, and it doesn't actually show what transactions  
2 were occurring. What I wanted to have was a full  
3 balance disclosure of the loans that were made.

4 My expectation was if I loaned money to the  
5 company, on the date that I loaned it, whatever the  
6 closing price of the stock was on that date, I expected  
7 in the future to convert my loan at least 50 percent of  
8 a discount from that price.

9 BY MR. ROGERS:

10 Q So you're saying it was priced at the closing  
11 bid.

12 A At the time that I put the money into the  
13 company, the closing bid on that day --

14 Q Right.

15 A -- I expected to have a 50 percent discount  
16 from that, from that on conversion on the loan.

17 Now, when these loans initially started, this  
18 nickel price may have been that price. It clearly would  
19 change it could change daily with the market.

20 Q And you said your intent, was that intent  
21 expressed to anyone?

22 A Yes.

23 Q Who?

24 A Andrew Whelan and other members of the board  
25 of directors of Bio Electronics.

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1 Q Okay. Was there agreement on that?  
2 A I believe we had a verbal agreement on that,  
3 yes.

4 Q Okay.

5 A And this document was intended to make this  
6 that a written agreement which is why I hired an  
7 attorney to complete it.

8 Q Yeah, I'm still really unclear as to why you  
9 memorialized an agreement that didn't exist.

10 A In retrospect, I am too actually because it  
11 almost seems unnecessary.

12 Q But you do agree that this memorializes the --

13 A I do agree, yes, and what happened  
14 subsequently is and part of the reason why I think  
15 that this document does not really show I think it  
16 implies that there was a line of credit available to Bio  
17 Electronics when there was not.

18 Subsequent loans I stopped basically I  
19 stopped making loans to the company under this agreement  
20 in 2009, and the reason that I stopped making loans  
21 under this agreement is that the market had changed and  
22 it changed significantly.

23 Bio Electronics was not going to continue to  
24 borrow money under this agreement. This agreement had  
25 ratcheted down to a point where I could convert at I

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1 believe the lowest is .0012 on the outstanding balances  
2 and accumulated interest.

3 There is no reason with the market conditions  
4 in 2009 that Bio Electronics would have continued to  
5 borrow money from IBEX under those terms.

6 Q Okay. Did you ever discuss the status of this  
7 agreement, the one memorialized in front of us here in  
8 43 and 44, with Andrew Whelan?

9 A I'm not sure I understand the question by this  
10 status?

11 Q Well, I guess what I'm trying to get at is was  
12 Andrew Whelan relying on this agreement?

13 A Was he relying on this agreement as it's  
14 written?

15 Q As it exists in front of us here in Exhibit 43  
16 and 44?

17 A I don't think I can answer for what he was  
18 relying on. I think you would have to ask --

19 Q I'm asking if you discussed it. I can't ask  
20 you to read his mind.

21 A If I discussed it with him? I don't recall a  
22 specific discussion on that, no.

23 Q Let me ask you this. Did Andrew Whelan ever  
24 object to a the conversion of a loan based on Exhibits  
25 43 and/or 44?



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1 A I don't believe so, no.  
2 Q So he never cited these agreements when it  
3 came time to convert the loans.  
4 A By the time this agreement was written, I  
5 didn't have any additional conversion on to those loans  
6 to my knowledge.  
7 MR. MORRIS: She's already testified I think  
8 that she had already made the loans and this was some --  
9 THE WITNESS: Yes, this was post-  
10 documentation.  
11 MR. MORRIS: -- post-documentation of that, so  
12 there is no way he could have objected because it didn't  
13 exist.  
14 THE WITNESS: Yeah. No, he couldn't have  
15 objected under this, because it didn't exist. I didn't  
16 make any additional loans --  
17 BY MR. ROGERS:  
18 Q Is there anything in this document that  
19 indicates that there was an expiration to the agreement?  
20 A I honestly don't know. I would have to read  
21 through it.  
22 Q I haven't seen such. Let me ask you this.  
23 Why \$2 million? Why is \$2 million the amount for the  
24 commitment by IBEX to Bio Electronics Corp.?  
25 A I don't honestly know. I believe it's a

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1 number that Mark Flannigan chose as an arbitrary number,  
2 that the balance was not likely to exceed that because  
3 at the time that he wrote this agreement, the balance  
4 was not exceeding that, and I wasn't intending to make  
5 additional loans under or of that nature under this  
6 agreement. So he just picked a number.  
7 Q But did Mark Flannigan have any role in the  
8 loans other than to write the agreement? To act as the  
9 attorney is what I'm asking?  
10 A No, no. I'm not sure I understand the  
11 question. What I'm not sure what other role he could  
12 have had.  
13 Q Did he have any skin in the game?  
14 (Laughter.)  
15 MR. MORRIS: Do you understand what he means?  
16 THE WITNESS: Yeah.  
17 MR. MORRIS: Did he make loans himself?  
18 MR. ROGERS: That was as plain as I could make  
19 it. Was he working solely as an attorney, or did he  
20 have a role above that?  
21 THE WITNESS: I believe he was working solely  
22 as an attorney.  
23 MR. MORRIS: For you.  
24 MR. ROGERS: Okay.  
25 THE WITNESS: For me.

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1 MR. MORRIS: For IBEX.  
2 THE WITNESS: Yeah, for IBEX.  
3 BY MR. ROGERS:  
4 Q The reason I'm asking that is it I'm unclear  
5 why an attorney would pull a number out of the air,  
6 write it down, and it would be signed by you, if it  
7 wasn't an accurate number.  
8 A You know, I hired him to write the agreement  
9 and file my taxes, and I believed he was a competent  
10 attorney. I didn't actually check to make sure he was  
11 licensed attorney and a licensed certified public  
12 accountant before I engaged with him.  
13 Q Okay. Where did the money for the loans come  
14 from?  
15 A Can you specify which loan?  
16 Q The first one.  
17 A The very first one came from my former husband, an  
18 IRA savings account, my former husband's 401-K account,  
19 and the equity in our home.  
20 Q And how much was that for?  
21 A A combined total?  
22 Q Yes. The first loan, how much was it for?  
23 A \$78, \$79,000, somewhere in that range.  
24 Q And did you get your money back?  
25 A Yes.

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1 Q And how did you get your money back?  
2 A I converted the loan.  
3 Q Walk me through what that means.  
4 A I'm not sure I understand.  
5 Q How do you actually start the process of  
6 converting the loan?  
7 A How did I start the process of converting the  
8 loan?  
9 Q Yes.  
10 A Again, I'm not sure I understand the question.  
11 Q You made a loan and sometime in the future,  
12 you decided that you wanted to convert that loan.  
13 A Uh-huh.  
14 Q You wanted money back, put it that way.  
15 A That's correct.  
16 MR. MORRIS: How long was the loan for? The  
17 original. I think we're talking about the first loan at  
18 this point.  
19 MR. ROGERS: Yes.  
20 THE WITNESS: I believe it was a two year  
21 loan, and payments should have started on it and did  
22 not.  
23 BY MR. ROGERS:  
24 Q So the structure of the loan was that you were  
25 supposed to get --

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1 A Cash.  
2 Q -- as the end as a balloon payment, or were  
3 you supposed to --  
4 A No, it was supposed to be a series of payments  
5 on that. On the initial loan that came from out home  
6 and the other assets that we had, there was supposed to  
7 be cash repayment on a monthly basis, and I believe the  
8 interest rate was eight percent. And then to entice to  
9 make that loan, there was also an issuance of shares  
10 associated with that loan.  
11 Q At the onset or at the end?  
12 A I believe it was at the onset.  
13 Q Okay, and how many?  
14 A I believe it was 400,000 shares.  
15 Q And did you hold on to those shares or did you  
16 sell them?  
17 A We sold those shares subsequently over the  
18 course of time.  
19 Q Do you know how long it took to sell the  
20 400,000 that we're talking about now?  
21 A I don't recall.  
22 Q So at the end of I assume two years, you  
23 decided to convert the loans into shares, is that  
24 correct?  
25 A No, that loans gets rolled into this IBEX loan

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1 at a later date.  
2 Q Okay.  
3 A So the balances that were due on that loan,  
4 instead of having a separate loan that was Kelly and  
5 Robert Lorenz got added into this one, like two years  
6 later I believe.  
7 Q Okay. When did you first decide to convert a  
8 loan into shares?  
9 A I don't recall.  
10 Q Okay. Let's try a different approach.  
11 (Pause.)  
12 Q This one has already been marked. I'm going  
13 to hand you what's been marked Exhibit 31. Actually can  
14 I have the last exhibits back?  
15 A Yes, you want these exhibits back?  
16 Q Yes, let's keep everything straight. Thank  
17 you very much.  
18 A This is Exhibit 31.  
19 Q That is Exhibit 31. Why don't you take a look  
20 at it while I get my records straight.  
21 A Okay.  
22 (Pause.)  
23 Q I'm sorry, I forgot to hand one to your  
24 attorney. All right, thank you for your patience. The  
25 Exhibit 31 that I've handed you is a one-paged document.

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1 A Uh-huh.  
2 Q It is an e-mail. It has the Bates stamp of  
3 SEC-BIO-MKW-E-0004891. Have you had a chance to look at  
4 the document?  
5 A Yes, I have.  
6 Q Okay, are you familiar with it?  
7 A Yes, I am.  
8 Q What is the document? Why don't you tell me  
9 that?  
10 A It is an e-mail from myself to Dr. Staelin and  
11 Mary Whelan who are members of the board of Bio  
12 Electronics.  
13 Q Okay. And the date is November 20th, 2009, and  
14 the subject is board resolution, dash, consent to borrow  
15 money from IBEX for 8/2009. Let's just walk through  
16 each sentence here. It says Rick and Mary, IBEX LLC  
17 loaned BIEL, do you know what BIEL is?  
18 A Bio Electronics, that's the stock symbol for  
19 Bio Electronics.  
20 Q Okay, \$519,920 during August of 2009. Did  
21 that happen?  
22 A Yes, it did.  
23 Q Okay, this loan needs to be evidenced by a  
24 promissory note. I have IBEX's attorney writing a  
25 promissory with the following terms, 24 months at eight

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1 percent, principal and interest due on 8-31-11,  
2 convertible at IBEX's option to common shares of BIEL,  
3 B-I-E-L, at a conversion price of .019 cents. Did that  
4 happen?  
5 A Is that what this document says?  
6 Q No, that's a bad question because that's not  
7 what I was asking. Did you have an attorney writing the  
8 promissory note at that point?  
9 A Yes, I did.  
10 Q And were the terms as described here?  
11 A Yes, I believe they were.  
12 Q Okay. The first sentence says that the loan  
13 happened in August of 2009, yet the e-mail was sent in  
14 November of 2009. How come there was no loan agreement  
15 at the time the loan was made?  
16 A Sloppiness.  
17 Q Okay, at the time the loan was made, what were  
18 the negotiations? Who took part in the negotiations?  
19 A Well, as under the previous loan arrangement  
20 that I had which was --  
21 MR. MORRIS: With who?  
22 THE WITNESS: With Bio Electronics, the one  
23 that we went over earlier --  
24 MR. ROGERS: Which you said didn't --  
25 THE WITNESS: Which I believe was Exhibit 43

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1 and 44, so --

2 BY MR. ROGERS:

3 Q But remember also this is late 2009 and you

4 said that that agreement was no longer in force in 2009.

