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Feb 19 2025

SC Court of Appeals

Case No. 2023-001733

Jian-yun (John) Dong, M.D., Ph.D., Appellant

v.

The Medical University of South Carolina, Respondent

VOLUME II.

VOLUME II.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLSTON COUNTY
Court of Common Pleas

Honorable Jean Toal, Circuit Court Judge

Civil Action No. 2016-CP-10-06683

FILED
2023 NOV 27 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT
DGL

Jian-Yun (John) Dong, M.D., Ph.D., Appellant

v.

The Medical University of South Carolina, Respondent

NOTICE OF APPEAL

Appellant Jian-Yun (John) Dong, hereby submit this Timely Notice of Appeal of the Order granting Defendant’s Motion for Summary Judgement issued on July 17, 2023, and the Order Denying Motion for Reconsideration/Amendment issued on September 22, 2023, by the Honorable Jean Taol.

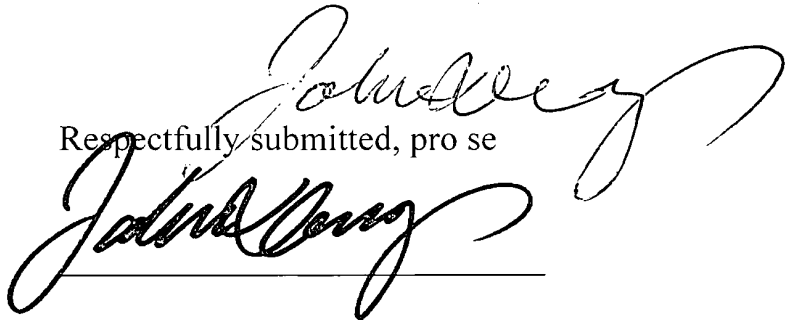
This Notice is **timely** because Appellant was not granted the access to the ECF system of the Court of Common Plea, did not receive the notice of either entry from the court electronically or by the mail. The Appellant only received the notice of the

entries forwarded by the Defendant using USPS mails on **October 5th 2023**, which was mailed on October 3, 2023 (a copy is attached).

Furthermore, Appellant filed a motion for Judicial Recusal due to the appearance of bias, which stays the time. The denial of the motion was entered on October 4th, 2023, and a notice forwarded by the Defendant was received on **October 6, 2023**.

November 3, 2023,

Respectfully submitted, pro se

A handwritten signature in black ink, appearing to read "John Dong", written over a horizontal line. The signature is cursive and stylized.

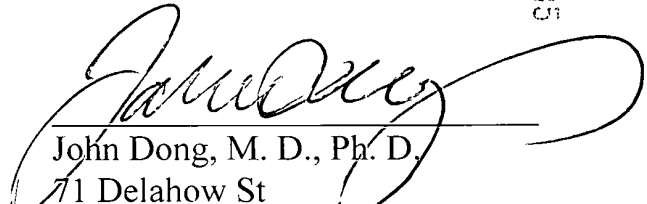
John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have, on this 22nd day of September 2023, served a copy of the Plaintiff's Notice of Appeal, which was submitted to the South Carolina Court of Appeals on the 3rd Day of September 2023, to the Court of Common Pleas, to replace the copy of the same Notice served on the 10th day of September. This Notice is sent via United States Mail Services with postage and addressed as the follows:

Julie J. Armstrong
Clerk of Court
Charleston County
100 Broad Street, suite 106
Charleston, South Carolina 29401-2258

FILED
2023 NOV 27 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY *DDL*


John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

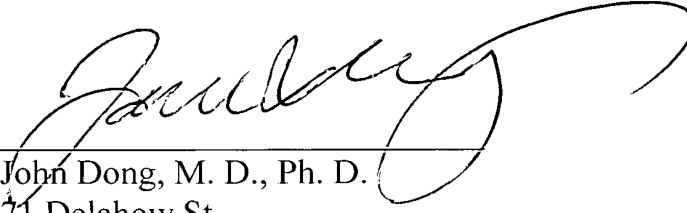
Honorable Julie J. Armstrong
Clerk of Court
Charleston County
100 Broad Street, suite 106
Charleston, South Carolina 29401-2258

Sept. 22, 2022

Dear Court Clerk,

Please find the replacement of the Notice of Appeal submitted to the court on 10 September 2023. The regional copy of the Notice was returned because I mistakenly signed and submitted two copies of the certificate of service instead of signing the second page. Therefore, I hope to keep the regional submission date.

Sincerely,



John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 106
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
clerkofcourt.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 143
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4434 FAX
clerkofcourt.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

The enclosed document is being returned for the following reason(s);

- The document is not signed / notarized.
- The filing fee is insufficient. The correct amount is: _____
- The check or money order must be made payable to the Clerk of Court.
- This document is a copy. We must have an original.
- This is not a Charleston County case.
- The case has been transferred/remanded to: _____
- Inmate litigation must comply with S.C. Code of Laws, Title 24, Chapter 27.
- The document is refused for filing pursuant to S.C. Code of Laws §30-9-30(B)(1).
- Name of submitting party: _____
- There is not a case listed in our system that matches this caption.
- Information may be obtained from our web-site at <http://clerkofcourt.charlestoncounty.org/>
- The required **new case** coversheet is not included. (SCCA234)
- The required **motion/order** coversheet is not included. (SCCA/233)
- The required **order (Form 4)** coversheet is not included. (SCRCP Form 4C)
- Effective October 21, 2019 Charleston County began accepting electronic filings from all South Carolina licensed attorneys. Please re-submit your filing electronically.**
- Other: The Notice of Appeal is missing its second page and signature.

Staff initials JA

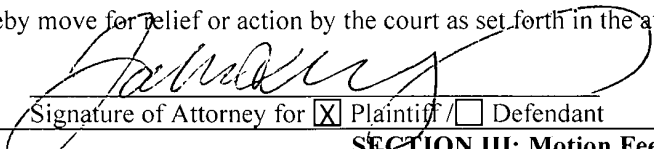
Date 11/13/23

-0106-

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Charelston)
)
Jian-Yun (John) Dong, M.D., Ph. D.)
 Plaintiff,)
 vs.)
)
The Medical Universit of South Carolina)
 Defendant.)

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT
 CASE NO.: 2016 -CP- 10. - 06683

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

| | |
|--|--|
| Plaintiff's Attorney: <u>John Dong</u> , Bar No. <u>pro se</u> | Defendant's Attorney: <u>Bob Conley</u> , Bar No. <u>81431</u> |
| Address: <u>71 Delahow St. Charleston, SC 29492</u> | Address: <u>171 Church St. Suite 310, Charelston, SC29401</u> |
| Phone: <u>(843)-991-2332</u> Fax _____ | Phone: <u>843-577-9626</u> Fax <u>843-577-6672</u> |
| E-mail: <u>johny.dong@gmail.com</u> | E-mail: <u>bconley@clevelandlablaw.com</u> |
| <input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III) | |
| SECTION I: Hearing Information | |
| Nature of Motion: <u>Plaintiff's Motion for Judicial Recusal based on Appearance of Bias</u> | |
| Estimated Time Needed: _____ | Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO |
| SECTION II: Motion/Order Type | |
| <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. | |
|  Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant | <u>September 27th</u> , 20 <u>23</u> Date submitted |
| SECTION III: Motion Fee | |
| <input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: | |
| (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____ | |
| JUDGE'S SECTION | |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____ | JUDGE CODE _____ Date: _____, 20____ |
| CLERK'S VERIFICATION | |
| Collected by: _____ | Date Filed: _____, 20____ |
| <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____ | |

A judicial system free of bias is assured by the Due Process Clause under the 4th, 5th, and 6th Amendments of the Constitution. The possibility of bias of a judge need not be proven, but the probability of a judicial bias that may affect the fairness of a court is too high a risk to be constitutionally tolerable and mandates the recusal or disqualification of the judge.

The South Carolina Court of Appeals has held that a judge must recuse himself or herself if there is an appearance of impropriety. In *State v. Brown*, 308 S.C. 257 (1993), the Court held that “a judge must recuse himself or herself if there is a reasonable basis to believe that the judge’s impartiality might reasonably be questioned.” (Emphasis added)

The Supreme Court of the United States has long held that judges must recuse themselves if there is an appearance of bias. In *Laird v. Tatum*, 408 U.S. 1 (1972), the Court held that “judicial disqualification is required whenever a reasonable person might entertain a doubt about the judge’s impartiality.” (Emphasis added)

“The due process clause requires recusal when the risk of actual bias on the part of the judge ‘is too high to be constitutionally tolerable.’” *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009)

The Supreme Court commanded that “[u]nder our precedents, the Due Process Clause may some time demand recusal even when a judge ‘has no actual bias’” *Rippo v. Baker*, 580 US, 137 S Ct, 197 L.Ed. 2d 176, 2017 citing *Aetna Life Ins. Co. v. Lavoie*, 476 U.S. 813, 825, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).

“The due process clause requires recusal when the risk of actual bias on the part of the judge ‘is too high to be constitutionally tolerable.’”

“Recusal is required when, objectively speaking, ‘the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable.’” *Withrow v. Larkin*, 421 U.S. 35. 47. 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). (Emphasis added)

“The Court asks not whether a judge harbors an actual bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential of bias” *Williams v. Pennsylvania*, 579 U.S., 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016) “When the possibility of a judicial bias is too high to be constitutionally tolerable, the judge must be recused.” *Id.*

ARGUMENT

In the present case, Judge Toal has engaged in conduct that creates an appearance and possibility of bias that may cause a reasonable person to question her Honor’s impartiality.

Specifically, the grounds for recusal are as follows:

1. Holding a preconceived decision that contradicts the law and the Due Process Clause under the Fifth Amendment to the Constitution.

(1) Honorable Toal stated that her mission is “to have a speedy deposition of this case [in favor of the defendant]” and “this is what I am intended to do.” This statement is direct contradiction to the Court’s obligation of providing fair and impartial justice for all following Due Process under the law. The court must apply the appropriate law to the facts.

(2) Under this erroneous mission, Honorable Toal implemented serious restriction on the Plaintiff’s discovery by limiting the scope and period of the discovery. These restrictions violated the Due process, the statutes and well-established precedents by the South Carolina Supreme Court and Court of Appeals and the Supreme Court of the United States.

Specifically:

(a) Judge Toal “affirmed” and continued limiting the scope of the Plaintiff’s discovery to only “the communications to the Plaintiff from Stephen Lanier and Mark Sothmann” during one year after the signing the breached Agreement; and ruled the Defendant had produced “all the documents that [Dr. Dong] was entitled to.” Judge Toal abandoned her neutrality by constantly stopping Dr. Dong from raise his issues or making argument; and joined the Defendant by arguing for the Defendant. Appx. P64, L23 – P71, L6.