5 A Yes. That's correct.

6 Q Okay.

7 A So when that agreement when I stopped making

8 loans to Bio Electronics under that previous arrangement

9 where Mark Flannigan had written what appeared to be

10 some sort of line of credit, and in fact, it was not a

11 line of credit, the market had changed significantly, so

12 it didn't make sense for Bio Electronics to borrow money

13 from IBEX under the terms that those notes were at,

14 because that conversion price on those previous loans

15 had been ratcheted down to the point of like .0012.

16 Q Okay.

17 A Okay? I believe the market price at the time

18 well, I can see it here because I have the Bloomberg

19 close price on here, so what occurred here is I wanted

20 to negotiate the conversion price for the \$519,920 I

21 believe it is, with Bio Electronics. This is what I

22 want on conversion if I convert this loan to shares.

23 Q Uh-huh.

24 A Okay. In the event that they don't pay me

25 back in cash. So typically, my understanding is, and

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1 what I had operated under is that when you make a loan

2 to a company that has the financial condition of Bio

3 Electronics, it's a pink sheets company, it's a going

4 concern, issues and other it's a high risk loan you

5 can expect to take 50 percent off the close on the

6 market on the day that you made that loan for putting

7 your money at risk.

8 I wanted more than 50 percent off the close on

9 this loan, and the reason is if you look do you want

10 me to explain through this e-mail?

11 Q Please, yeah.

12 A Okay, so I had actually sold to Mr. Jacoby

13 five million shares of Bio Electronics stock, and he had

14 paid me \$225,000 for that stock. The closing price on

15 the Bloomberg on that date was .0785. What Mr. Jacoby

16 had paid was .05, which is roughly 30 percent off the

17 bid.

18 So any time that I made a private placement of

19 stock to sell, I never wanted to go more than 30 percent

20 off the bid. I felt like that was a fair price for

21 someone who was going to buy from me in a private

22 placement because the stock thinly traded, there is not

23 a big market for it, my expectation was that they would

24 hold it, not dump it into the market. I didn't want to

25 dump it into the market because I felt like it would

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1 drive the price down.

2 Q How come - where did you get that expectation?

3 A Where did I get what expectation?

4 Q That the buyer from IBEX was going to hold

5 onto the shares?

6 A I didn't another reason why they would want to

7 buy a large block of stock.

8 Q At a discount of what?

9 A Well, this is such --

10 Q -- of 2.85 cents a share and you bought five

11 million of them, why wouldn't you want to sell?

12 A Because it's too thinly traded. There's not a

13 market for it.

14 Q But there is a nice discount there.

15 A Only if you're going to have to hold it and

16 sell it into the market slowly. You can't just drop it

17 in.

18 Q So this expectation was --

19 A So my expectation was that's my expectation,

20 I didn't think that I thought that it made sense to me

21 to give a 30 percent discount off the bid so that I

22 could take the cash that I wanted right then.

23 Q And was there an agreement with Mr. Jacoby or

24 any other buyer of shares in these private placements

25 you've referred to?

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1 A An agreement as to what nature?

2 Q As to whether they would hold on to the

3 shares?

4 A No.

5 Q Okay. So they were under no actual obligation

6 to hold on to the shares.

7 A No.

8 Q No, okay, okay, so go on, I'm sorry.

9 A Okay, so then the next three transactions that

10 are listed here is a sale of IBEX shares, two million

11 shares of IBEX stock to Joe Noel at two cents a share,

12 and then another --

13 Q That's a pretty good discount.

14 A Exactly, and so he got that discount because

15 it was part of his compensation for consulting work that

16 he had done for Bio Electronics.

17 Q Okay, that confuses me greatly because you are

18 not Bio Electronics.

19 A I am not Bio Electronics.

20 Q From what you've said.

21 A I'm not Bio Electronics.

22 Q Why would you be paying him?

23 A I was asked to sell him the stock at a

24 significant discount. I agreed to do it.

25 Q Okay, who asked you that?

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1 A I believe it was Andrew Whelan. It's --  
2 Q Could it have been anyone else?  
3 A Could it have been anyone else? I don't  
4 believe so, no.  
5 Q Okay, go on.  
6 A So I sold the stock to Mr. Noel at a  
7 significant discount. I sold stock to Miss or Dr. Kong  
8 at a significant discount, and I sold stock to a Mr.  
9 Simone at a significant discount. I don't really recall  
10 who Mr. Simone is, but I know that Dr. Kong had done  
11 consulting work for Bio Electronics. Joe Noel certainly  
12 had done consulting work for Bio Electronics, and so  
13 what I was showing here was I actually sold 14 million  
14 shares of Bio Electronics stocks that was owned by IBEX,  
15 and the average price that I got for selling those  
16 shares comes out to .031, or .037, okay?  
17 Q Uh-huh.  
18 A Are you following that?  
19 Q Yeah, I am.  
20 A Okay. So what I wanted on this note was half  
21 the .037 as my conversion price, as opposed to half the  
22 market.  
23 Q Okay. The conversion is going to happen in  
24 the future, correct?  
25 A Correct.

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1 Q But the shares that you just discussed that  
2 were sold to these individuals in private placement, as  
3 you referred to them, happened in the past?  
4 A Right, they were shares that I previously  
5 sold.  
6 Q So what's the connection between the shares  
7 that were sold and the ones that you're going to get two  
8 years hence?  
9 A I don't really know that there's a true  
10 connection other than to explain why to because  
11 normally it's going to be a 50 percent discount off the  
12 bid is going to be your conversion rate.  
13 Q But you had not received those shares, that's  
14 two years hence.  
15 A Yeah, that's --  
16 Q And we're talking about shares that you sold  
17 November back to August, that's three months prior.  
18 A I am not really talking about shares, I'm  
19 talking about the terms of the loan.  
20 Q I am talking about shares. You said that you  
21 sold shares.  
22 A Right.  
23 Q To what's his name, Yenin Jacoby, Joe Noel,  
24 Dr. Kong, and Joseph Simone, correct?  
25 A Uh-huh.

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1 Q You sold shares?  
2 A Correct.  
3 Q And in the future, you're going to get shares  
4 as a conversion on the loan, correct?  
5 A Possibly, or I'm going to get cash.  
6 Q Have you ever gotten cash?  
7 A I'm not certain. I don't believe so.  
8 Q And how many loans has IBEC made to Bio  
9 Electronics?  
10 A A multitude of loans to Bio Electronics.  
11 Q Is a multitude more than three?  
12 A Correct, yes.  
13 Q Is it more than five?  
14 A Yes.  
15 Q Is it more than ten?  
16 A Yes.  
17 Q Is it more than 20?  
18 A Yes.  
19 Q Is it more than 50?  
20 A Yes.  
21 Q Okay, is it more than 60?  
22 A I would say yes.  
23 Q Let's jump to 100, is it more than 100?  
24 A I don't know.  
25 Q Okay. So it's mostly likely more than 60, and

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1 you don't think you've ever gotten cash back, but you  
2 think it's possible you get cash back on this one at the  
3 time you were writing this?  
4 A Yes, I think it's possible on all of them that  
5 I could have cash back.  
6 Q Okay.  
7 MR. MORRIS: How could that happen?  
8 MR. ROGERS: Does the company have any  
9 revenues?  
10 THE WITNESS: The company has revenues from  
11 sales, yes.  
12 BY MR. ROGERS:  
13 Q And what's their revenue level, do you know?  
14 A It's not --  
15 Q On an annual basis.  
16 A This is a high risk loan.  
17 Q Uh-huh, so it is fair to say is that your  
18 expectation is that you will likely receive shares.  
19 A Not necessarily, because the company could get  
20 an FDA approval, it could be bought out, it could have a  
21 significant distributor come in from outside of the  
22 United States.  
23 Q Okay, so there are possibilities there.  
24 A There are possibilities that I could be paid  
25 cash, yes.

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1 Q Okay. Let me ask you this, did Andrew Whelan  
2 ever ask you to sell shares to anyone else at a  
3 discount, other than the transactions you've described  
4 here related to this exhibit?  
5 A Did he ever ask me to sell shares to anyone  
6 else at a discount?  
7 Q Uh-huh.  
8 A I don't recall specifically. I know that I  
9 paid some of Bio Electronics' expenses with shares to  
10 various consultants, and then in return for that I  
11 expected to get a note.  
12 Q I'm not sure what you mean by I expected to  
13 get a note. What does that mean?  
14 A I expected to repaid.  
15 Q Okay, so you didn't really want a piece of  
16 paper, you wanted to be paid?  
17 A Well, I expected to be repaid for the value of  
18 what I had paid the consultant.  
19 Q Let me ask you this. I read through your  
20 background briefly and not you didn't have any other  
21 jobs previous to the IBEX loan relationships as a  
22 financier. How did you get into the financing business?  
23 A I made an initial loan to Bio Electronics.  
24 Q And how did that come about?  
25 A The company was in need of cash. My former

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1 husband and I discussed it. We took a loan out on our  
2 home. We put our savings in there. We put our cashed  
3 out his 401-K.  
4 Q Not to the details, but how did you know that  
5 the company was in need of cash?  
6 A Because my father is president of the company,  
7 and I knew that the company was cash-strapped.  
8 Q How did you know that?  
9 A I believe he told me.  
10 Q Okay, and --  
11 A Or my mother told somebody told me.  
12 Q Did your father approach you and request that  
13 you loan money to the company?  
14 A No, actually I approached him.  
15 Q So what terms did you pitch, did you come to  
16 him with?  
17 A The initial loan, eight percent, and half the  
18 market if it was converted.  
19 Q Why did you keep doing it?  
20 A Why did I keep doing it?  
21 Q Yeah, why did you keep making loans?  
22 A Because it was profitable for me.  
23 Q Okay. About how much did you make in 2005 off  
24 of the loans?  
25 A I don't recall.

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1 Q Okay, let's go through the game again. Was it  
2 more than \$100?  
3 A Yes.  
4 Q Was it more than \$1,000?  
5 A Yes.  
6 Q Was it more than \$10,000?  
7 A Yes, I believe it was.  
8 Q Was it more than \$20,000?  
9 A Yes.  
10 Q Okay, was it more than \$50,000?  
11 A Yes.  
12 Q Was it more than \$70,000?  
13 A I believe so.  
14 Q How about was it more than \$100,000?  
15 A I believe it was. I don't know, I'm not sure.  
16 Q Were you supporting yourself with that income?  
17 A No.  
18 Q How else did you generate income?  
19 A I was married at the time, my husband had an  
20 income.  
21 Q Okay, how about the next year?  
22 A I also worked --  
23 Q Oh, I'm sorry.  
24 A I was employed in other places.  
25 Q Yeah, I think your background questionnaire leaving

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1 Balfort and working somewhere else during 2005, but  
2 after 2006, there is no record there any way of other  
3 income.  
4 A Uh-huh.  
5 Q Were you supporting yourself solely from the  
6 revenue from loans made to Bio Electronics?  
7 A No.  
8 Q How else were you supporting yourself?  
9 A I was still married. I was actually using my  
10 credit card to some extent to pay our household  
11 expenses, and I was being paid as a consultant by Bio  
12 Electronics.  
13 Q Okay. How much were you getting paid by Bio  
14 Electronics?  
15 A In what year?  
16 Q 2006.  
17 MR. MORRIS: If you don't have any --  
18 THE WITNESS: I don't recall. I know I wrote  
19 it down, but I don't recall.  
20 BY MR. ROGERS:  
21 Q Did you make revenue from the IBEX loans in  
22 2006?  
23 A Yes.  
24 Q Do you think it was more or less than 2005?  
25 A I think it was more.

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1 Q Okay, why do you think it was more?  
2 A I'm not sure.  
3 Q Okay. What year did you --  
4 A [Laughter.]  
5 MR. MORRIS: It is not a memory test. If you  
6 remember the answer, you know it, and if you don't, you  
7 don't. We talked about providing an estimate if you  
8 have it. You can't make an estimate on something if you  
9 just have to take a guess.  
10 THE WITNESS: Yeah, I just don't know.  
11 BY MR. ROGERS:  
12 Q Okay, what year did you get divorced?  
13 Actually, let me ask you this, what year did you get  
14 separated from your husband?  
15 A Permanently?  
16 Q What year did you and he stop cohabitating?  
17 A 2007.  
18 Q In 2007, was he providing any financial  
19 support for you?  
20 A We separated in July of 2007 so it's a split.  
21 Q Okay, but I'm really looking for, and I do  
22 apologize, I asked that question and I thought what I  
23 jerk, assuming you would get and why not support him,  
24 and I had to ask the question and I apologize if I  
25 offended you, but what I'm trying to figure out at any

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1 point did you start becoming solely financially  
2 supported by your activities related to Bio Electronics?  
3 A Yes.  
4 Q And what year was that?  
5 A 2009.  
6 Q 2009. How did you support yourself in 2008  
7 because we skipped over that year?  
8 A I was paid as a consultant.  
9 Q By?  
10 A Bio Electronics.  
11 Q Anyone else?  
12 A No.  
13 Q So in 2008 maybe was the first year that you  
14 became financially dependent upon the income generated  
15 by loans made to Bio Electronics, or other work you did  
16 for Bio Electronics?  
17 A I don't think I was ever dependent upon it.  
18 Q Okay.  
19 A I certainly have the ability to go and seek  
20 other employment. I chose not to.  
21 Q Okay. Well, that's certainly fair. But did  
22 you have any other source of income?  
23 A No.  
24 Q Okay, how about 2009?  
25 A No.

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1 Q No, okay. Give me a ballpark on how much you  
2 think you made what your reported income was for 2009.  
3 A My adjusted gross income for 2009?  
4 Q I want to know gross and adjusted.  
5 A Me personally or IBEX? What are you asking  
6 me?  
7 Q That's a great question from an accountant.  
8 I'm going to ask for both.  
9 A Okay, so you want to know what was the income  
10 reported on my personal 1040?  
11 Q And IBEX's?  
12 A I believe it was in excess of \$6 million.  
13 Q So you made over \$6 million from loans made to  
14 Bio Electronics in 2009.  
15 A That's correct.  
16 Q How about 2010, the same questions?  
17 A I don't recall.  
18 Q Okay.  
19 A The 2010 taxable income.  
20 Q How come you don't recall 2010 but you do  
21 recall 2009?  
22 A Because 2009 was my banner year.  
23 Q So it was less in 2010.  
24 A I believe it was, yes.  
25 Q Okay, significantly less?

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1 A Probably, yes.  
2 Q Let me ask you this. Did Bio Electronics make  
3 \$6 million in 2009?  
4 A No.  
5 Q No.  
6 A Not to my knowledge.  
7 Q That's the year they put out a 10-K, so we  
8 actually, and I'm not going to bother you here, but they  
9 actually lost money, didn't they? How about in 2010,  
10 you said it was significantly less? Do you think you  
11 made \$3 million?  
12 A I think that's possible, yes.  
13 Q Do you think you made \$4 million?  
14 A No.  
15 Q Okay. How about 2011? Do you think you made  
16 \$5 million?  
17 A In 2011?  
18 Q Yes.  
19 A No, I do not.  
20 Q Okay, what do you think you made in 2011  
21 combined IBEX and yourself?  
22 A I don't recall.  
23 Q 2012?  
24 A I haven't filed my 2012 tax return, I don't  
25 know.

1 Q You got me. I thought that. Okay. Can I  
 2 have this document back please? Your attorney hasn't  
 3 asked me for a break yet. Are you ready for a break?  
 4 MR. MORRIS: Yeah, I am anyway, I always want  
 5 breaks.  
 6 MR. ROGERS: Okay, is that a yes?  
 7 MR. MORRIS: Yes.  
 8 THE WITNESS: Yes.  
 9 MR. MORRIS: I get to bill for the during the  
 10 break time as well. I don't know if you are aware of  
 11 that, but --  
 12 MR. ROGERS: We are off the record at 11:24.  
 13 (A brief recess was taken from 11:24 a.m.  
 14 until 11:33.)  
 15 MR. ROGERS: We are back on the record at  
 16 11:33 let's call it. Ms. Whelan, did we have any substantive  
 17 discussions while we were off the record?  
 18 Okay, I'll define substantive because you're  
 19 looking at me like you don't understand the question.  
 20 THE WITNESS: Yes.  
 21 BY MR. ROGERS:  
 22 Q Did we discuss anything that had to do with  
 23 Bio Electronics Corp. or this investigation while we  
 24 were off the record?  
 25 A Are you asking me the people in this room

1 discuss it? I'm not sure what the question is.  
 2 Q You and I, I'm only asking you about you and  
 3 I, whether I as --  
 4 A Did we do anything off the record?  
 5 Q -- an officer of the SEC --  
 6 A No.  
 7 MR. MORRIS: About the case?  
 8 THE WITNESS: No.  
 9 MR. MORRIS: Were there any discussions about  
 10 the case off the record?  
 11 THE WITNESS: Okay, I'm following that now.  
 12 MR. MORRIS: I believe there were not as well.  
 13 BY MR. ROGERS:  
 14 Q Okay, thank you. I'm going to have the court  
 15 reporter mark Exhibit 45.  
 16 (SEC Exhibit No. 45 was marked  
 17 for identification.)  
 18 Q While that's being done, let me just read on  
 19 the record Exhibit 45 is a one-paged document. It is  
 20 Bate stamped SEC-BIO-MKW-E-0003336.  
 21 (Pause.)  
 22 A I'm ready.  
 23 Q You haven't been handed the document yet so  
 24 you can't possibly be ready.  
 25 A Oh, sorry. I'm looking at the attorney copy.

1 Okay, now I'm ready.  
 2 Q Okay, my this is an e-mail from Kelly  
 3 Lorenz. The e-mail address in the from line is  
 4 actipatch.net, and it's to Mary Whelan, and the body of  
 5 it says please update your records with my new e-mail  
 6 address, klorenz@bielcorp.com. Thank you. Follow me?  
 7 A Yes.  
 8 Q Why were your changing your e-mail address?  
 9 A The server for Bio Electronics had changed,  
 10 and they were no longer using actipatch.net. Actipatch  
 11 is a product name.  
 12 Q Okay.  
 13 A So they changed to a Biel Corp. address, and I  
 14 had a Biel Corp. address.  
 15 Q How come?  
 16 A Because I acted as a consultant for them.  
 17 Q Okay.  
 18 A And if I were recruiting a distributor, I  
 19 would send the e-mail introducing the product and the  
 20 opportunity to be a distributor from that e-mail address  
 21 as opposed to from some AOL or gmail or some you know,  
 22 it gives lends credibility I think to the offer.  
 23 People don't pay much attention to gmail.  
 24 Q Okay, when you were working as a financier for  
 25 Bio Electronics, did you ever use the Biel Corp. e-mail

1 address?  
 2 A I don't recall.  
 3 Q But that is an e-mail address that you've  
 4 used.  
 5 A That's an e-mail address that I have used,  
 6 yes.  
 7 Q Okay, thank you, that's all. All right, this  
 8 is an exhibit that is pre-marked. It is Exhibit 30. I  
 9 will give you a minute to look it over and give me an  
 10 audible cue when you are ready.  
 11 (Pause.)  
 12 A I'm ready.  
 13 Q Okay, Exhibit 30 is a one-paged document Bate  
 14 stamped SEC-BIO-MKW-E-0003809. It is an e-mail from  
 15 Andrew Whelan, subject default notes, date June 5th, 2012  
 16 to Richard Staelin, Mary Whelan with a copy to Kelly  
 17 Whelan. Just I think you have explained this, but to be  
 18 at the risk of being redundant, who is Richard Staelin?  
 19 A Dr. Staelin, he is the chairman of the board  
 20 of Bio Electronics Corporation.  
 21 Q And Mary Whelan is who?  
 22 A A board member of Bio Electronics Corporation,  
 23 and the sister of Andrew Whelan.  
 24 Q And Andrew is?  
 25 A My father.