Knowing this is a clear error of due process violation and abuse of power, Judge Toal first denied that she ever limited the scope of discovery, then stated that it was never a question to her, and finally claimed she held the restrictions because of she was not responsible for the ruling of her predecessor. Appx. P138, L19 – P139, L5.

(b) Judge Toal further limited Plaintiff’s discovery to a short timeline and held it strictly as if it were the law. Even though, the scheduling order was solely based the Defendant’s request without any Plaintiff’s input, and it was arbitrarily set by the judge without statutory authority and due process interest. In contrast, unencumbered discovery is assured by the Due Process right. The arbitrary restrictions on discovery directly contradict to the law and the well-established commands by the US Supreme Court that “due process interests outweigh the court interest in deadlines” and “pro se pleaders should be given more leeway than attorneys in filing schedules.”

(c) To restrict the discovery, Judge Toal repeatedly denied Defendant’s motions for extension of time for discovery necessary for the Plaintiff to conduct depositions of the witnesses. Judge Toal denied these due process request by applying the erroneous standard – “the motion conflict with the scheduling order,” even when Dr. Dong was suffering pneumonia and bronchitis following a Covid infection (supported by health records and doctor’s letter).

(d) Knowing that the denying Motions for Extension of Discovery Time, which was supported with good cause and unopposed by the other party, was a violation of due process and abuse of discretion, Judge Toal went on to accused Dr. Dong “attempt to delay due process” and “would not be tolerated.” See order, and Judge Toal’s email sent to Dong.

(e) Judge Toal placed her scheduling order above the order of superior court and denied Dr. Dong’s Motion for Extension of Time based on a Briefing Order issued by the US Court of Appeals on an unrelated case, again without the opposition of the Defendant and using the erroneous standard the motion conflicts with her Scheduling Order. Again, Judge Toal doubled down on the accusation that Dr. Dong filed the Motion with the intent to delay due process and threatened Dr. Dong with potential punishment. See order emailed.

This denial order further showed Judge Toal abandoned the Court’s obligation to be fair and impartial, and made the Court an extension of the Defendant and put her “scheduling order” above the law. The due process right protects people from facing more than one legal controversy at a time; and the US Court of Appeals is a superior court and has the priority over the county district court. Under the law, this Court shall suspend the proceeding until the resolution of the proceedings in the superior court. Violation of this Due Process, “nullifies the proceedings and orders as if they were never entered.”

2. Having expressed an opinion on the merits of this case

Under the same preconceived decision of “speedy deposition of the case,” Judge Toal declared that “this case will not go to trial” at the first and the only status hearing, after expressing opinions unfavorable to Dr. Dong and merit of the case.

Without the Defendant raising it as defense and making any argument, Judge Toal had a preconceived notion that the Chairman of the Department, James Norris, took Dr. Dong’s research materials, equipment, and funds for his benefit and the final breach of the contract by the Defendant was because Dr. Dong was indicted for GenPhar’s using contract funds for a research building. Appx. P11, L19 – P14, L24.

Judge Toal further argued against the fact that Dr. Dong was indicted for GenPhar using contract fund for a research facility was this happened four years after Dr. Dong was pushed out of MUSC and not be able to obtain a job at another university due to the Department Chairman took over Dr. Dong’s research projects, funding, research materials and equipment and never returned to him. Dr. Dong had to take the position as the Chief Scientist and later CEO at GenPhar and ended becoming the sacrificial lamb after the professional managers resigned from the company. Evidence show that Judge Toal’s decisions have been heavily influenced by this preconceived and erroneous notion. Appx. P18, L21– P21, L15; P154, L18 – P158, L21;

Under Article III of the Constitution, the Court is charged with “ensuring the American people the promise of equal justice under law” and “ensuring access to the court process for all who seek it.” To resolve a controversy, a court must supervise “the fact finding by a jury” through due process and must apply the appropriate law to the facts. Under these Constitutional guarantees, a judge who holds a preconceived opinion on the merit of the case commits a disqualifying error for violating the due process guarantee.

3. Abandoning the fairness, impartiality and equal justice of the Court and advocating for the Defendant using the Court.

(1) Under the preconceived decision and opinions, Judge Toal failed to hold the Court’s obligation to administrate fair, impartial, and equal justice for all.

Judge Toal has made the Court an extension of the Defense team issuing all her orders in favor of the Defendant without legal and factual basis, and Plaintiff’s motion without the Defendant’s opposition. Judge Toal even repeatedly making baseless accusations and threats of punishment against the Plaintiff in the effort to deter him from pursuing his claim through the court.

For examples:

a, Ruled 100% for Defendant and 100% against Plaintiff without any support of the law and fact. See the court record.¹

b. Not only, without citing any legal and factual basis, denied Dr. Dong's motions for extension of time for discovery necessary to complete deposition, and motions for protection based on documented health issues, superior court order, and eye surgeries, but also accused Dr. Dong of filing these motions "with intent to delay justice and would not be tolerated." See Orders denying.

c. Instead of giving more leeway to Dr. Dong as a pro se pleader, Judge Toal repeatedly interrupted Dr. Dong's argument and testimony and tried to deprive Dr. Dong's right to be heard.

While allowing the Defendant's attorney to testify falsely about the facts, Judge Toal repeatedly snapped at Dr. Dong: "overruled" even before Dr. Dong could complete his objection. When Dr. Dong finally was able to state his basis for the objection, that Defendant's attorney should not be allowed to testify about the fact without citing a witness or making up Dr. Dong's testimony without any citation, Judge Toal firmly overruled Dr. Dong's objection without any explanation.

d. In contrast, after shutting down Dr. Dong's objections, Judge Toal allowed Defendant's attorney to make false testimonies at will. Defendant's attorney testified about the terms and meaning of the Agreement signed between MUSC and Dr. Dong and "MUSC's position on the Agreement" without any witness or document support as if the attorney himself were a witness and a party. Judge Toal

also allowed Defendant's attorney to testify fictitiously about Dr. Dong's position or statement without any citation over Dr. Dong's repeated objections.

e. Furthermore, as if all these were not enough support for Defendant, Judge Toal actually raised a defense for Defendant by posing it as a question. For example, to justify the major breach of the Agreement by not giving back Dr. Dong's assets essential for his research and not allowing Dr. Dong to continue his research at the off-campus location, Judge Toal asked the Defense attorney "Was there any evidence that Dr. Dong submitted the various certificates of operation at the company?" Under suggestion, the Defendant's attorney immediately claimed that showing these certificates was "a prerequisite" for giving back Dr. Dong's personal assets illegally taken by MUSC, and transferring the assets to the Company for Dr. Dong to reinitiate his research interrupted by the department chairman, James Norris, and vice president research, Stephen Lanier.

Judge Taol firmly agreed with such a brilliant defense and dismissed the proven fact:

- (a) MUSC never initiates the transfer of Dr. Dong's assets to Dr. Dong or the Company, pending for Dr. Dong to provide the operation permits to the Company.
- (b) MUSC was well aware that the Company had all the essential permits to operate under the US Government funding and had received copies of these certificates when MUSC had joint grant funding with the Company.

(c) Dr. Dong personally submitted these certificates with his grant proposals to the Department while applying for collaborative research grants.

(2) Displayed significant hostility and expressed negative extrajudicial opinion against Dr. Dong.

At hearings, judge toll apparently made her decision before hearing the arguments. Judge Toal started by repeatedly interrupting and being dismissive of Dr. Dong's arguments and testimony, and then directly arguing and criticizing Dr. Dong. It was painfully apparent that the Court was not neutral, impartial, and applying the law equally. Dr. Dong was not only arguing his case against a team of attorneys but also against a biased court, which violated its Constitutional duty of being fair, impartial, applying them all equally to all who seek it, and maintaining the public perception and trust of the judicial system.

Examples of these conducts include:

While allowing the defendant's attorney to testify about the agreement's terms and meanings without citing any witness or the actual document, Judge Toal repeatedly interrupted Dr. Dong from his testimony about the events and his understanding of the agreement with his direct knowledge.

Judge Toal was dismissive of Dr. Dong's testimony and arguments without any objections or arguments by the defendant's attorney or any legal or factual basis.

This is true even when Judge Toal obviously knew that she was not following the law.

Finally, Judge Toal resulted in constant interruption, distraction, and direct arguments against Dr. Dong and extrajudicial comments about Dr. Dong that was irrelevant, erroneous, and prejudice. Appx. P109, L22 – P169, L19.

4. Egregiously abusing discretion or authority

Judge Toal makes her decision wholly based on the Defendant's attorney's request and ignores the law and the facts. To date, Judge Toal granted 100% of the Defendant's motions and denied 100% of Dr. Dong's motions without citing a single piece of fact or statute. Judge Toal also does not announce the legal and factual basis of decision in the court but simply grants the Defendant's motion or request by signing the Defendant's proposed order. See court records.

Examples include:

(1) Deprivation of Due Process Rights

Judge Toal limited Dr. Dong's discovery to a narrow scope: “only communications between Dr. Dong and Stephen Lanier or Mark Sothmann” within a year after signing the Agreement.

Judge Toal further restricted Dr. Dong's discovery to a short timeline and strict conditions and held the timeline and the conditions as if they were the law. Judge Toal denied all of Dr. Dong's motions for an extension of time or protection from

legal proceedings due to good causes, such as documented health conditions, surgeries, and other legal proceedings under the superior court's order.

In addition, Judge Toal ordered that Dr. Dong could only depose his witness in the office of the defendant's attorney. It gave the defendant the at-home advantage and, more importantly, allowed the defendant's attorney complete control of the deposition process. As a result, Dr. Dong could not even take the deposition of a single witness.

Judge Toal made these decisions with complete disregard for the statutes ensuring unencumbered discovery and Dr. Dong's rights to due process.

(2) Abuse of Discretion

Judge Toal made every effort to make it difficult for Dr. Dong to seek justice in his complaint. In addition to repeatedly setting short and rigid timelines, Judge Toal rejected Dr. Dong's requests for access to the court's electronic court filing system and refused to implement the common-law mailing time allowance for Dr. Dong to send and receive filings using the mailing system. It reduced at least six business days from the minimal timeline for Dr. Dong to receive the filings from the defendant and mail out responses. In addition, because of the upgrade of the ECF system, including its excess to pro se leaders, the clerk's office has stopped sending out notices by mail. Dr. Dong had not been receiving notice from the court. For example, the statute requires the moving party to submit a motion for summary

judgment at least ten days before the hearing. Judge Toal set the hearing date strictly at the minimally required ten dates, and Dr. Dong did not receive a notice from the court. Dr. Dong found out about the hearing date until he received an email a few days before the hearing, and the hearing overlapped with his scheduled eye surgeries. Dr. Dong timely filed a motion for protection from court proceedings.

Instead of granting Dr. Dong's motion based on the "good cause standard," judge toll criticized him for not being able to schedule the surgeries around the hearing date and accused Dr. Dong scheduled his eye surgeries intentionally to delay the justice, and once again threatened with a judicial punishment.

After Dr. Dong submitted additional motions and letters to Judge Toal explaining his advanced stage of cataracts due to the seriousness of his diabetes that severely hampered his ability to read and write, Judge told moved the hearing date to one day after the requested protection period and stated that further extension would be denied. As a result, Dr. Dong could not complete his Memorandum supporting his Opposition to the Defendant's Motion for Summary Judgment and had no time to prepare for the hearing.

At the hearing, Judge Toal denied Dr. Dong's Motion for Continuance Pursuant to Rule 56(f) without a hearing.

Judge Toal's obstructions of Dr. Dong's pursuing his Complaint through the court are abuses of discretion. The Supreme Court of the United States, as well as

the South Carolina Court of Appeals, has long established that courts should give “more leeway,” or a “certain degree of latitude to pro se litigants in the presentation of their cases” and “should be held to less stringent standards” for both the contents and the procedures and “due process concerns can outweigh rigid procedural rules,” in this case, arbitrary deadlines set by judges. See *Beckles v. United States*, 137 S. Ct. 886 (2017); Also see *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2004); *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

(3) Abuse of Power

Judge Toal has been advocating for the Defendant using the judicial power and disregarding the law. Judge Toal repeatedly issue orders in favor of the Defendant without statutory authorization.

Examples of abusing power include:

- a. Limiting the scope and time of the plaintiff's discovery contradicting the statutes governing the discovery.
- b. Denying Dr. Dong's motions using illegitimate standards, such as denying motions for extension of the time for discovery using the standard that the motion conflict with the arbitrary scheduling order arbitrarily set by herself.
- c. Setting an unreasonable short timeline not to allow Dr. Dong sufficient time to submit his memorandum supporting his opposition to Defendant's motion for summary judgment and denying Dr. Dong's motion for continuance in violation of rule 56(f), which specifically instructs that a judge may not apply

the summary judgment but should order additional time for discovery, such as interrogatory, or deposition when the opposing party cannot provide sufficient evidence or affidavit to support his opposition. In this case, the Judge ordered the hearing only one day after Dr. Dong's surgeries and necessary recovering time and denied his motion for continuance necessary for him to submit the memorandum and affidavit under rule 56(f).

- d. Judge Toal granted the plaintiff's motion for summary judgment in violation of rule 56, which requires the moving party to prove the lack of genuine issues with evidence, interrogatories, and affidavits. In this case, Defendant raised two issues – statutory limitation and whether the plaintiff can present sufficient evidence, without supporting evidence, such as testimony, verified documents, and affidavits. Even were the two issues valid, but they are not, they do not meet the requirement for summary judgment under Rule 56.

This judgment error is extrajudicial because it is based on the Judge's biased interest rather than being authorized by the statute. It is rudimentary that judges must enforce the law as it is written; when the language is clear, any expansion from its written language is illegitimate. Judge Toal is a seasoned and retired justice, making it unlikely an error of judgment but a biased interest.

- e. Judge Toal argued against Dr. Dong in the interest of the Defendant and made erroneous and misleading statements to cover up her malfeasance in court.

For example, Judge Toal allowed the Defendant's attorney to testify freely about his understanding of the terms and meanings of the Agreement without any testimony or evidential support and allowed the attorney to testify about Dr. Dong's statement falsely. Judge Toal repeatedly overruled Dr. Dong's objections that Defendant's attorney was not a witness and could not

testify about the facts without stating a reason for her ruling. To cover up this elementary error, Judge Toal stated that the reason for her overrule of Dr. Dong's objections was that Defendant's attorney was allowed to make arguments and was not testifying about any facts. This statement was misleading and erroneous because Defendant's attorney was testifying about the facts of Defendant MUSC's "position and understanding" of the Agreement without a witness testifying on MUSC's behalf. On this contrary, Judge Toal tried to stop Dr. Dong from arguing by saying you cannot interpret the terms of the Agreement. This was erroneous because Dr. Dong is a party and a witness and can testify about the facts, including the terms of the Agreement, as he was explained and understood.

For another example, despite the fact that Defendant's attorney failed the burden of proving the "lack of genuine issues with testimonies, interrogatories, documents, and affidavits," and the fact that Dr. Dong proved the breach of contract by MUSC with his testimonies and verified documents, Judge Toal granted Defendant's motion for summary judgment on the issue of statutory limitation without stating her basis. Knowing that such a ruling violated Rule 56 and the statutes require the judge "to announce the judgment and the factual and legal basis in an open court," Judge Toal simply asked the Defendant's attorney to draft the order. As a seasoned attorney, Defendant's attorney apparently understood that it would be difficult to justify such an order to the statutory requirements; he requested Judge Toal to give him the authority to add "the other issues" by posing it as a question. Judge Toal replied: "Yes," without identifying what the other issues were and the basis for granting these issues. In essence, Judge Toal gave the Defendant the authority to issue the order at will and served as a rubber stamp for the

Defendant. When Dr. Dong objected by pointing out that Defendant's attorney was not asking a question but a request of the Judge to allow him to grant other issues as he wanted, Judge Toal explained that this was standard practice because she only had one law clerk. It would be more efficient to allow the Defendant's attorney to draft the order. This statement is erroneous and misleading in this context because the law requires the Judge to announce the judgment and the legal and factual basis in the open court. Even if it were a common practice to allow a Party's attorney to draft the final judgment, the attorney would be legally bound by accurately reflecting what the Judge announced in the court, not to get unlimited authority to issue the order at his will.

Courts have the discretion to adopt a proposed order submitted by a party when the issue is procedural, interlocutory, and uncomplicated. However, under the parties' due process right to be properly noticed, the proposed order must be submitted with the motion before the hearing so that the opposing party can make the opposing argument before a decision is rendered. In contrast, a Summary Judgement is a depository decision, depriving Dr. Dong's rights to be properly noticed and the opportunity to be heard is a due process violation and a structural error.

The law is clear. The United States Supreme Court has long established that "[n]othing is better settled than that in the construction of a law, its meaning must first be sought from the language employed. If that be plain, it is the duty of the courts to enforce the law as written." *United States v. Standard Brewery*, 251 U.S. 210, 40 S. Ct. 139, 64 L. Ed. 229. "The Court is [] obligated to enforce the statute as

written," "any expansion from the words written is illegitimate." See *Lamie*, 540 U.S. at 534, 124 S. Ct. 1023.

The South Carolina Court of Appeals also has underscored the significance of giving effect to the plain language of statutes. The Court stated, "When the statutory language is plain and unambiguous, there is no room for judicial construction or interpretation, and the court must apply the statute according to its literal meaning." *State v. Smith*, 322 S.C. 225 (Ct. App. 1996). This clear directive emphasizes that judges are bound to interpret statutes based on their plain and ordinary meaning without inserting their own subjective interpretations or modifying the language to suit personal preferences.

Additionally, the South Carolina Court of Appeals has emphasized that "stare decisis is the foundation of our legal system" and that "prior decisions of this court are binding precedent and must be followed unless and until overruled." *State v. Bright*, 361 S.C. 43 (Ct. App. 2003). This principle underscores the court's commitment to consistency and stability in the law, and it ensures that judges respect and give due deference to previous decisions when interpreting and applying the law.

Statutes give courts the authority to adjudicate cases and issue judgments. Want of statutory authority is a jurisdictional error and must be corrected at this court.

It is unlikely that Judge Toal violated the statutes and the well-established case laws due to ignorance, but the biased interest in advocating for the Defendant, a prominent State institution.

Any one of these conducts creates an appearance and the possibility of bias as defined by the law – “a reasonable person could question whether [Judge Toal] is impartial” in this case.

As The South Carolina Court of Appeals held that “[Judge Toal] must recuse [] herself [because] there is a reasonable basis to believe that the [J]udge’s impartiality might reasonably be questioned.” *Brown, Id.*

The United States Supreme Court commanded that “judicial disqualification is required whenever a reasonable person might entertain a doubt about the judge’s impartiality.” *Laird v. Tatum, Id.* In this case, Judge Toal’s legislating over the bench and disregarding the law and the fact create “the probability of actual bias on the part of the [Judge Toal] is too high to be constitutionally tolerable.” *Withrow v. Larkin, Id.*

Even to assume that were there no actual bias, – Honorable Toal’s 100% ruling for the Defendant without citing any law or fact was only coincidental, her preconceived opinions and the colorful extrajudicial comments were unintentional, the Supreme Court of the United States commands: “[u]nder our precedents, the Due Process Clause may some time demand recusal even when a judge ‘has no actual

bias”” *Rippo v. Baker, Id.* “The Court asks not whether a judge harbors an actual bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential of bias.” *Williams, Id.*

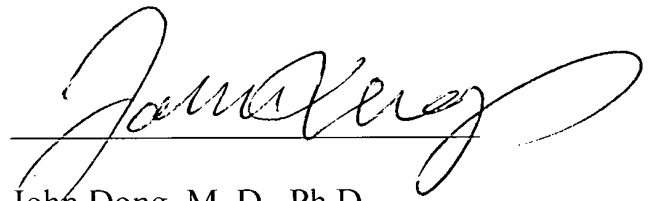
CONCLUSION

For the reasons stated above, John Dong respectfully requests that Honorable Judge Jean Toal recuse her Honorable from the above-captioned case.

Respectfully submitted, pro se,

September 26, 2023

Charleston, South Carolina



John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johnny.dong@gmail.com
Phone: 843-991-2332

Appendix:

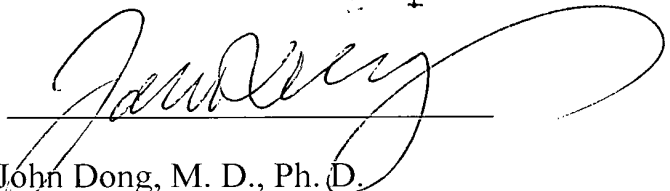
Transcripts of the Status Hearing and the Hearing on Summary Judgement

CERTIFICATE OF SERVICE

This is to certify that I have on this 26th day of September 2023, served a copy of the Plaintiff's Motion for Recusal to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2023 SEP 28 AM 11:54
JERRY J. JONES
CLERK OF COURT
JR



John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

APPENDIX:

1. Transcript of Status Hearing: P 1 – 93
2. Transcript of Hearing on Defendant's Motion for Summary
Judgement: P 95 – 190

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) TRANSCRIPT OF RECORD

-----x
JIAN-YUN (JOHN) DONG, M.D.,)
Ph.D.,)
)
Plaintiff,)
vs.) Case No. 2016-CP-10-06683
)
THE MEDICAL COLLEGE OF)
SOUTH CAROLINA,)
)
Defendant.
-----x

October 4, 2022

STATUS CONFERENCE HEARING

B E F O R E:

The Honorable Jean H. Toal, Presiding Judge

A P P E A R A N C E S:

Jian-Yun "John" Dong, M.D., Ph.D.,
Pro Se Plaintiff

Bob J. Conley, Esq.
Attorney for the Defendant

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

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I N D E X

| WITNESS/DESCRIPTION | PAGE |
|---------------------------|------|
| Status Conference Hearing | 3 |

E X H I B I T S

(None)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:30 a.m.):

THE COURT: Good morning, ladies and gentlemen. My name is Jean Toal. I am a retired Chief Justice of South Carolina, serving in the senior active status as a circuit court judge, and I have been specially assigned the following matter: John Dong, M.D., Ph.D., Plaintiff, against the Medical University of South Carolina, Defendant. This is Case No. 2016-CP-10-06683.