1 Q Okay, and what is his role at the --  
 2 A He's the president of Bio Electronics  
 3 Corporation.  
 4 Q Thank you. In the body of the e-mail, there  
 5 is a couple, for lack of a better term, spreadsheets in  
 6 which there are a series of loans laid out by IBEX and  
 7 then down below that. St. John's, Robert Whelan and  
 8 Janelle Zaluski. I guess my first question is what is  
 9 St. John's?  
 10 A It's an LLC entity that was formed in Virginia  
 11 that is primarily owned by my mother, Patricia Whelan.  
 12 Q Okay, do you have a role with that?  
 13 A I am the registered agent, and I have a one  
 14 percent ownership currently.  
 15 Q So was St. John's making loans to Bio  
 16 Electronics Corp.?  
 17 A I believe that it was, yes.  
 18 Q And were the terms for those loans similar or  
 19 the same as the loans that you made to Bio Electronics  
 20 Corp. through IBEX?  
 21 A I believe they were, yes.  
 22 Q And why do you believe that?  
 23 A Because I've seen them.  
 24 Q Okay, so you have seen the actual loans.  
 25 A I have on occasion, yes. I haven't seen all

1 Q Were the how about after 2005?  
 2 A I don't know after 2005. I mean, 2005 was the  
 3 initial loan from L&H or the L&H group I guess, and I  
 4 know that that's basically a debt spiral because it had  
 5 a ratchet-down provision in it.  
 6 Q And how did that ratchet-down provision differ  
 7 from the loan structure that you entered into?  
 8 A It didn't.  
 9 Q So you had the same structure as the L&H, the  
 10 ratchet-down structure.  
 11 A I don't think it was precisely the same. I  
 12 actually think that the ratchet-down structure that L&H  
 13 had was more detrimental to Bio Electronics.  
 14 Q How so?  
 15 A Because I believe I believe they were  
 16 selling into the market and intentionally driving the  
 17 price down and then issuing a conversion.  
 18 Q Okay. In 2010, do you believe Bio Electronics  
 19 was receiving financing from anyone who wasn't a family  
 20 member of Andrew Whelan's?  
 21 A I believe there were 504's. I do not know the  
 22 dates of those financings.  
 23 Q Do you know the approximate amount of that?  
 24 A I believe there was one that was done in Texas  
 25 for a million dollars, and one that was done possibly in

1 of them, but I have seen a loan from St. John's.  
 2 Q And how about Robert Whelan? Was he making  
 3 loans to Bio Electronics Corp.?  
 4 A You would have to ask Robert Whelan, I don't  
 5 -  
 6 Q So you don't know.  
 7 A I don't know.  
 8 Q How about Janelle Zaluski?  
 9 A I don't know.  
 10 Q I'm curious why Bio Electronics Corp. would go  
 11 to another financier if IBEX was meeting the needs. Did  
 12 you ever discuss that with Andrew Whelan or anybody  
 13 involved with Bio Electronics?  
 14 A Who was another financier?  
 15 Q St. John's, Robert Whelan and Janelle Zaluski?  
 16 A I don't know.  
 17 MR. MORRIS: Are you aware of any other  
 18 financiers?  
 19 THE WITNESS: Well, you know, there are other  
 20 financiers. There was a group commonly referred to as  
 21 L&H who was three different note holders that had  
 22 convertible notes.  
 23 BY MR. ROGERS:  
 24 Q Okay, and when was that?  
 25 A 2005 I believe.

1 Delaware for a million dollars.  
 2 Q Okay.  
 3 A Well, they wouldn't have been in the same year  
 4 I guess, two different years.  
 5 Q Okay. You have certainly made good money off  
 6 of this. You testified that you made \$6 million in  
 7 2009. I'm going to say that's good money. That's a  
 8 judgment. You may not think so. Have you encouraged  
 9 anybody else in your family to make similar loans so  
 10 that they could make the same type of money?  
 11 A Anyone else in my immediate family?  
 12 Q Yeah. How about your mother? Did you encourage  
 13 your mother to make these loans?  
 14 A My mother has made loans. She owns St.  
 15 John's.  
 16 Q I know, and I'm asking did you encourage her  
 17 to make --  
 18 A Did I encourage her to?  
 19 Q Yeah.  
 20 A No, because I don't think that's my role to  
 21 encourage my mother to do anything.  
 22 Q Okay, how about Robert Whelan, same question?  
 23 A I don't same answer, I don't discuss  
 24 finances with my brother and my sister.  
 25 Q So then you are covering, you are anticipating my



1 next question which was going to be Janelle Zaluski.  
 2 A Or sisters actually.  
 3 Q Sisters, that's right.  
 4 A Another sister too.  
 5 Q And who is the other sister?  
 6 A Lauren Jarmin.  
 7 Q And has Lauren Jarmin made loans to Bio Electronics  
 8 Corp.?  
 9 A I believe she has.  
 10 Q Okay, why do you believe that?  
 11 A I don't know, but I think she did make one.  
 12 Q I'm done with this exhibit. I'm going to hand  
 13 you what's been marked as Exhibit 34. Please take a  
 14 minute to look at it, and let me know when you're ready.  
 15 While you are doing that, I'm going to go  
 16 ahead and put on the record Exhibit 34 is a two-paged  
 17 document. It has a Bate stamp of SEC-BIO-MKW-E-0012519  
 18 and 20. Each is headed with the words unanimous consent  
 19 of the directors of Bio Electronics.  
 20 A Uh-huh.  
 21 Q Are you ready?  
 22 A Not quite.  
 23 Q Okay.  
 24 (Pause.)  
 25 A Okay, I'm ready. Are you ready?

1 through the dates that the dates you were reading were  
 2 not correct.  
 3 Q Okay, why don't you correct the record then.  
 4 A So the first note is February 9th, 2010 in the  
 5 amount of \$135; the second one was \$310,000, March 31st,  
 6 2010; \$20,000, April 15th, 2010; \$120,000, May 5th, 2010;  
 7 \$100,000 May 14th, 2010; \$130,000, June 22nd, 2010; and  
 8 \$10,000, July 15th, 2010.  
 9 Q Thank you.  
 10 A Thank you. All right, another pre-marked  
 11 exhibit, this one is 33. I will hand it to you. While  
 12 you are looking at it, I'm going to read into the  
 13 record, describe it for anyone who is reading the  
 14 record. It is a three-paged document, Bate stamped SEC-  
 15 BIO-MKW-E-0016233, 34 and 35. Let me know whenever  
 16 you're ready.  
 17 (Pause.)  
 18 A I'm ready.  
 19 Q Okay. You are not copied on the top two, top  
 20 three, you are on the e-mail at the bottom here on the  
 21 first page. It's from Mary Whelan, date October 15th,  
 22 2009 to Andrew Whelan and Kelly Lorenz. Do you see  
 23 where I am?  
 24 A Yes.  
 25 Q The subject, 144. The e-mail says Alex is

1 MR. MORRIS: Yes.  
 2 BY MR. ROGERS:  
 3 Q Okay. The first page has a series of notes  
 4 with dates and I will read those real quick, \$135,000,  
 5 February 9th, 2010; \$310,000, March 31st, 2010; \$20,000,  
 6 March 15th, 2010; \$120,000, March 5th, 2010; \$100,000, May  
 7 15th, May 14th, 2010; \$130,000, June 22nd, 2010; and  
 8 \$100,000, July 15th, 2010. Where was the money coming  
 9 from? The document does seem to evidence a series of  
 10 loans by IBEX to Bio Electronics Corp.  
 11 A Correct.  
 12 Q So I'm asking you as the manager of IBEX,  
 13 where did the money come from for each of these notes?  
 14 A At that point, it came from proceeds that IBEX  
 15 had made in 2009.  
 16 Q Okay, thank you.  
 17 A I believe.  
 18 Q And just to be clear, down on the bottom of  
 19 that page there is a signature. Oh, you know what, I  
 20 don't need to ask you because it is not your signature.  
 21 Okay, let me ask you this, did IBEX make those loans, to  
 22 the best of your knowledge?  
 23 A To the best of my knowledge, yes, it did.  
 24 Q Okay, that's all I got.  
 25 A I did notice though when you were reading

1 saying we need to submit a 144. Can we check with the  
 2 attorney for clarification, or do you have something in  
 3 writing you can give to his operations and compliance  
 4 people to clarify our situation. Do you know what is  
 5 being referred to there with the 144?  
 6 A Do I know what she's referring to?  
 7 Q Yes.  
 8 A I assume she is referring to a 144 form that  
 9 she needed to submit to her broker.  
 10 Q Okay, do you know what a 144 is?  
 11 A I believe I do.  
 12 Q Okay, and what's your understanding?  
 13 A I believe it is a reporting form for the  
 14 Securities and Exchange Commission.  
 15 Q And what why would one fill out a Form 144?  
 16 A I'm not certain.  
 17 Q Do you have any experience with the 144, the  
 18 Form 144?  
 19 A I believe I had to fill one out with the  
 20 Buckman account early.  
 21 Q Okay. Let me have that back, I'm done with  
 22 that right now.  
 23 (Pause.)  
 24 Q I need to have this one marked. What are we  
 25 up to? Exhibit 46.

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1 (SEC Exhibit No. 46 was marked  
2 for  
3 identification.)  
4 Q While you're looking at that, I'm going to  
5 state for the record that Exhibit 46 is a one-paged  
6 document, it's Bate stamped SEC-LK-E-0000166, and I'm  
7 going to give you a minute or two.  
8 (Pause.)  
9 A I'm ready.  
10 Q Okay. Do you recognize the document?  
11 A Do I recognize it?  
12 Q Yeah.  
13 A It appears to be a letter from Alexander Kuhne  
14 to GRQ Consultants.  
15 Q Okay, have you seen this type of letter  
16 before?  
17 A I've seen this type of letter before, yes.  
18 Q And in what context?  
19 A I've been providing with similar letters from  
20 Alexander Kuhne in the past.  
21 Q And why would Alexander Kuhne be providing you  
22 with these letters?  
23 A They are his legal opinion on the transaction.  
24 Q Did you ask him for his legal opinion on a  
25 transaction?  
A Yes.

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1 Q Okay, and --  
2 A On this specific recollect, I don't recall.  
3 I'm not going to say this one, but I have asked for a  
4 legal opinion from the past.  
5 Q Okay, that's fair enough. In the body of this  
6 paragraph that begins relying upon, it's the big one in  
7 the middle, the first sentence says relying upon the  
8 representation of the shareholder and issuer at the time  
9 of this letter and for 90 days prior, neither IBEX or  
10 its principal, Kelly Whelan Lorenz was an officer,  
11 director or agent of Bio Electronics.  
12 You don't remember this particular  
13 transactions so I guess what I can ask you is did you  
14 ever make representations about a transaction to  
15 Alexander Kuhne?  
16 A What representations?  
17 Q Yeah, I'm glad you stopped. When you were  
18 requesting legal opinions from Alexander Kuhne, did you  
19 give him did you make representations to him in order  
20 for him to produce legal opinions?  
21 A I'm not sure I'm really understanding the  
22 question. Did I tell him something specific?  
23 Q Yes, Alexander Kuhne is writing legal opinions  
24 at your request. Where is he getting the information  
25 that he is using to write the legal opinions?