I am conducting this status conference this morning with a court reporter here to make note of what we do. And let me explain, by way of preliminaries, what I'd like to have happen. The goal is to set a scheduling order that sets up everything that needs to be done to bring this case to a pretrial hearing on what might be or might not be dispositive pretrials motions, and then, depending on what happens with the motion hearings, to move on to trial. And I'll schedule all of that in the scheduling order that I will develop in the course and conversation with you.

The first thing I'd like to have done is for the plaintiff, whom I understand is appearing pro se, to introduce himself to the court reporter.

And, Dr. Dong, if you would do this for me: If you would introduce yourself for the record, state your address and your contact information by way of an email address and by way of a



1 cell phone. And I just tell you in advance -- I'll introduce
2 everyone here. This is my law clerk, Zitel Poswal. And I
3 will give y'all information about our contact information as
4 well so that everybody is on the same page.

5 So if you would stand and introduce yourself and give
6 your contact information.

7 DR. DONG: Yes, Your Honor. My name is John, J-o-h-n,
8 last name Dong, D-o-n-g. I currently reside at 71 Delahow
9 Street.

10 THE COURT: Say that again.

11 DR. DONG: 71 Delahow Street. D-e-l-a-h-o-w Street.
12 That's Charleston, South Carolina 29492. My cell number is
13 (843) 991-2332. My email address is j-o-h-n-y dot d-o-n-g at
14 me.com. That's more exclusive than --

15 THE COURT: Very good. Thank you, sir. You may be
16 seated.

17 Counsel, I want you to -- I take it you represent the
18 Medical University of South Carolina.

19 MR. CONLEY: I do, Justice Toal.

20 THE COURT: Glad to see you. Please introduce yourself
21 in the same way and give your name, your firm name and contact
22 information.

23 MR. CONLEY: Certainly. Just so the Court knows, I
24 shared all my contact information with the court reporter
25 while we were waiting in the hallway.

1 THE COURT: That's great. I just want to be sure it
2 appears on the record and that we take it down.

3 MR. CONLEY: Sure. So, my name is Bob Conley. I'm with
4 the law firm of Cleveland and Conley, and it's spelled just
5 like the city. Our address is 171 Church Street, Suite 310,
6 Charleston, 29492. The office number is (843) 577-9626. My
7 work email address is BConley, just spelled like my last name,
8 at Cleveland, like the city, laborlaw.com.

9 THE COURT: Great. Thank you very much.

10 What I'd like to do first is to find out -- I have looked
11 at the pleadings, and I'd like to find out from each of you --
12 and I'll start with you, Dr. Dong -- whether -- well, whether
13 there are any amendments you intend to make to the pleadings
14 and what your view is of what has happened in discovery, if
15 anything so far, with this matter and what kind of pretrial
16 motions you have filed or intend to file.

17 So if you would begin, sir.

18 DR. DONG: Yes, Your Honor. Actually, just give a little
19 bit background with the --

20 THE COURT: Certainly, that would be helpful.

21 DR. DONG: Okay. Thank you very much.

22 The basis of the lawsuit is based on at the time -- first
23 of all, I was the tenured full professor in Medical University
24 of South Carolina. The first appointment at the Department of
25 Immunology and Microbiology. Second appointment is the

1 Department biochemist -- molecular biochemistry, and I also
2 have an appointment at the Hollis Cancer Center as member. So
3 I was recruited from UCSF by then the director Ken Drewsen
4 (ph), come to Medical University of South Carolina.

5 THE COURT: When did you come to the Medical University
6 of South Carolina?

7 DR. DONG: I'm not quite sure. I think it was 2008 or
8 2009.

9 So among the conditions I did not know at the time was --
10 asked me to help the University, under the mundane of the
11 State, to sponsor biotechnology companies and to establish
12 high-paid jobs for South Carolina, especially for the interest
13 of MUSC is to provide job opportunities to the doctoral
14 graduates to be scientists, to have employment opportunity,
15 and, also, being the first duck landing in the pond, attract
16 other biotech companies to a beautiful environment and with a
17 company with high-paid jobs that there's no pollution and
18 actually to fit an environment.

19 At the request of then-president Greenberg --
20 Dr. Greenberg -- and, actually, I did use my contact in San
21 Francisco, brought investors, and they actually joined with
22 the science research foundation of MUSC. It was called FRD.
23 Set up a company. So I was asked to help the company as a
24 consultant to --

25 THE COURT: So they joined the foundation and then

1 established a company?

2 DR. DONG: MUSC established a foundation.

3 THE COURT: Well, I understand. MUSC has a science and
4 research foundation. In addition to that, these San Francisco
5 contacts of yours, did they establish a company?

6 DR. DONG: The foundation -- FRD, Foundation Research
7 Development, established company based on the contact I
8 brought in --

9 THE COURT: What was the name of the company?

10 DR. DONG: The name of the company is GenPhar, Inc.,
11 also, basically, the person who --

12 THE COURT: And GenPhar is capital G-e-n capital P-h-a-r?

13 DR. DONG: Yes, Your Honor.

14 THE COURT: All right.

15 DR. DONG: And the major investor was from Wall Street,
16 who handles billions of dollars in private fund. So the
17 company was founded eventually by his grant's college
18 associate personally with well over \$13 million. But -- and
19 also during this time, I was requested by MUSC to collaborate
20 with them. So I obtained contracts excessive -- more than --
21 I think about \$14 million, and there was also 20- or
22 \$30 million pending. On top of that, there was \$500 million
23 contract was also pending.

24 THE COURT: Contract with who?

25 DR. DONG: With the Department of Defense and as well as

1 NIH, Department of Human --

2 THE COURT: National --

3 DR. DONG: National Institute of Health.

4 THE COURT: Oh, Health. Right.

5 DR. DONG: Sorry.

6 During this time, I actually brought a lot of research
7 money, came with me from UCSF. So, start from there, I was --
8 of course, I'd like to be a productive member for the MUSC, so
9 I actively, at the request of then the vice chair, Jim Norris,
10 actively collaborate with him and many colleagues on the
11 campus, including David Cole, who came in assistant professor
12 at the time, and now, he's the president of the university.

13 So, long story short -- and I will try to help Dr. Norris
14 with his graduate student who was from Iran, could not
15 graduate, there was no publication, no scientific project. So
16 as a help -- I helped Dr. Norris transition from chemical
17 oncology to genetic-level oncology, which is cutting edge at
18 the time; namely, gene therapy.

19 So I helped each -- nine or twelve, his graduate
20 students, based on my research project, my genetic material,
21 and my funding, graduate. And, yes, they graduate the first
22 author because the research project was mine, I should be the
23 correspondent. But Jim Norris -- Dr. Norris always put
24 himself, which he has nothing to do with the actual project
25 other than being the mentor, long story short.

1 And he was the corresponding author, put me in the middle
2 or actually deleted my name completely and put one other
3 person working in my lab into the publication. It's critical
4 for publication is for any faculty member as professors that
5 is associated with future funding as well as career
6 advancement.

7 And, also, at the same time, because he not only use his
8 graduate student, basically, come to my lab, taking materials
9 -- genetic materials, documents, and everything, and also,
10 yes, they were learning from me, from my post-doctoral fellows
11 and the scientists in my lab, paid by me, but that was all
12 appeared to be logistic, but he's supposed to acknowledge me.

13 And, also, in the end -- so long story -- he not only
14 put -- took my genetic material and everything and completely
15 transformed my research project to become his, he also dipped
16 into my grants --

17 THE COURT: And the name of this person you're talking
18 about at MUSC?

19 DR. DONG: Dr. James S. Norris.

20 THE COURT: James S. Norick?

21 DR. DONG: Norris. N-o-r-r-i-s.

22 THE COURT: Norris. Okay. Got it.

23 DR. DONG: Right. He later become the chairman. And he
24 was holding my promotion for tenure and holding my salary.
25 Actually, he reduced my salary based on he's saying the only

1 thing -- he promote everybody around me to full professor with
2 a tenure, not me. I was associate professor at MUSC -- sorry,
3 UCSF, which was a more prestigious university, with promise I
4 will be named the center of gene therapy --

5 THE COURT: Well, you ultimately got tenure at MUSC; did
6 you not?

7 DR. DONG: Yes, I did, but that was -- but that was --

8 THE COURT: How long was it? You came in 2008. When did
9 you receive tenure?

10 DR. DONG: Only 2013 or --

11 THE COURT: That couldn't be right. The trouble started
12 before that. You would have had tenure --

13 DR. DONG: Oh, right. Sorry, sorry. 2010, '09. I'm
14 sorry.

15 THE COURT: So a year or a year and a half after you
16 came, you received tenure; right?

17 DR. DONG: No, no, sorry. I messed up. Actually, I came
18 in 1998. Sorry.

19 THE COURT: You came in 1998?

20 DR. DONG: Right. 1998. So, actually, I was confused
21 with the --

22 THE COURT: And you received tenure --

23 DR. DONG: In two-thousand -- 2010.

24 THE COURT: 2010?

25 DR. DONG: Right.

1 THE COURT: So that still seems kind of off in terms of
2 the timeframe. You received tenure 11 years after you came to
3 MUSC?

4 DR. DONG: Right. About ten years.

5 THE COURT: Okay. All right.

6 DR. DONG: And including assistant professor at the
7 department and being promoted to tenure of full professor.
8 Right. Sorry. I have a problem remembering dates.

9 THE COURT: Right.

10 DR. DONG: And that came from history when I was in
11 China. My family was persecuted by the Communist party,
12 including my father.

13 THE COURT: Well, let's get back to telling me what
14 happened to MUSC.

15 DR. DONG: All right. At the MUSC, basically one of
16 the defect, he criticize -- everything was --

17 THE COURT: Well, let's not try the whole case right now.

18 DR. DONG: All right. Sorry.

19 THE COURT: Your objection was Mr. Norris took your
20 publications and your grants.

21 DR. DONG: Grant money and research material and
22 equipment --

23 THE COURT: Okay. I got that.

24 DR. DONG: So, basically, everything I had, including
25 notebooks and technologies.

1 THE COURT: And when did that happen?

2 DR. DONG: That just -- it happened gradually during the
3 entire process. Right? In the end -- and then I realize,
4 even -- he was holding the -- basically the -- holding over me
5 is the -- if you don't do so, I will not promote you. So the
6 only thing I could not --

7 THE COURT: I get that.

8 DR. DONG: Right. So, finally, I have to raise the issue
9 with the -- actually, at the same time, he's raising issues
10 with the biosafety committees and everything. So I'm
11 basically constantly being involved with defend myself --

12 THE COURT: I got that. What then happens?

13 DR. DONG: Then, eventually, with help of his friend,
14 Dr. Stephen -- sorry, sorry. Could you remind me of the name?

15 MR. CONLEY: Talking about Dr. Lanier?

16 DR. DONG: Yes, Dr. Steve Lanier. With the help of Steve
17 Lanier, they basically shut down my lab. Well, one day,
18 before I know it, they closed down my lab, took all my --

19 THE COURT: Well, now, let's stop here for a minute. Was
20 that in the time period when the federal authorities began to
21 investigate your grants and programs?

22 DR. DONG: No.

23 THE COURT: Is that when the shutdown of your lab took
24 place?

25 DR. DONG: No.

1 THE COURT: Well, when did that occur?

2 DR. DONG: That occurred during the end of the pretense
3 biosafety.

4 THE COURT: What's that?

5 DR. DONG: Biosafety. So they said because they say I
6 brought in --

7 THE COURT: I'm asking what time period are we in right
8 now when your lab -- when they shut your lab down, as you
9 claim?

10 DR. DONG: I think it's almost two years before -- more
11 than two years before 2011.

12 THE COURT: Well, two years before we'll just say --

13 DR. DONG: Two years before signing the contract.

14 THE COURT: All right. Now, there came a time when you
15 signed a contract; right? A separation agreement?

16 DR. DONG: Yes.

17 THE COURT: And why was that?

18 DR. DONG: Right. When? Why?

19 THE COURT: What was the reasoning behind --

20 DR. DONG: Right. That's what I'm going -- just about to
21 go into. So they basically shut down my lab, locked the door,
22 changed the lock from me, changed the lock from the office,
23 and under the false tense, somebody stole genetic material
24 from my freezer.

25 Because, one day, I came to the lab, and I was blocked

1 from entering my lab, and then one of my student's facial
2 expression, something serious happened, and it turned out the
3 manager worked with Jim Norris was inside the lab supervising
4 people taking material out of the freezer and basically
5 completely blocked me from my genetic material, my research
6 lab and including --

7 THE COURT: Okay. I get your contention is that, at a
8 certain point in time, they took over your lab, locked you out
9 and so forth.

10 DR. DONG: Right.

11 THE COURT: Then you have a separation agreement after
12 that; right?

13 DR. DONG: That's what actually transpired too. So I
14 have to go through an attrition, finding the most two powerful
15 person over me because they did not --

16 THE COURT: Dr. Dong, let me get you focused a little
17 bit. I just kind of need the time frame. And this is very
18 helpful, so I'm not being critical at all.

19 DR. DONG: Yes, Your Honor.

20 THE COURT: But there came a point in time when you
21 signed, on May the 3rd of 2010, a final separation agreement.
22 And this final separation agreement, I take it, was signed
23 because of the federal investigation.

24 DR. DONG: That's not true. I'm sorry. That's --

25 THE COURT: All right. Well, then, tell me what happened

1 with this May 3rd --

2 DR. DONG: That is all before, actually, the
3 investigation happened. It's about a year after that. So
4 that was actually -- the reason the separation, because I
5 raised the issue with the -- actually, before that, I did
6 raise the issue with the attrition, mainly, Dr. John Greenman
7 who was provost at the time, and also actually was writing
8 letters to Dr. Greenman and also actually was writing letters
9 to Dr. Rick Greenberg to explain --

10 THE COURT: What this -- I really don't need every detail
11 of the interactions, and that doesn't mean you can't bring
12 them out in a later court proceeding. I'm just trying to get
13 an overall view of this thing of what the agreement says. It
14 doesn't tell us why and that's what I was asking. It simply
15 says that this is an irrevocable reservation of your tenured
16 faculty appointment, effective no later than March the 31st,
17 2012. This was signed in May of 2010. So it provides that, a
18 little less than two years after this agreement is signed, you
19 irrevocably resigned your tenured appointment. You retain
20 your faculty appointment until the effective date of the
21 resignation, which is about two years from the time you signed
22 this agreement.

23 DR. DONG: I wasn't challenging those.

24 THE COURT: Sir?

25 DR. DONG: I wasn't challenging those, but I did -- yes,

1 it --

2 THE COURT: Well, I mean, this is what it says.

3 DR. DONG: I understand.

4 THE COURT: It's got your signature on it and initials on
5 it.

6 DR. DONG: Yes.

7 THE COURT: All right. It says that your primary
8 appointment is in biochemistry with a secondary appointment
9 with microbiology and immunology. You will receive annual
10 evaluations, respond to critical inputs. The University
11 acknowledges you were primarily working off-site in the
12 Charleston area, and you agreed to do teaching and writing and
13 so forth and so on.

14 And, then, it says that you relinquished your future use
15 of the lab facilities, campus research laboratories and
16 resources, and it gives some other information, but it says,
17 "The University intends to equip a temporary vector core
18 facility insofar as the temporary relocation of that equipment
19 does not disadvantage the grant funded by other -- to research
20 of other faculty members."

21 And it says, "In lieu of rental payment for the space in
22 GenPhar building, the University will waive direct charging of
23 Dr. Dong's salary to any grants or contracts."

24 And it says --

25 DR. DONG: If I may summarize --

1 THE COURT: Well, it talks about relocating some of your
2 equipment and this sort of thing.

3 DR. DONG: There's a detail --

4 THE COURT: And it lists a lot of this stuff on here.

5 DR. DONG: Right. I think, first of all, why we signed
6 the agreement, because actually --

7 THE COURT: Well, you signed the agreement. That's all I
8 can look at. You signed it.

9 DR. DONG: Right. But the reason was proposed --
10 presented to me was, instead of fighting, it's going to take a
11 long process, because that was going to affect my career, it's
12 going to --

13 THE COURT: Well, I mean, that's what people do
14 sometimes. They resolve their differences in this way. So
15 you signed this agreement?

16 DR. DONG: Yes. I signed the agreement --

17 THE COURT: And you got outside legal --

18 DR. DONG: -- under the condition --

19 THE COURT: And you got outside legal counsel. The
20 agreement says that.

21 DR. DONG: I did not -- well, that's --

22 THE COURT: You signed an agreement --

23 DR. DONG: I signed it, yes.

24 THE COURT: -- that said you got outside legal counsel.

25 DR. DONG: Yes, Your Honor.

1 THE COURT: All right.

2 DR. DONG: All right. Okay. The reason they presented
3 to me is to give me a transitional period or cool down for me
4 to look for another job.

5 THE COURT: Right. It says that in the agreement, that
6 you'll be actively pursuing other appointments.

7 DR. DONG: While I continue my research off-site, they
8 transfer all my documents, material, genetic materials, and
9 equipment on the list to me so I can continue. That's the
10 critical part of it. If a surgeon without equipment -- a
11 surgeon without equipment cannot perform surgery.

12 THE COURT: We don't need to try the case now.

13 DR. DONG: Right, I understand. So what's breached of
14 the contract, first -- actually, I would add a claim because
15 of bad faith, because they presented to me as giving me a
16 cool-down period, transitional period, and they actually said
17 -- the wording as they have is the right to rehire me --

18 THE COURT: Well, what -- is the separation agreement, is
19 that the contract you saying was breached?

20 DR. DONG: Yes.

21 THE COURT: Okay. Now, is there any other amendment to
22 this agreement, or is this -- I think there's a letter.

23 After this agreement was signed and after -- but during
24 the period the agreement was still effective, during that
25 two-year period, a letter was sent to you dated September the

1 29th of 2011, and it says administrative leave. You,
2 apparently, were notified that you had been placed on
3 administrative leave with pay. And it says your -- the
4 administrative leave applies to all your responsibilities
5 until the March 31st, 2012, deadline for the end of the
6 separation agreement. Right?

7 DR. DONG: But that's not a letter I agreed with.

8 THE COURT: It's not a question of whether you agreed
9 with it. That's why we've got cases to try. I'm just looking
10 at the agreement, and it says in the agreement that, in your
11 separation agreement, you relinquished use of your laboratory
12 space at MUSC, agreed to relocate certain equipment to the
13 GenPhar building, "due to a change in ownership of GenPhar, we
14 have been unable to relocate the equipment, and it has
15 remained in a secure place on campus. As you know, the area
16 currently housing your laboratory equipment is scheduled for
17 renovation beginning October 2011." That would be shortly
18 after the date of this letter.

19 "Therefore, Scott Reed, in the Department of Biochemistry
20 and Molecular Biology will coordinate an inventory relocation
21 of your lab equipment and freezers to a secure location. Any
22 access to this material during the period of administrative
23 leave can be coordinated through Scott Marie with the
24 Associate Provost for Research."

25 So that is the action they took after your indictment

1 on -- and when was the indictment?

2 DR. DONG: That was not -- at least a year or two before
3 the indictment.

4 THE COURT: Right. If it was a year or two before that,
5 then it was right about the time you signed the separation
6 agreement. When in relation to the separation agreement were
7 you indicted?

8 DR. DONG: At least two or three years before --

9 THE COURT: No, that can't be right. That can't be
10 correct. The final separation agreement is signed the 3rd of
11 May 2010. This letter of September 2011 says that --

12 DR. DONG: Actually --

13 THE COURT: -- you have been indicted, and you're saying
14 that occurred a year before. So it sounds to me like it
15 occurred around the time of the separation agreement. I can
16 look and find the indictment here.

17 DR. DONG: Right. But, off my memory -- because the
18 trial -- there is a speedy trial, and I think the trial
19 started --

20 THE COURT: Well, if you were indicted around the time of
21 the separation agreement --

22 DR. DONG: No, that's not true.

23 THE COURT: Well, when were you indicted?

24 DR. DONG: I couldn't give you exact date, but I think at
25 least two or three years after all of this occurred.

1 THE COURT: Okay. The indictment -- this is the third
2 superseding indictment, and that is April the 16th, 2013.

3 DR. DONG: Right. So the agreement was signed in --

4 THE COURT: Right. Well, this says the unsealed third
5 superseding indictment. You apparently were indicted before
6 that and then you had superseding indictments. That's what
7 that generally means.