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1 A He would get that information from me.  
2 Q Okay, and I think the letter also suggests  
3 from the company, but --  
4 A Possibly, yes.  
5 Q -- you did provide representations to him in  
6 order for him to produce legal opinions, correct?  
7 A I provided a document for him usually.  
8 MR. MORRIS: Yeah, I'm going to object as to  
9 any specific representations if it was attorney/client  
10 privileged communication.  
11 THE WITNESS: I'm not following you.  
12 MR. MORRIS: Any time he is acting as your  
13 counsel.  
14 MR. ROGERS: Yeah, I'm not sure if I agree  
15 with that because the information was being provided in  
16 order to produce a public document which is the legal  
17 opinion which was to be read by others. It wasn't for  
18 the purpose of getting legal advice, but we don't have  
19 to decide that.  
20 MR. MORRIS: Let's see if we get there.  
21 MR. ROGERS: Yeah, okay. The I don't know  
22 the number of the sentence, but I think it's the third  
23 one, the same paragraph that says as the underlying  
24 shares appear to have been issued by Bio Electronics in  
25 conjunction with a 2008 transaction, whatever Rule 144

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1 restrictions were applicable would have been satisfied,  
2 allowed for the removal of any restrictive certificate  
3 legends. Do you see where I was reading?  
4 THE WITNESS: Uh-huh.  
5 BY MR. ROGERS:  
6 Q Okay, does that help you with a question that  
7 I asked you earlier about what's your understanding of  
8 Rule 144?  
9 A My understanding of Rule 144 is that you have  
10 to have an asset at risk, cash at risk for some period  
11 of time which changed.  
12 Q Okay.  
13 A Over the time of these transactions. I  
14 believe it changed from a period of two years to one  
15 year to six months. So you would have had to have cash  
16 at risk in order to have had the legend removed on the  
17 Rule 144. That's my understanding of it.  
18 Q Is it your understanding that IBEX was relying  
19 on Rule 144 in transactions that Alexander Kuhne  
20 produced legal opinions for?  
21 MR. MORRIS: Objection to the extent that it  
22 calls for a legal conclusion.  
23 MR. ROGERS: As the executive of IBEX, was  
24 that your impression?  
25 MR. MORRIS: You can answer the question. I'm

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1 just putting my objection out there.  
2 THE WITNESS: Yes, that was my understanding.  
3 BY MR. ROGERS:  
4 Q Okay, how did you get that understanding?  
5 A How did I get that understanding?  
6 Q Yes, and this is where I need to be careful.  
7 If you received that understanding as part of legal  
8 advice given to you by an attorney, I don't want you to  
9 answer the question.  
10 A I don't recall.  
11 Q Okay. I'm done with that, thanks. Thanks.  
12 I'm going to have this one marked as 47.  
13 (SEC Exhibit No. 47 was marked  
14 for identification.)  
15 A Thank you.  
16 (Pause.)  
17 Q Have you had a chance to review it?  
18 A Yes.  
19 Q Are you ready? Do you want to confer with  
20 your attorney? I just see you looking towards him. I  
21 don't want to ask you a question if you need.  
22 MR. MORRIS: Just a quick break.  
23 THE WITNESS: Okay.  
24 MR. MORRIS: I just want to discuss the  
25 privileged issues with her.

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1 MR. ROGERS: Yes, let's go off the record at  
2 11:57.  
3 (A brief recess was taken from 11:57 a.m.  
4 until 2:02 p.m.)  
5 MR. ROGERS: We are back on the record 12:02.  
6 BY MR. ROGERS:  
7 Q I don't remember was there a question pending  
8 to you or not. I think we've looked at the document and  
9 I don't think I've given you a question yet.  
10 A I think that's correct.  
11 Q Okay. Do you recognize the document put in  
12 front of you?  
13 A I don't recognize it.  
14 Q Exhibit 47?  
15 A No.  
16 Q Do you know what it pertains to?  
17 A Well, I've read it so I understand what it  
18 pertained to. It appears to be a legal opinion from Lex  
19 Kuhne for Joseph Noel.  
20 Q It appears to be related to IBEX and Kelly  
21 Whelan Lorenz, a sale made by IBEX to Joseph Noel, is  
22 that correct?  
23 A That's possible.  
24 Q Do you remember the transaction in 2011 with  
25 Joseph Noel?

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1 A Not specifically, no.  
2 Q Was there more than one in 2011?  
3 A I don't recall.  
4 Q You don't remember how much he paid you for  
5 the 21 million shares? I guess the question is do you  
6 remember how much he paid you for the 21 million shares?  
7 A I do not.  
8 Q That's all, thanks.  
9 (Pause.)  
10 Q Let's go ahead and mark this one.  
11 (SEC Exhibit No. 48 was marked  
12 for identification.)  
13 Q This is a very long document. While you are  
14 getting a chance to look at it, let me just go ahead and  
15 note for the record that this is a it is a multiple-  
16 paged document with the Bate stamp of SEC-LK-E-0000024  
17 sequentially through 41, and I will give you a chance to look  
18 through that. Please take as much time as you  
19 need, and let me know when you're ready.  
20 (Pause.)  
21 A I'm ready.  
22 Q Okay. On the page towards the back that is  
23 Bate stamped, the final two numbers are 37 proceeded by  
24 all zeros so I'm going to call it 37, there is a  
25 document that is headed stock purchase agreement, and

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1 then on the page that is marked 41 which is the last  
2 page of the exhibit, there is a line that says seller  
3 Kelly Lorenz, and name IBEX, and title, non-affiliate.  
4 Is that your signature there for IBEX?  
5 A That is my signature, yes.  
6 Q I want to go back to the second page. The  
7 second page which is Bate stamped 25 by the way, is a  
8 letter from IBEX to Thomas Lauck of Holladay Stock  
9 Transfer. Who is Thomas Lauck and what role does  
10 Holladay Stock Transfer play?  
11 A I believe they are the transfer agent for Bio  
12 Electronics Corporation.  
13 Q Okay. I think you signed the letter, so do  
14 you know that he is the transfer agent, or do you think that he  
15 is the transfer agent?  
16 A Today?  
17 Q Yes.  
18 A Well, they are no longer the transfer agent is  
19 kind of why I'm kind of --  
20 Q Okay, on January 19th --  
21 A I believe that, yes.  
22 Q -- on the date of the letter?  
23 A Yes.  
24 Q Was Holladay Stock Transfer the transfer agent  
25 for Bio Electronics?

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1 A To my knowledge, yes.  
2 Q Okay, and that's why you wrote the letter to  
3 Thomas Laucks?  
4 A Yes.  
5 Q Okay. There are three transactions in the  
6 body of the letter, 6,250,000 shares, Asher Enterprises.  
7 Who is Asher Enterprises?  
8 A Asher Enterprises is the stock purchase  
9 agreement that's in the back here.  
10 Q I understand that. Is there a person  
11 associated with Asher Enterprises who you spoke to?  
12 A I don't recall their name at this point.  
13 Q Okay, how did you end up in contact with Asher  
14 Enterprises?  
15 A I don't recall.  
16 Q The second line, 6,250,000 shares, Benjamin  
17 Neuman. Who is Benjamin Neuman?  
18 A I don't know who Benjamin Neuman is  
19 specifically. Based on the address, I'm going to say  
20 he's a member of the group of rabbis who are investing  
21 in Bio Electronics.  
22 Q Why do you think that?  
23 A Because I was in Brooklyn.  
24 Q The third line, 12,500,000 shares, Mark  
25 Jacobowitz. Who is Mark Jacobowitz?

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1 A I would imagine he is also a group from the  
2 group of rabbis.  
3 Q Okay, but he's from Lawrence, New York which I  
4 don't believe is in Brooklyn. I could be wrong. So I'm  
5 wondering why you think he's associated because you said  
6 that the group was from Brooklyn.  
7 A Because, Simon is in Brooklyn. Simon probably  
8 brought it says to deliver it to Simon, so Simon  
9 probably hand-delivered it to Mark Jacobowitz.  
10 Q Yeah, I see that, and on the entry for Mark  
11 Jacobowitz, the 12,500,000 shares, there is a direction  
12 to send the certificate to Simon Jacobson. Who is he?  
13 A He's another one of the people in New York.  
14 Q Okay. So were these people that you, IBEX  
15 regularly sold shares to?  
16 A Yes.  
17 Q How come you sold them to them?  
18 A Because they were willing to buy them at the  
19 price that I wanted to be paid.  
20 Q Was there any other stipulation? Just the  
21 price?  
22 A Just the price.  
23 Q And how did you come in contact with this  
24 group?  
25 A I don't recall specifically. I remember

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1 meeting some people over the years, but these specific  
2 people I don't recall.  
3 Q And who did you meet over the years?  
4 A Who did I meet?  
5 Q Uh-huh.  
6 A I remember meeting Sam Schlesinger, Joseph  
7 Stein. I've met Simon Jacobson, Hershey Mootsen. Those  
8 are all I can remember at the moment.  
9 Q Okay. And I guess what I don't understand and  
10 maybe you can help me is how you ended up selling all of  
11 these shares to these individuals in Brooklyn. There's  
12 no geographic connection here. They've made no promises  
13 to you to do anything but pay you. What is the nature  
14 of the relationship you have with these people I guess  
15 is what I'm asking.  
16 A I'm not sure I understand that.  
17 Q Did they do anything other than buy in large  
18 quantities of Bio Electronics shares from you?  
19 A Buy anything other than what? Is there  
20 something specific that you mean?  
21 Q Yeah, did you sell any other stock to them  
22 other than Bio Electronics Corp.?  
23 A No.  
24 Q Okay. Did you ever buy anything from them?  
25 A Buy anything from them?

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1 Q Yeah. They bought from you, did you buy from  
2 them?  
3 A No.  
4 Q No, so these individuals and entities simply  
5 bought Bio Electronics shares from you. That's the  
6 nature of the relationship, is that correct?  
7 A That's correct.  
8 Q And you don't remember how you came into  
9 contact with these people?  
10 A Not specifically, no.  
11 Q Generally, if you don't remember specific,  
12 what do you remember generally?  
13 A I'm not really sure what the --  
14 MR. MORRIS: You believe they know each other,  
15 right?  
16 THE WITNESS: Yeah, I do believe they know  
17 each other.  
18 MR. ROGERS: Okay.  
19 THE WITNESS: Yeah.  
20 MR. ROGERS: So you think they --  
21 MR. MORRIS: So if you met one, then they may  
22 have introduced you to the others it seems, right?  
23 THE WITNESS: Correct.  
24 BY MR. ROGERS:  
25 Q Okay. And when the transactions took --

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1 MR. MORRIS: These aren't random people,  
2 right? They are all related in some way?  
3 THE WITNESS: I believe they're all related,  
4 yes.  
5 BY MR. ROGERS:  
6 Q We started off looking at this exhibit at a  
7 purchase agreement. Were there similar purchase  
8 agreements for the purchase agreement we were looking  
9 at was specific to --  
10 A Uh-huh.  
11 Q -- Asher.  
12 A Correct.  
13 Q Were there purchase agreements with Benjamin  
14 Neuman as well?  
15 A If there was, it would be attached, so I would  
16 say no.  
17 Q Okay, how about Mark Jacobowitz?  
18 A I don't believe so, because I believe it would  
19 have been attached.  
20 Q Okay, and Simon Jacobson, his transaction  
21 isn't part of this letter, but you did say that you had  
22 done other transactions with him, so was there a stock  
23 purchase agreement at any point with Simon Jacobson?  
24 A I don't believe so, no.  
25 Q Okay. Did you ask for any information about

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1 their financial where-with-all before you made these  
2 transactions with them?  
3 A Did I specifically ask them?  
4 Q Yeah.  
5 A What sort of information are you referring to?  
6 Q It's not untypical for you described these  
7 as private placements.  
8 A Uh-huh.  
9 Q To ask for information from the purchaser as  
10 to their financial condition, things like their annual  
11 incomes, their net worth. Did you ask for any of that  
12 sort of information.  
13 Q No. Okay. So why do you call this a private  
14 placement? Or these types of transactions that have  
15 been done, not necessarily the ones we're looking at  
16 here. You used the word private placement, but I don't  
17 understand where you are getting it, so I'm asking for  
18 that.  
19 A Well, because I gave them a discount,  
20 basically. They are going to buy a large block of stock  
21 at a discount.  
22 Q And that's the basis for using the term  
23 private placement. Is there any other basis?  
24 A No.  
25 Q Okay. I'm done with that one. I'm going to

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1 have another exhibit, Exhibit 49, marked.  
2 (SEC Exhibit No. 49 was marked  
3 for identification.)  
4 A Okay.  
5 Q It's a long document again, so take as much  
6 time as you need. While you are looking at it, I'm  
7 going to go ahead and read into the record that it is a  
8 nine-paged document Bate stamped SEC-BIOE-0001731  
9 sequentially through 39.  
10 (Pause.)  
11 A Can we have a break?  
12 MR. ROGERS: We can. It is 12:17, and we are  
13 off the record.  
14 (A brief recess was taken from 12:17 p.m.  
15 until 12:20 p.m.)  
16 MR. ROGERS: We are back on the record at  
17 12:20.  
18 BY MR. ROGERS:  
19 Q I have put a document in front of you. I  
20 think it's been Bate stamped 49. I don't know if you  
21 have had time to look at it yet, so if you could let me  
22 know whenever you are ready.  
23 A I'm ready.  
24 Q Okay, do you recognize this document?  
25 A I do.