8 DR. DONG: Right, actually --

9 THE COURT: I'll get to you, Counsel. I'm not going to
10 go on forever with this, but --

11 DR. DONG: We can find the date of first indictment
12 because they --

13 THE COURT: Sir?

14 DR. DONG: We can find the date of first indictment --

15 THE COURT: And we certainly can, so I won't spend any
16 more time on that. It sounds to me as if the separation -- if
17 the indictment occurred then, as complicated as this thing is,
18 it probably was the result of some investigation that went on
19 for several years before that, and at some point in time, you
20 would have been contacted and MUSC probably would have been
21 contacted at some point before the indictment was released.

22 DR. DONG: I think that's all excuses. I'll get to it if
23 you allow me to --

24 THE COURT: I want you to really briefly summarize it,
25 but I want you to -- what I'm trying to figure out is when you

1 first knew that the federal government was investigating you
2 for what ultimately became an indictment and a conviction.

3 DR. DONG: Actually, the indictment -- head indictment
4 was sealed, actually, for a long time --

5 THE COURT: Before anybody knew about it.

6 DR. DONG: Right. So the indictment --

7 THE COURT: And the indictment was maybe sealed for a
8 couple of years; right?

9 DR. DONG: Right. So I did not know. There was nothing
10 going on other than there was -- also, there was -- the whole
11 thing was based on the qui tam lawsuit, based on what GenPhar
12 did, not me. I did not take a single dollar from GenPhar,
13 because I was pushed to conduct research --

14 THE COURT: Who was the qui tam action lodged against?

15 DR. DONG: Sorry?

16 THE COURT: Who was sued in the qui tam action? If
17 you're saying the indictment was the result of the qui tam
18 matter -- I'm familiar with what qui tam cases are. They are
19 civil attempts by the government to recover misappropriated
20 funds. Did the qui tam action name you?

21 DR. DONG: No. The qui tam was claimed the company
22 billed with the contract --

23 THE COURT: GenPhar?

24 DR. DONG: Yes.

25 THE COURT: And GenPhar was your company with others;

1 right?

2 DR. DONG: No. I was the consultant before I was pushed
3 into the company based on the contract because --

4 THE COURT: Let's go back to the start. The company was
5 started because of you and the --

6 DR. DONG: No.

7 THE COURT: -- grants you were going to get and the good
8 contacts you had in San Francisco and other places, and that's
9 how GenPhar got started; right?

10 DR. DONG: I was the -- provided, on behalf of MUSC --

11 THE COURT: Right.

12 DR. DONG: -- as a professor. I have no ownership in the
13 company --

14 THE COURT: I understand.

15 DR. DONG: -- except the FRD is part ownership. The
16 investors -- about 130 investors who put over \$30 million
17 there --

18 THE COURT: I understand.

19 DR. DONG: -- was the owner.

20 THE COURT: I understand.

21 DR. DONG: So I was trying to be the good faculty sponsor
22 technology, helping FRD to support the company. In the end,
23 actually because the fighting -- the big dispute over my
24 technology and money, and they pushed me to a cool-off period
25 of time, saying you can -- now you can completely go to

1 GenPhar, conduct your research for MUSC, getting grants. Once
2 you're getting more grants for MUSC, we'll hire you back,
3 bring you back to the campus.

4 So, actually, that was a promise given to me, although
5 they played word game in the agreement, because, at the time,
6 I was tired of it, for years of fighting with the chairman and
7 the --

8 THE COURT: Okay. I get all that.

9 DR. DONG: Right.

10 THE COURT: So, at a certain point in time, you say
11 during the time this contract -- the final separation
12 agreement was in force --

13 DR. DONG: Right.

14 THE COURT: -- and before it came to an end, your
15 contention in this lawsuit is that MUSC breached this
16 contract?

17 DR. DONG: But not transfer any of the genetic
18 material --

19 THE COURT: By not transferring any of your --

20 DR. DONG: Not transfer any genetic material, any of the
21 documents, any of the equipment.

22 THE COURT: Right, right, right. And all of that was
23 specified in a very long Exhibit A --

24 DR. DONG: Yes.

25 THE COURT: -- that's attached to the complaint.

1 DR. DONG: Right.

2 THE COURT: Basically, this is a breach of contract
3 action, as far as you are concerned, that contends that MUSC
4 violated this agreement by not transferring listed items that
5 they were supposed to transfer to who: To you or to GenPhar?

6 DR. DONG: To me.

7 THE COURT: To you personally?

8 DR. DONG: Right. Because, actually, that's -- the
9 reason is, I have agreement at GenPhar to allow me the space
10 to conduct my research on behalf of MUSC, use my genetic
11 material, grants, and the equipment, but they -- including my
12 document notebook.

13 THE COURT: I got it. I understand very clearly exactly
14 what you're saying. It's a breach because of the failure to
15 transfer to you personally listed equipment that was listed on
16 this agreement.

17 DR. DONG: Those are my equipment, actually.

18 THE COURT: And, at that time, your intention was to set
19 up your operation at GenPhar with this equipment; right?

20 DR. DONG: Yes, because --

21 THE COURT: In their physical -- they had a physical --

22 DR. DONG: In their physical space. I relinquish the
23 physical space, which is tight at MUSC. I understand that.

24 THE COURT: Okay. Let me just ask one question. That's
25 2010 when the agreement began. That was the idea that these

1 equipments would be transferred at the end of the agreement,
2 which would be 2012, with the agreement, and that equipment
3 would be transferred to you personally, and you would be at
4 GenPhar, operating with that --

5 DR. DONG: I understand, but they catch me in both --

6 THE COURT: That -- I'm just trying to figure out what
7 was breached about this. And this contract entitled you to a
8 trans- -- as you see it -- to a transfer of all this equipment
9 at the -- when the contract came to an end in 2012?

10 DR. DONG: I don't remember that, but if you're saying
11 that, but that was not represented to me at the time. How I
12 conduct my research on behalf of MUSC without equipment,
13 without document -- that contradicts itself -- using different
14 space.

15 THE COURT: It looks to me like the contract contains a
16 provision on page 3 that describes the material and where it
17 should be transferred, and your contention is that that
18 equipment was supposed to be transferred before the agreement
19 came to an end --

20 DR. DONG: So I can --

21 THE COURT: -- to the facilities at GenPhar; right?

22 DR. DONG: Right. Everything need to be transferred.

23 THE COURT: And that is or is not what the agreement
24 says. I'm saying that's what you contend it says.

25 DR. DONG: Unless how I conduct research on behalf of

1 MUSC at a different location without any equipment, without
2 documents?

3 THE COURT: And then what was going to happen after the
4 agreement came to an end and you were no longer with MUSC?

5 DR. DONG: No, actually, they played word game, but --
6 with it but --

7 THE COURT: I'm just trying to ask you what you
8 understood was what would happen to the equipment and --

9 DR. DONG: Those are my equipment I brought from UCSF.

10 THE COURT: So you would continue to retain the
11 equipment.

12 DR. DONG: That's my personal property.

13 THE COURT: And you would continue to be located at
14 GenPhar; right?

15 DR. DONG: That's correct.

16 THE COURT: That was your understanding of the agreement?

17 DR. DONG: My understanding is a transition period. They
18 used the word they will have right to rehire me, brought me
19 back to campus. That's actually presented.

20 THE COURT: Well, let's -- for goodness' sakes, let's not
21 get into that. Right now, we're just on the agreement and
22 what they did to breach it during the time you --

23 DR. DONG: Right. They did not transfer all the
24 essential materials for me to conduct my research, continue my
25 project. But, in fact, they took all my research projects,

1 continued being used by Dr. Norris.

2 THE COURT: Now, the letter that they sent you after you
3 were indicted was sent while the agreement was -- the
4 separation agreement was still in effect, and it put you on
5 administrative leave, and it said, "We have attempted to
6 relocate your equipment to the GenPhar building, but due to a
7 change in ownership, we have been unable to relocate the
8 equipment." What was the situation there?

9 DR. DONG: There was never change of -- there was never a
10 change of owner, but that's a long time after. So that's what
11 they tried to -- before the end -- first of all, I did not --
12 I do not remember that letter -- I received the letter. But,
13 second of all, there's no so-called ownership change, and
14 actually --

15 THE COURT: So it all --

16 DR. DONG: They never actually -- I repeatedly request
17 they never transferred my genetic material and the equipment.
18 The genetic material documents was supposedly given to me,
19 because that's how I conduct my research. So, basically, they
20 shut down my career cold.

21 THE COURT: Did you continue to have an office at
22 GenPhar?

23 DR. DONG: That has nothing to do with MUSC with my
24 career.

25 THE COURT: Well, I'm just trying to figure out where

1 would they have transferred the equipment, in your view, if it
2 was your equipment and should be transferred. If you didn't
3 have an office at GenPhar, where were they supposed to
4 transfer it?

5 DR. DONG: It's not office but research laboratory, yes.
6 We have research laboratory in GenPhar. And the GenPhar did
7 agree for me -- of course, they would be glad to, for me to
8 pay back as a professor and work on-site and have a better
9 collaboration scientifically.

10 So, GenPhar did agree to provide space for me to locate
11 the equipment at the --

12 THE COURT: And that's where it was supposed to be
13 placed?

14 DR. DONG: Right.

15 THE COURT: And they say they didn't place it there
16 because GenPhar changed ownership, but you say --

17 DR. DONG: No, GenPhar never changed ownership. GenPhar
18 always have the operational lab -- research lab.

19 THE COURT: Okay. Just one more question then: Did you
20 still have an office there?

21 DR. DONG: No. GenPhar actually closed down because of
22 the prosecution.

23 THE COURT: Well, then, in order for them to honor this
24 separation agreement, if GenPhar had closed down, where do you
25 say the equipment should have been transferred?

1 DR. DONG: That's years later, because I was stuck in
2 GenPhar without equipment, without being able to work on the
3 university --

4 THE COURT: Okay.

5 DR. DONG: -- without the opportunity to transfer to
6 another university with my research grant equipment. So my
7 career would be shut down cold.

8 THE COURT: Okay. I understand that.

9 DR. DONG: And that would give me no option. I end up
10 with GenPhar because, once they indicted GenPhar under the qui
11 tam, which is single procedure but managed by the ex-U.S.
12 attorney, who actually used his subordinate he promoted,
13 actually, criminally prosecuted GenPhar, and then they found
14 out we have to have a warm body --

15 THE COURT: Mr. Dong -- or Dr. Dong, we can go into all
16 these things in more detail at the proper time.

17 DR. DONG: Right.

18 THE COURT: I think I got the picture, though. GenPhar
19 was indicted just like you were indicted, and it had been shut
20 down. Right?

21 DR. DONG: It wasn't shut down until two years later.
22 Because, first of all, the indictment was not known for
23 another year or so.

24 THE COURT: I'm going to the time when you knew about it.

25 DR. DONG: When I knew about it, it was unsealed. When

1 it's unsealed.

2 THE COURT: Right. And that was 2011.

3 DR. DONG: No. The indictment in 2013 was sealed --

4 THE COURT: That's a superseding sealed indictment.

5 DR. DONG: The indictment -- they haven't --

6 THE COURT: This letter is dated September the 29th of
7 2011, and it said, after notification of your indictment by
8 then United States Government, MUSC is saying that, in 2011,
9 it got notification from the United States Government, the
10 federal authorities and the U.S. attorney, that you had been
11 indicted, and that is why they sent this letter saying we have
12 been trying -- we have tried to relocate this equipment, but
13 we're unable to.

14 GenPhar was indicted just as you were indicted; right?

15 DR. DONG: Right. But GenPhar is still operational at
16 the time, two years after that. So they had nothing to do
17 with not being able to transfer and also before that, nothing
18 to do with --

19 THE COURT: Well, it's just a big, factual controversy,
20 then, between the two of you about that, but I think I
21 understand what your position is about it.

22 All right. Then you go on forward. At some point, you
23 were tried. Apparently, you had a jury trial. You had some
24 reversals. You had a bench trial. You had some reversals,
25 and then you served, what, about six years or so?

1 DR. DONG: Five years.

2 THE COURT: Five years. All right.

3 And you had brought this lawsuit before you -- well, it
4 was after some of the activity in terms of your criminal side
5 was in place. When did you --

6 DR. DONG: I brought the lawsuit a year -- at least a
7 year before I know anything about the --

8 THE COURT: I gotcha. So your position is that breach of
9 contract action had to do with the time when neither you nor
10 MUSC knew that you were indicted or anything else, and they
11 violated that agreement before --

12 DR. DONG: Not before that. My indictment was
13 invalidate. As a result, they push me into off-site GenPhar
14 to conduct my research. So I was the only so-called warm body
15 in charge for GenPhar issue the fund for research for city
16 deal. So I was indicted the same, which I was just a
17 scientist being a consultant. So, actually, that's --

18 THE COURT: And, of course, I can't relitigate that.

19 DR. DONG: That's why, actually, we should not actually
20 touch the case --

21 THE COURT: Well, I think it looms as a factor in all of
22 this, but I can't retry that case, of course. The final word
23 has been spoken on that.

24 DR. DONG: But if you brought in the indictment as the
25 issue, which they use it as the issue after facts, which would

1 be --

2 THE COURT: Well, that's what we're going to --
3 apparently, that, itself, is a factual dispute.

4 DR. DONG: And then allow me to add in a claim because
5 they basically used this situation, pushed me into a company,
6 eventually end up with a problem, or they may knew there was a
7 problem --

8 THE COURT: So the bottom line of this summary is you
9 want to amend your complaint?

10 DR. DONG: Yes. Actually, after discovery, I need to
11 establish were my documents -- why my documents were seized to
12 begin with.

13 THE COURT: Okay. I understand that. Now --

14 DR. DONG: And where the documents were.

15 THE COURT: What discovery has taken place so far?

16 DR. DONG: Nothing. Actually, basically -- actually,
17 I'll say the discovery -- first of all, I followed the request
18 for production for documents. Right? Basically, MUSC denied
19 all the document with one line, was clearly --

20 THE COURT: Okay. You filed a request for production.
21 The defendant denied --

22 DR. DONG: Produce anything.

23 THE COURT: Production. All right. And then did you
24 file interrogatories?

25 DR. DONG: I haven't yet, because, actually, it was still

1 -- we're in the process to what can be produced, what cannot
2 be produced, and, so far, I can say the document was limited
3 under condition, can be extended at any time to --

4 THE COURT: You don't need to give me the explanation.
5 Just the one piece of discovery you have filed is a request
6 for production, and they have denied that; right?

7 DR. DONG: Right. The judge did agree conditional,
8 limiting the first counter for production to the
9 communications.

10 THE COURT: Was that Cothran's order -- Judge Cothran's
11 order, Counsel?

12 MR. CONLEY: Judge, the issue he speaks of was actually
13 addressed by two different circuit court judges.

14 THE COURT: Okay. I'll get to the history with you in
15 little bit. Thank you so much. All right.

16 So the request for production was denied. There has been
17 some judicial action on that issue. And I also understand
18 that this matter has been designated as trial not before
19 November 1st, and that is rapidly approaching. And I can tell
20 you, I'm going to sign a scheduling order that, first of all,
21 deals with all this discovery and sets some firm dates for
22 when things have to be proposed and answered by each party so
23 we won't have any confusion about that. I'm going to set that
24 today before I leave.

25 DR. DONG: Yes.

1 THE COURT: And, then, I'm going to set the trial date.
2 And I'm going to set it as soon as I possibly can. Now, the
3 trial may or may not take place, depending on what happens
4 with the motions, but I'm going to set all of that before we
5 depart from each other today.

6 DR. DONG: Yes, Your Honor. I think to actually smooth
7 out the process without a dispute --

8 THE COURT: Sure.

9 DR. DONG: -- I think it would be prudent for the Court
10 to issue a standing discovery order like this.

11 THE COURT: What do you have there?

12 DR. DONG: This is the standing discovery order. This is
13 issued by Judge Roger Young, but that's adopted by a number of
14 judges.

15 THE COURT: Would you hand that up to me and let me just
16 look at it?

17 DR. DONG: Yes.

18 THE COURT: I'll give it right back to you.

19 DR. DONG: No, actually, I will submit it. I'll file a
20 motion to adopt this order.

21 THE COURT: Okay. Well, that's -- you're just verbally
22 making that motion at this time. All right. This is Judge
23 Roger Young's -- this is his standing order.

24 DR. DONG: Right.

25 THE COURT: It's not specific to this case. It's his

1 standing order.

2 DR. DONG: Right. You can see the title.

3 THE COURT: And I will tell you right now that I intend
4 to make a specific scheduling order for this case. And I
5 thank you for giving me this. I'll certainly be guided by
6 Judge Young. I'm familiar with his standing order. It's a
7 good one. And I will be mindful of that. But in terms of the
8 deadlines and so forth here, we're going to talk about those
9 and deal with those today.

10 DR. DONG: Right. Actually, I have nothing against it,
11 but I was requesting, instead of stonewalling me on every
12 step, allow me to conduct discovery if they timely --

13 THE COURT: Well, they're going to have to do the same
14 thing. They're going to be allowed to conduct discovery as
15 well.

16 DR. DONG: Yes.

17 THE COURT: They may have some dispositive motion that
18 will be heard before that, which is their motion to dismiss.
19 I don't know exactly what they're going to say about that, but
20 you and I will find out, and then I'll tell you what I'm going
21 to do.

22 DR. DONG: Yes. I think that the normal process is
23 normal. First, discovery and mediation and dispositive --

24 THE COURT: Well, I don't know that we're going to file
25 all that normal process here. This case has been pending

1 since 2016. There's been a lot of exchange back and forth
2 about the case. I'm going to compress all that as much as I
3 can, because this case needs to be dealt with.

4 DR. DONG: I understand. But I think the schedule will
5 be --

6 THE COURT: Well, there's no sense in debating in the
7 abstract.

8 Let me hear first from defense counsel about his position
9 about the case, and then I'll talk to both of you about
10 scheduling. Okay?

11 DR. DONG: Yes, Your Honor. I would just state that
12 discovery is the -- assured of my constitutional rights --

13 THE COURT: Yes, sir. It's not a constitutional
14 provision. It's a practice and procedure. But, yes, we
15 follow it. A trial judge has the authority to set a special
16 scheduling order for any kind of case, and I'm going to do
17 that.

18 DR. DONG: Yes, Your Honor.

19 THE COURT: Okay. Mr. Conley?

20 MR. CONLEY: Good morning, Judge. I'm not sure where you
21 would like me to start. I don't want to go over what you have
22 already heard about.

23 THE COURT: The first thing, Mr. Conley, what would be
24 helpful is you-all have filed an answer, which is basically a
25 motion to dismiss -- a general denial and a motion to dismiss.

1 MR. CONLEY: That is correct.

2 THE COURT: All right. And that matter -- it's just been
3 filed, but it hasn't been briefed or -- at least I have not
4 seen anything to indicate exactly how we would proceed. A
5 motion to dismiss, as we know, is something that's based on
6 the pleadings. And I have not seen the traditional memo. I
7 would have to examine to see exactly what you contend about
8 the pleadings, looking at them in the light most favorable to
9 the non-moving party what would give me the basis for
10 dismissing it, just based on the pleadings.

11 Has something been submitted like that?

12 MR. CONLEY: It has not, Your Honor. And I think the
13 reason is, is because I think, collectively, my client and I
14 decided this case is more of a summary judgment case --

15 THE COURT: I agree with you.

16 MR. CONLEY: -- in light of discovery than it is a
17 12(b)(6) motion --

18 THE COURT: Sure.

19 MR. CONLEY: -- just based on the four corners.

20 So to go directly to your question, this is not a case
21 where we're going to pursue a 12(b)(6) motion.

22 THE COURT: Very good.

23 MR. CONLEY: I don't mind telling the Court that on the
24 record on behalf of my client and MUSC. So this is a case
25 that is a summary judgment case from a dispositive motion

1 standpoint, Judge.

2 THE COURT: All right. Now, very little has been done
3 with discovery, I take it.

4 MR. CONLEY: Let me give a small piece of background on
5 discovery.

6 THE COURT: Sure. Sure.

7 MR. CONLEY: So, at the outset of the case, on behalf of
8 MUSC, we served both interrogatories and requests for
9 production on Dr. Dong. Dr. Dong responded to those
10 interrogatories and requests for production. He produced both
11 documents and responded to interrogatories.

12 To my recollection, there was no motion to compel in
13 regard to Dr. Dong's responses. As he has indicated to you,
14 he, likewise, served MUSC with requests for production. Those
15 requests for production were subject to what I would call
16 various contested issues in what he was asking for in regard
17 to documents.

18 And I want to make sure I get my date right here, Judge.
19 In March of 2019, Dr. Dong actually filed a motion to compel
20 regarding MUSC's responses to his request for production.
21 That motion was heard by Circuit Court Judge Craig Brown out
22 of Florence. Judge Brown held a hearing. He actually ended
23 up holding two hearings, and I'll explain that in a moment.