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1 Q What is it?  
2 A It is a master purchase and sale agreement  
3 between Jarenz, LLC and Bio Electronics Corporation.  
4 Q Okay. And what was the nature of the  
5 agreement?  
6 A It is an agreement for Jarenz to purchase the  
7 receivables of Bio Electronics Corporation.  
8 Q Okay, and I think that's clear enough.  
9 Receivables are a pretty understandable phrase, right?  
10 Let me ask you who is a member of Jarenz?  
11 A Me.  
12 Q Anyone else?  
13 A No.  
14 Q Okay. Why was Jarenz set up? Let me ask you,  
15 was Jarenz around before IBEX was created?  
16 A No.  
17 Q Okay, so it was created subsequent to IBEX.  
18 A Yes.  
19 Q And why was there a new LLC created for this  
20 agreement?  
21 A I wanted --  
22 Q Or created, period?  
23 A Why did I create Jarenz LLC?  
24 Q Yeah.  
25 A For asset protection.

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1 Q Okay, why not use IBEX for that?  
2 A Because I was getting divorced.  
3 Q Okay. No, I need to ask about that. You had  
4 told me that IBEX was you were at all times the only  
5 member of IBEX, so why would divorce threaten IBEX?  
6 A Well, maybe it wouldn't but I didn't know  
7 that.  
8 Q Fair enough. So when was Jarenz created?  
9 A 2009 I believe.  
10 Q Okay. And what are Jarenz's businesses?  
11 A It really doesn't have one.  
12 Q Okay.  
13 A I didn't want to use IBEX to purchase the  
14 receivables because I figured it would make an  
15 accounting nightmare, so I just used Jarenz.  
16 Q Okay. So you set up Jarenz specifically for  
17 this agreement, is that correct?  
18 A No, I set up Jarenz for asset protection in  
19 2009 because I was in the process of getting divorced.  
20 Q Okay.  
21 A I didn't know whether or not IBEX would become  
22 a marital asset and become subject to a fight in the  
23 divorce.  
24 Q Okay, and this agreement was made through  
25 Jarenz, correct?

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1 A Correct.  
2 Q This being Exhibit 49, the master purchase and  
3 sale agreement which is for accounts receivables from  
4 Bio Electronics.  
5 A Yes.  
6 Q Okay. Did Jarenz have any other agreements?  
7 What I'm trying to get at was Jarenz solely for solely  
8 used for the agreement we're looking at?  
9 A In relation to Bio Electronics?  
10 Q No.  
11 A Or did Jarenz have other agreements with I'm  
12 not following your question. Can you be more specific?  
13 Q You were right on the second part. I'm asking  
14 generally what does Jarenz do?  
15 A Nothing.  
16 Q Nothing, other than house the agreement that  
17 we're looking at here in 49.  
18 A Well, I initially set it up to protect assets  
19 in the divorce because I was in the process of divorcing  
20 between the period 2007 and the time the divorce was  
21 final in 2010 because it was already set up and it  
22 already had a bank account, I decided to use it for this  
23 transaction as opposed to using IBEX.  
24 Q Okay. Did Jarenz make any loans to Bio  
25 Electronics?

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1 A It does at the end well, Jarenz under this  
2 agreement purchased the receivables of Bio Electronics  
3 in chunks basically, so initially I believe it was  
4 somewhere around \$600,000 in receivables, Jarenz paid  
5 ten percent, if I remember correctly, ten percent to take and  
6 secure those receivables.  
7 And then on collection, was paid according to  
8 the fee schedule that is shown here.  
9 Q Okay, did Jarenz make any convertible loans to  
10 Bio Electronics Corp.?  
11 A At the time that this arrangement stopped, the  
12 remaining balance that was due to Jarenz was put into a  
13 convertible note, yes.  
14 Q And what was the amount of that note?  
15 A I believe it was \$52,000-and something. I  
16 don't remember the specific amount.  
17 Q Okay. Are there any other entities and by  
18 entities I mean LLC's, corporations, or sole  
19 proprietorships or similar that you have used to make  
20 loans to Bio Electronics Corp., other than Jarenz and  
21 IBEX?  
22 A That are controlled by me?  
23 Q That you've been associated with.  
24 A One, as the registered agent for St. John's  
25 and there are loans from there.

Page 97

1 Q Okay, any others?  
2 A IBEX and this agreement and the remaining  
3 balance on this agreement was put into a note. I would  
4 have preferred actually to have had cash returned to me  
5 at the time that this agreement ended, but it wasn't  
6 available so I agreed to take a note.  
7 Q Okay, but are there any other entities?  
8 A Are there any other entities?  
9 Q Uh-huh.  
10 A No.  
11 Q No. And I just want to tie this bow up, let's  
12 look at the last page of this exhibit. Is that your signature  
13 on the bottom right there above Kelly Lorenz,  
14 manager?  
15 A Yes, it is.  
16 Q Is that date accurate?  
17 A Yes, it is.  
18 Q That's all I have with that.  
19 A I guess I have to give this to you, sorry.  
20 (Pause.)  
21 MR. ROGERS: I have no further questions for  
22 you at this time. However we may need to speak with you  
23 again, and if we do, we will go through your attorney.  
24 Before we close the record, is there anything  
25 you wish to clarify or add to the testimony you've given

Page 98

1 here today?

2 MR. MORRIS: Want to take a quick break with

3 me real quickly?

4 THE WITNESS: Yes, can we?

5 MR. ROGERS: You sure can, we are off the

6 record at 12:27.

7 (A brief recess was taken from 12:27 p.m.

8 until 12:34 p.m.)

9 MR. ROGERS: We are back on the record at

10 12:34. The preliminary question to you, Ms. Whelan, is

11 did we have any substantive discussions while we were

12 off the record?

13 THE WITNESS: No, we did not.

14 MR. ROGERS: Okay, and I think when we broke

15 from the record, I had asked you whether there was

16 anything you wished to clarify or add to your testimony,

17 so I think that's still to you.

18 MR. MORRIS: Yes, I have a couple of

19 clarifying questions and we think it will work better

20 maybe through a question and answer process.

21 MR. ROGERS: Fine.

22 MR. MORRIS: Ms. Whelan, in terms of we

23 touched on this earlier, making the initial loan that

24 you made to IBEX, or to Bio Electronics, excuse me, what

25 was the source of those funds?

Page 99

1 THE WITNESS: The equity in my home, personal

2 savings, and retirement savings of my former husband.

3 MR. MORRIS: And did you, at any other time,

4 was there cash that was loaned to Bio Electronics by

5 IBEX or –

6 MR. ROGERS: Or what?

7 MR. MORRIS: Let me strike that. As part of

8 the loans that IBEX had to Bio Electronics, were any of

9 those loans ever made up from other sources of cash

10 other than from the sale of Bio Electronics stock?

11 THE WITNESS: Yes.

12 MR. MORRIS: Explain that.

13 THE WITNESS: My aunt, Betty Rutowski, had put

14 cash into the company at around or near the same time

15 that we made our initial loan, and that got rolled into

16 the, what is unfortunately referred to as the revolver

17 loan.

18 MR. MORRIS: How much cash did your and what

19 is your aunt's name?

20 THE WITNESS: Betty Rutowski.

21 MR. MORRIS: And how much cash did Betty

22 Rutowski put in?

23 THE WITNESS: Somewhere in the neighborhood of

24 \$80,000, \$85,000, something to that effect.

25 MR. MORRIS: Why was her loan rolled into an

Page 100

1 IBEX loan?

2 THE WITNESS: Because she agreed to make the

3 decisions on how that would be handled for her.

4 MR. MORRIS: And was Ms. Rutowski paid her

5 \$80,000 back?

6 THE WITNESS: No.

7 MR. MORRIS: She's never received the \$80,000

8 back from Bio Electronics or IBEX?

9 THE WITNESS: No.

10 MR. MORRIS: Okay. And did you when you

11 made this loan, did you expect the initial loan we're

12 talking about now did you expect IBEX to pay you did

13 you expect Bio Electronics to pay you back in cash?

14 THE WITNESS: Yes.

15 MR. MORRIS: How could Bio Electronics pay you

16 back in cash?

17 THE WITNESS: I believe they would have the

18 sales volume to pay it back in cash, and there was a

19 structure of payments that were going to be made on a

20 monthly basis.

21 MR. MORRIS: What was the sales revenue of Bio

22 Electronics at the time you made the initial loan?

23 THE WITNESS: I don't know.

24 MR. MORRIS: Okay.

25 THE WITNESS: But I know that they had not

Page 101

1 really started operations yet, and had opened a sales

2 office subsequent to that and the expectation was, that

3 of course, the expectation has been for a decade that

4 FDA approval is imminent.

5 MR. MORRIS: And how would FDA approval change

6 whether IBEX could pay you back in cash or not? IBEX,

7 I'm sorry, I said it one more time.

8 THE WITNESS: Whether Bio Electronics paid me

9 back?

10 MR. MORRIS: Yes.

11 THE WITNESS: I think FDA approval would be

12 key to having a larger organization come in and possibly

13 purchase the company outright, and/or it gives more

14 credibility to the product in and of itself, and could

15 improve sales.

16 MR. MORRIS: And what were the company's sales

17 over the course of the loans that you made?

18 THE WITNESS: I believe it's around \$5

19 million.

20 MR. MORRIS: In total revenue.

21 THE WITNESS: Yes.

22 MR. MORRIS: Okay, and do you believe that the

23 loans that IBEX made to Bio Electronics were made on

24 favorable terms because of your relationship with the

25 CEO, your father?

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1 THE WITNESS: No.

2 MR. MORRIS: Why don't you believe that?

3 THE WITNESS: Because I heard him make the

4 offer to other people that they could have the same

5 exact deal.

6 MR. MORRIS: Do you remember the names of any

7 of those people?

8 THE WITNESS: I heard him on the phone. There

9 was a shareholder calling and screaming and I heard him

10 saying you know, I'll give you the same deal, send me

11 your check.

12 MR. MORRIS: Do you think the shareholder knew

13 who IBEX was?

14 THE WITNESS: Yes.

15 MR. MORRIS: How would the shareholder know

16 that?

17 THE WITNESS: It's publicly disclosed.

18 MR. MORRIS: And how is it publicly disclosed?

19 THE WITNESS: I believe it's in the SB-2

20 filings in 2006.

21 MR. MORRIS: Any other SEC filings?

22 THE WITNESS: I'm sure it's in the 10-K.

23 MR. MORRIS: So it is disclosed in the SEC

24 filings that you control IBEX and that you are related

25 to the CEO of the company.

Page 103

1 THE WITNESS: Yes, I believe that's true.

2 Certainly there are lawyers all over it. I mean, there

3 was Kirkpatrick & Lockhart in the SB-2, Austin & Byrd at

4 the time of the jumbo 10-K. My lawyers, Lex, so --

5 MR. MORRIS: Did Kirkpatrick & Lockhart ever

6 tell you that your loans and your convertible loans that

7 you made to Bio Electronics were improper in any way?

8 THE WITNESS: No.

9 MR. MORRIS: Do you know if Kirkpatrick &

10 Lockhart ever told Bio Electronics that the loans that

11 you were making to Bio Electronics violated any of the

12 federal securities laws?

13 THE WITNESS: I don't know.

14 BY MR. ROGERS:

15 Q Was Kirkpatrick & Lockhart working for IBEX?

16 A Kirkpatrick & Lockhart worked on the filing of

17 the SB-2 and they are listed as the attorney.

18 Q Okay, but --

19 A In the public filing.

20 Q Did IBEX pay Kirkpatrick & Lockhart?

21 A No.

22 Q Thank you.

23 MR. MORRIS: Who did Kirkpatrick & Lockhart

24 work for?

25 THE WITNESS: Bio Electronics.

Page 104

1 MR. MORRIS: And what about the other firm you

2 mentioned, Austin & Byrd?

3 THE WITNESS: Austin & Byrd worked for Bio

4 Electronics as well.

5 MR. MORRIS: Okay, did you ever have any

6 conversations with those lawyers?

7 THE WITNESS: I don't recall her name.

8 MR. MORRIS: You did have a conversation with

9 an Austin, Byrd lawyer?

10 THE WITNESS: Yes, but not in the context of

11 anything related to IBEX.

12 MR. MORRIS: Okay. And to your knowledge, did

13 anybody at Austin & Byrd ever say tell Bio Electronics

14 that these loans with IBEX violate the federal

15 securities laws?

16 THE WITNESS: Not to my knowledge.

17 BY MR. ROGERS:

18 Q Did any of those attorneys ask for details of

19 the loans?

20 A I believe that the loans were listed in a

21 table format in the filing.

22 Q But from you or from IBEX?

23 A Did anybody ever ask me for the details of

24 loans?

25 Q Or IBEX.

Page 105

1 A I don't recall. I don't think so.

2 Q Okay, thanks.

3 MR. MORRIS: But they were listed in the

4 registration statement that disclosed that IBEX was your

5 company and you believed the series of loans were

6 disclosed to the investors?

7 THE WITNESS: Yes.

8 MR. MORRIS: That's I don't have any other

9 questions.

10 MR. ROGERS: Okay. How about you, Ms. Whelan?

11 THE WITNESS: Do I have any questions?

12 MR. ROGERS: Do you have anything else that

13 you wanted to say or ask or state on the record?

14 THE WITNESS: No.

15 MR. ROGERS: No, okay. We are off the record

16 at 12:42. Thank you.

17 (Whereupon, at 12:42 p.m., the examination

18 was adjourned.)

19 \*\*\*\*\*

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21

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PROOFREADER'S CERTIFICATE

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In the Matter of: BIOELECTRONICS CORPORATION  
Witness: Kelly Anne Whelan  
File Number: HO-11713-A  
Date: Thursday, February 21, 2013  
Location: Washington, D.C.

This is to certify that I, Susan Watkins, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

\_\_\_\_\_  
(Proofreader's Name) (Date)

REPORTER'S CERTIFICATE

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I, Jon Hundley, reporter, hereby certify that the foregoing transcript of 105 pages is a complete, true and accurate transcript of the testimony indicated, held on February 21, 2013, at Washington, D.C. in the matter of: BIOELECTRONICS CORPORATION.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: \_\_\_\_\_  
Official Reporter: \_\_\_\_\_  
Diversified Reporting Services, Inc.

## **EXHIBIT 28: Emails**

**Bates numbered SEC-BIO-MKW-E-0002671-72**

From: "Andrew Whelan" <awhelan@bielcorp.com>  
Subject: RE: Ibex Note Payable  
Date: December 15, 2011 7:01:00 PM EST  
To: "Mary Whelan" [REDACTED]  
Reply-To: <awhelan@bielcorp.com>

Your grand nieces and nephews thank you. Kelly was magnanimous when she raised the conversion price from .0012 to .019 and now she has been rewarded.

---

From: Mary Whelan [REDACTED]  
Sent: Thursday, December 15, 2011 6:40 PM  
To: awhelan@bielcorp.com  
Cc: 'Richard Staelin'  
Subject: Re: Ibex Note Payable

Andrew,  
Rick and I discussed and agreed to sign. He's in the Virgin Islands and will get the fax back as soon as possible. I have signed and I'm trying to fix my scanner right now.  
Mary

On Dec 15, 2011, at 11:16 AM, Andrew Whelan wrote:

Board Members,

I would like to get the Note issue resolved. It would be grossly unfair to try to resolve this issue after we have FDA clearance.

Regards,

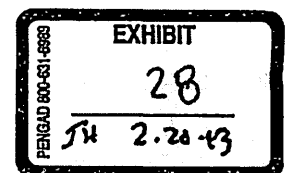
Andy

---

From: Andrew Whelan [mailto:awhelan@bielcorp.com]  
Sent: Tuesday, December 13, 2011 12:08 PM  
To: 'Richard Staelin'; Mary Whelan [REDACTED]  
Cc: 'Lex Kuhne'  
Subject: Ibex Note Payable

Rick and Mary,

Ibex has a note payable that was due on August 31, 2011 for \$519,920 with accumulated interest now approximately \$618,705, which is convertible at \$.019 per share. I suggest that we agree to change the Conversion Price to the current market price of \$.0015 in exchange for her agreeing to waive her right to demand cash payment. Attached for your review is a copy of the Note and a Board Resolution authorizing the change in the conversion price.



SEC-BIO-MKW-E-0002671

Regards,

Andy

Andrew Whelan  
BioElectronics Corporation  
4539 Metropolitan Court  
Frederick, MD 21704

(301) 874-4890  
(301) 874-6935 fax

[www.bielcorp.com](http://www.bielcorp.com)

<519 Convertible Note1.doc><Unanimous consent to Restructure Note Payable  
12.13.11.doc>

**EXHIBIT 29: Email from Andrew Whelan**

**Bates numbered SEC-BIO-MKW-E-0003222**

From: "Andrew Whelan" <awhelan@bielcorp.com>  
Subject: Convertible Notes  
Date: April 26, 2012 5:41:29 PM EDT  
To: "Richard Staelin" [REDACTED], "Mary Whelan" [REDACTED]  
Reply-To: <awhelan@bielcorp.com>  
▶ 2 Attachments, 71.7 KB

---

Board Members,

We should extend the due dates on the notes due in the next 5 months to get the liability out of current liabilities. Attached is the schedule of the Convertible Notes.

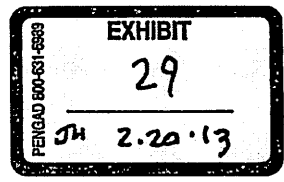
In the Other Notes Whelans and Staelin the extension at current market will increase the number of shares convertible from 54 million to 174 million. The Ibex extension will increase the number of shares convertible from 135 million to 387 million or an additional 387 million shares, or an increase of approximately 9% increase in the fully diluted shares outstanding.

Regards,

Andy

Andrew J. Whelan, President  
BioElectronics Corporation  
4539 Metropolitan Court  
Frederick, MD 21704  
(301) 874-4890 , Extension #107  
Cell [REDACTED] Fax: (301) 874-6935  
Skype: Andy.Whelan.BioElectronics  
[www.bielcorp.com](http://www.bielcorp.com) <http://bielcorp.com/distributors-2/distribution-opportunities/>

   
Mail Attach...t.eml (17.7 KB) Copy of 3 31...xls (54.0 KB)



**EXHIBIT 30: Email from Andrew Whelan**

**Bates numbered SEC-BIO-MKW-E-0003809**

From: "Andrew Whelan" <awhelan@bielcorp.com>  
 Subject: Defaulted Notes  
 Date: June 5, 2012 6:55:13 PM EDT  
 To: "Richard Staelin" <[REDACTED]> "Mary Whelan" <[REDACTED]>  
 Cc: "Kelly Whelan" <kwhelan@bielcorp.com>  
 Reply-To: <awhelan@bielcorp.com>  
 ▶ 2 Attachments, 14.4 KB

Board Members,

We need to renew the following Notes:

lbex

Issuance Date	Maturity Date	Interest Rate	Amounts Available for Conversion			Conversion Price/Share
			Principal	Interest	Total	
4/15/2010	4/30/2012	8.00%	20,000	-	20,000	0.0100
5/5/2010	5/31/2012	8.00%	120,000	-	120,000	0.0100
5/14/2010	5/31/2012	8.00%	100,000	-	100,000	0.0100
6/22/2010	6/30/2012	8.00%	130,000	-	130,000	0.0100

lbex earns an additional 148 million shares.

St. John's and Robert Whelan and Janel Zaluski (Daughter)

Issuance Date	Maturity Date	Principal Balance	Amounts Convertible			Conversion Price/Share
			Principal	Interest	Total	
8/9/2010	8/31/2012	100,000	\$ 100,000	\$ 14,009	\$ 114,009	0.0060
6/30/2010	5/31/2012	18,941	18,941	6,084	25,025	0.0100
8/31/2010	5/31/2012	61,109	61,109	8,250	69,359	0.0070
8/9/2010	8/31/2012	100,000	100,000	14,009	114,009	0.0060

St John's and other Whelan's is an additional 121 million shares.

Let's discuss.

Andy

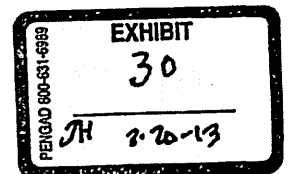
Andrew J. Whelan, President  
 BioElectronics Corporation  
 4539 Metropolitan Court  
 Frederick, MD 21704

(301) 874-4890 , Extension #107

Cell: [REDACTED] Fax: (301) 874-6935

Skype: Andy.Whelan.BioElectronics

[www.bielcorp.com](http://www.bielcorp.com) <http://bielcorp.com/distributors-2/distribution-opportunities/>





**EXHIBIT 32: Emails**

**Bates numbered SEC-BIO-MKW-E-0010033-34**

**From:** Richard Staelin [REDACTED]  
**Sent:** Thursday, December 15, 2011 9:00 PM  
**To:** Mary Whelan [REDACTED]  
**Subject:** RE: Ibex Note Payable

---

I am home now. 1-284-495-4676 or skype

---

**From:** Mary Whelan [mkwhelan@verizon.net]  
**Sent:** Thursday, December 15, 2011 3:23 PM  
**To:** Richard Staelin  
**Subject:** Re: Ibex Note Payable

What time can you talk?

Mary

On Dec 15, 2011, at 11:56 AM, Richard Staelin wrote:

Mary: I know you are family and this is s touchy issue, but in effect we are giving Kelly a double reward for all this. She got 1/2 discount the first time. We would be giving her the same discount again. I am willing to listen to argumnts, but if you want to talk, we can talk on skype.

rick

---

**From:** Andrew Whelan [awhelan@bielcorp.com]  
**Sent:** Thursday, December 15, 2011 11:16 AM  
**To:** Richard Staelin; Mary Whelan  
**Subject:** FW: Ibex Note Payable

Board Members,

I would like to get the Note issue resolved. It would be grossly unfair to try to resolve this issue after we have FDA clearance.

Regards,

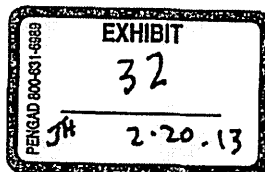
Andy

---

**From:** Andrew Whelan [mailto:awhelan@bielcorp.com]  
**Sent:** Tuesday, December 13, 2011 12:08 PM  
**To:** 'Richard Staelin'; Mary Whelan [REDACTED]  
**Cc:** 'Lex Kuhne'  
**Subject:** Ibex Note Payable

Rick and Mary,

Ibex has a note payable that was due on August 31, 2011 for \$519, 920 with accumulated interest now approximately \$618,705, which is convertible at \$.019 per share. I suggest that we agree to change the Conversion Price to the current market price of \$.0015 in exchange for her agreeing to waive her right to demand cash payment. Attached for your review is a copy of the Note and a Board Resolution authorizing the change in the conversion price.



SEC-BIO-MKW-E-0010033

Regards,

Andy

Andrew Whelan  
BioElectronics Corporation  
4539 Metropolitan Court  
Frederick, MD 21704

(301) 874-4890  
(301) 874-6935 fax

[www.bielcorp.com](http://www.bielcorp.com)

**EXHIBIT 34: Resolution of the Bioelectronics Board  
of Directors**

**UNANIMOUS CONSENT OF THE DIRECTORS OF BIOELECTRONICS  
CORPORATION IN LIEU OF MEETING**

**BOARD RESOLUTION FOR THE AUTHORIZATION  
OF LOAN TERMS SECURED BY CORPORATE PROPERTY**

On July 22, 2010, it was resolved by unanimous consent of the board, that the below officer of the Corporation is authorized to borrow the sum of Eight Hundred Twenty Five Thousand (\$825,000.00) on behalf of the Corporation from IBEX, LLC, 201F Front Royal Street, Leesburg, VA 20175. This amount is in addition to the existing \$519,000.00 note and the existing \$2,000,000.00 revolver, with an outstanding principal balance of \$1,062,347.70.

Andrew Whelan, President, is authorized to execute promissory notes for above amount under the following terms together with a security agreement and other documents necessary to secure payment of the notes with the pledge of the following property:

Property Used as Security for Note: The equipment, fixtures, trademarks, inventory and accounts receivable, intellectual property and all other assets of BioElectronics Corporation.

Terms of the Notes:

\$135,000.00 – February 9, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

\$310,000.00 – March 31, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

\$20,000.00 – April 15, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

\$120,000.00 – May 5, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

\$100,000.00 – May 14, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

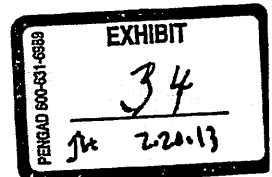
\$130,000.00 – June 22, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

\$10,000.00 – July 15, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

\_\_\_\_\_  
Richard Staclin

\_\_\_\_\_  
Andrew J. Whelan

  
\_\_\_\_\_  
Mary K. Whelan



**UNANIMOUS CONSENT OF THE DIRECTORS OF BIOELECTRONICS  
CORPORATION IN LIUE OF MEETING**

**BOARD RESOLUTION FOR THE AUTHORIZATION  
OF LOAN TERMS SECURED BY CORPORATE PROPERTY**

On July 22, 2010, it was resolved by unanimous consent of the board, that the below officer of the Corporation is authorized to borrow the sum of Ninety Five Thousand Seven Hundred Ninety Four and 67/100 (\$95,794.67) on behalf of the Corporation from St. Johns, LLC, 20417 Plainfield Street, Ashburn, VA 20147.

Andrew Whelan, President, is authorized to execute a promissory note for the above amount under the following terms together with a security agreement and other documents necessary to secure payment of the note with the pledge of the following property:

Property Used as Security for Note: The equipment, fixtures, trademarks, inventory and accounts receivable, intellectual property and all other assets of BioElectronics Corporation.

Terms of the Note: June 30, 2010, 24 months, 8%, Lump Sum Payment of Principal and Interest, convertible at the holder's option to Common Stock at the conversion rate of \$.01 per share.

\_\_\_\_\_  
Richard Staelin

\_\_\_\_\_  
Andrew J. Whelan

  
\_\_\_\_\_  
Mary K. Whelan

**EXHIBIT 35: Email from Andrew Whelan to Mary Nyary**

**Bates numbered SEC-BIO-MKW-E-0007029-30**

**From:** Andrew Whelan <awhelan@bielcorp.com>  
**Sent:** Wednesday, June 27, 2012 4:25 PM  
**To:** Mary Nyary [REDACTED]  
**Subject:** FW: Note Conversion Board Resolution  
**Attach:** Unanimous Consent to Restructure Notes Payable 06-27-12.doc

---

**From:** Andrew Whelan [mailto:awhelan@bielcorp.com]  
**Sent:** Wednesday, June 27, 2012 11:50 AM  
**To:** Rick Staelin; Mary Nyary  
**Cc:** Ragone, Peter; Kelly Whelan  
**Subject:** Note Conversion Board Resolution

Board Members,

Attached is a Board Resolution to extend the term of Notes Payable in the next quarter for one year and to change the conversion price to \$.002 share. St. John's is also converting its outstanding payable in the amount \$184,644. to a Note Receivable with the same \$.002 conversion rate.

Thank you.

Andrew J. Whelan, President

BioElectronics Corporation  
[REDACTED]

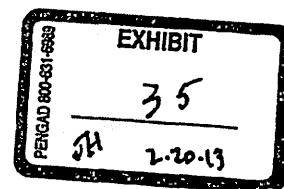
Frederick, MD [REDACTED]

(301) 874-4890 , Extension #107

[REDACTED] Fax: (301) 874-6935

Skype: Andy.Whelan.BioElectronics

www.bielcorp.com <<http://www.bielcorp.com/>>  
<http://bielcorp.com/distributors-2/distribution-opportunities/>



SEC-BIO-MKW-E-0007029



**BIOELECTRONICS CORPORATION**  
**UNANIMOUS CONSENT OF DIRECTORS IN LIEU OF MEETING**

All the Directors of the BioElectronics Corporation, a Maryland corporation (the "Corporation"), pursuant to applicable Maryland General Corporation Law, on June 27, 2012 consent to the following:

WHEREAS, the Corporation presently has outstanding a Convertible Promissory Notes Payable bearing interest at eight percent (8%) that is due and payable on the following dates listed below:

Issuance Date	Maturity Date	Principal Balance	Amounts Convertible			Conversion Price/Share	Shares to be Issued	Lender
			Principal	Interest	Total			
9/30/2010	9/30/2012	\$ 21,882	\$ 21,882	\$ 3,169	\$ 25,051	0.0020	12,525,500	St. Johns LLC
11/22/2010	11/30/2012	\$ 125,600	\$ 125,600	\$ 16,678	\$ 142,278	0.0020	71,139,000	St. Johns LLC
11/29/2010	11/30/2012	\$ 100,000	\$ 100,000	\$ 13,616	\$ 113,616	0.0020	56,808,000	St. Johns LLC
11/9/2010	11/30/2012	\$ 25,000	\$ 25,000	\$ 3,404	\$ 28,404	0.0020	14,202,000	Richard Staelin
9/30/2010	10/31/2012	\$ 50,000	\$ 50,000	\$ 7,240	\$ 57,240	0.0020	28,620,000	Ibex LLC
10/4/2010	10/31/2012	\$ 50,000	\$ 50,000	\$ 7,214	\$ 57,214	0.0020	28,607,000	Ibex LLC
10/8/2010	11/30/2012	\$ 50,000	\$ 50,000	\$ 7,164	\$ 57,164	0.0020	28,582,000	Ibex LLC
11/4/2010	11/30/2012	\$ 40,000	\$ 40,000	\$ 5,474	\$ 45,474	0.0020	22,737,000	Ibex LLC

St. John's is own primarily by the wife of Andrew Whelan, President and Director of BioElectronics.

WHEREAS, the Corporation does not have the cash to pay the Notes and wishes to avoid being in default and the note holders wish to avoid having the Corporation in default.

BE IT THEREFORE:

RESOLVED, that the Board of Directors agrees to change the Conversion Price of the Notes to the current market price of shares to Two Tenths (\$.002) per share and Ibex LLC, Richard Staelin, Ph.D. and St. John's LLC agrees to extend the term of each Note one year.

RESOLVED FURTHER, that the President and each other officer designated by the President is authorized and directed to take any and all actions necessary or proper to put the terms of this resolution into effect

This Consent may be executed in multiple counterparts and shall be filed among the minutes of the proceedings of the Board of Directors of the Corporation.

Dated: June 27, 2012

\_\_\_\_\_  
 Andrew J. Whelan

\_\_\_\_\_  
 Mary K. Whelan

\_\_\_\_\_  
 Richard Staelin

**EXHIBIT 100: Certification of Principal Executive Officer  
of BioElectronics**

EX-31.1 9 v179172\_ex31-1.htm  
Exhibit 31.1

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
Pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002**

I, Andrew J. Whelan, certify that:

1. I have reviewed this annual report on Form 10-K of BioElectronics Corporation;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact, or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of BioElectronics as of, and for the periods presented in this annual report;
4. I am the sole officer responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and
  - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent function):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls.

Date: March 31, 2010

s/ Andrew J. Whelan  
Andrew J. Whelan  
President, CEO and CFO  
(Principal Executive Officer and  
Principal Financial Officer)