24 Dr. Dong attended both of these hearings by phone. Of
25 course, he was in -- I'm not sure where he was incarcerated at

1 the time, but he was --

2 THE COURT: But, regardless, he was still in federal
3 custody.

4 MR. CONLEY: That is correct. But the Court made
5 arrangements for him to appear by phone each time.

6 The result of his motion to compel was that Judge Brown
7 issued an order that really contained two things in general,
8 Judge. One, it contained a very ex- -- fairly explicit
9 detailed order as to what MUSC was required to produce in
10 regard to documents, and in addition to that, what we were not
11 required to produce.

12 I don't want to be held to this, but my recollection is
13 it ended up being about somewhere in the nature of 500 pages
14 of documents, including in emails -- many emails and other
15 related documents.

16 THE COURT: So the required production was about 500
17 pages?

18 MR. CONLEY: Somewhere in that neighborhood. That's my
19 recollection, Judge.

20 Those documents were all produced to Dr. Dong. Even
21 though he was incarcerated at the time, we made arrangements
22 to be able to produce those to him and did produce those to
23 him.

24 Judge Brown's order also contained another component too.
25 A little unusual but Judge Brown determined it was the right

1 thing to do at the time. He also built into that order a
2 scheduling order because he even recognized that, even at that
3 point in 2019, obviously, the case had a lot of age on it
4 already. And so, in order to try and move it along, he put a
5 scheduling order into that order. So if the Court were to
6 look at his first order, it's got the motion to compel
7 component and the production of records, and it's also got
8 this component regarding scheduling.

9 The other thing that Judge Brown did in that order was he
10 built into the order that he was going to stay the case until
11 Dr. Dong was released from federal custody. MUSC filed a
12 motion to alter or amend that order with Judge Brown in only
13 one respect and that was his order that the case was going to
14 be stayed while Dr. Dong was in federal custody.

15 As a consequence of that motion to alter or amend, Judge
16 Brown issued a new order, and the only thing he changed about
17 the new order was he removed the stay component --

18 DR. DONG: Your Honor --

19 THE COURT: Just -- no -- I'll get back to you. Don't
20 worry. Just make a note of what you want to say, and I'll get
21 back to you. Just like I didn't let him interrupt, I'll treat
22 you the same way.

23 THE COURT: So Brown altered by removing the stay?

24 MR. CONLEY: Correct. So, in other words, what we were
25 left with at the end of Judge Brown's involvement, as I will

1 phrase it, was an order that ordered us to produce the
2 records, which MUSC did, and had the scheduling order that
3 applied going forward. And the scheduling order included the
4 typical things we would see, such as a discovery deadline, a
5 dispositive motion deadline. I think it has a mediation
6 deadline, and I believe it's got a trial before deadline, just
7 speaking from memory.

8 So that's what we operated under going forward. One of
9 the things --

10 THE COURT: Let me just interrupt you, Mr. Conley, to
11 say, I'm going to get you to prepare for me, before it's all
12 over, a little notebook that gives me all these orders.

13 MR. CONLEY: Sure. So we --

14 THE COURT: You operated under this order.

15 MR. CONLEY: We operated under Judge Brown's built-in
16 scheduling order, and when we got into early 2020, one of the
17 things that Judge Brown's order had in it was it had a
18 discovery deadline built in it that I believe was the end of
19 February of 2020.

20 We actually, in advance of that deadline, worked with the
21 federal correctional facility in Salter, South Carolina, where
22 Dr. Dong was at the time, to take Dr. Dong's deposition. It
23 was scheduled to occur at Salters, at the correctional
24 facility. It was all scheduled, set up. And in the days
25 before we were scheduled to go take Dr. Dong's deposition, he

1 filed a motion with the Court seeking to delay his deposition.

2 So as a consequences of him filing --

3 THE COURT: What was the basis?

4 MR. CONLEY: I don't have it in front of me, but I
5 believe the basis of his motion was something to the effect of
6 he wasn't ready to be deposed, he didn't feel like he had been
7 produced all the documents he was entitled to.

8 THE COURT: Right. Okay.

9 DR. DONG: Because of COVID, actually.

10 THE COURT: No, no. I'll get back to you.

11 MR. CONLEY: So that's --

12 THE COURT: Was COVID mentioned?

13 MR. CONLEY: To my knowledge, no, but if you look at the
14 dates, Judge --

15 THE COURT: That's right when COVID is striking.

16 MR. CONLEY: That's exactly right. It's within days of
17 that.

18 THE COURT: So that's not unreasonable that you would
19 have done that because of COVID. That's what I thought it was
20 going be, the end result, because a lot of what Craig Brown
21 put forward would have been interfered with, to some extent,
22 by COVID.

23 MR. CONLEY: It is, Judge, particularly anything with the
24 discovery deadline that ended the end of February because, as
25 we all remember, it's mid-February that COVID begins to raise

1 its ugly head.

2 So, yes, there is a COVID component there. Nonetheless,
3 the combination of Dr. Dong's motion, if you will, he files to
4 delay it and then, subsequently, COVID, where we couldn't even
5 go to Salters at that point -- I mean, there's just no -- it
6 was just shut down -- that just shut down the case, as best I
7 can put it, Judge.

8 Dr. Dong had also filed some other motions that I will
9 give to the Court in a notebook in the interim. He filed a
10 motion to expand the discovery period in January of 2020.

11 And so, in summary, we get into March of 2020 and the
12 courts are shut down, and Dr. Dong -- we can't really do
13 anything with the case without taking his deposition.

14 On September 2nd, 2020 -- so we're roughly seven months
15 later, Judge -- Dr. Dong filed a notice of change of address
16 indicating that he had, at that point, been released from
17 confinement at Salters and was back in his residence on Daniel
18 Island, living in, apparently -- I can let him speak to
19 that -- completing the remainder of his sentence.

20 Obviously, that was not unusual at that point that the
21 federal correctional system was releasing a lot of people at
22 that point to try and reduce capacity.

23 THE COURT: Yes. And that was September what?

24 MR. CONLEY: I think it was filed on or about
25 September 2nd, 2020, was when --

1 THE COURT: All right.

2 MR. CONLEY: We got notice by way of his change of
3 address that he was no longer in Salters.

4 THE COURT: Right.

5 MR. CONLEY: Three months, four months later on
6 January 11th, 2021, Dr. Dong filed a motion again to expand
7 the discovery schedule due to COVID-19, and on January 20 of
8 2021, he filed a second motion to compel production.

9 What occurred --

10 THE COURT: To expand production?

11 MR. CONLEY: Exactly. Both expand it, and as I'll get to
12 in a minute, sort of reinstitute his prior motion to compel
13 that Judge Brown had resolved a year and a half or so prior.

14 Those motions languished. Again, I don't like to blame
15 everything on COVID, but the fact of the matter is, it did
16 languish due to COVID.

17 And so, on December 13th of 2021, Judge Cothran heard
18 Dr. Dong's then pending motions, and the pending motions were
19 a motion to amend the discovery schedule and a second motion
20 to compel production, which the second motion to compel
21 production was, as I mentioned a minute ago, effectively a
22 renewal of his prior motion that Judge Brown had ruled on.

23 Judge Cothran held a hearing on December 13th, 2021, and
24 Dr. Dong appeared. I appeared on behalf of MUSC. The sum
25 result of that is a fairly detailed order. It's about eight

1 pages long that Judge Cothran issued. It really contains two
2 components. It's much like Judge Brown's prior order from
3 2019. The two only components are what I would call a denial
4 of -- a re-denial of Dr. Dong's motion to compel the
5 production of any further records. Judge Cothran said, "I'm
6 not ordering MUSC to produce any further records at this
7 point."

8 And, then, like Judge Brown, recognizing the case had
9 languished and recognizing the Court needed to do something to
10 sort of move it forward, Judge Cothran, like Judge Brown,
11 built in a scheduling order into it.

12 We conducted ourselves under that scheduling order, and
13 one of the components of it was a discovery deadline that
14 ended -- I think it's June 28th or 30th. The end of June,
15 I'll just put it, Judge Toal.

16 In mid-June, with that date approaching, I had scheduled
17 Dr. Dong's deposition, and it was scheduled in my office, and
18 Dr. Dong, of course, appeared for it. A court reporter was
19 there. That deposition never went forward, Judge. And the
20 reason it did not go forward was Dr. Dong asked if he could
21 record the deposition on his iPhone in addition to
22 the stenographic reporter that was there.

23 THE COURT: Our rules don't allow that. You have a
24 stenographic reporter. The reporter is to take it down.

25 MR. CONLEY: That was my position, Judge. Dr. Dong did

1 not agree with that at the time. I suggested, as I always do
2 in dealing with pro se plaintiffs, that we take a pause, and
3 he look at the rules or perhaps seek some legal advice on his
4 own. I did not want to debate him on what the rules required.
5 So what I agreed to do, in light of his position, was delay
6 his deposition once again.

7 So the other thing that happened in conjunction with that
8 is Dr. Dong, leading up to the June discovery deadline, had
9 served a number of deposition notices himself. I counted this
10 morning; it's 11 in total deposition notices. In general, he
11 had noticed most of all these depositions to occur by video,
12 meaning he wanted to videotape the deposition, not a virtual
13 deposition, but he wanted to videotape each deposition.

14 THE COURT: That's not provided for in the rules.

15 MR. CONLEY: And he also, Judge, wanted to -- the
16 deposition notices indicate that a number of them were
17 scheduled to take place at his residence, at his house on
18 Daniel Island.

19 Because of the issues that arose at his deposition in mid
20 June, as I described, and the issues that I had with his
21 deposition notices in regard to the 11 individuals he had
22 asked to depose, several who don't even work at MUSC any
23 longer and, I think, who live out of state, I filed a very
24 brief motion for a protective order simply to make sure I had
25 made a record of what was occurring with respect to these

1 depositions, which, since that occurred, Judge, nothing has
2 happened with the case. My motion for protective order has
3 remained pending and not heard, and that's where we are in
4 terms of discovery.

5 From my standpoint, as I mentioned a minute ago, Dr. Dong
6 has responded to our request for production and
7 interrogatories. We have not moved to compel anything
8 further. I need to take his deposition in the case.

9 THE COURT: That is the remaining -- from your
10 standpoint, you have received production and interrogatory
11 responses, and, from your standpoint, you need to take his
12 deposition.

13 MR. CONLEY: That is correct.

14 THE COURT: Right.

15 MR. CONLEY: And unless he were to tell me something at
16 his deposition that was, you know, sort of wholly unknown, I
17 don't know of anyone else I would need to depose in the case,
18 Judge. So, in other words, standing here this morning before
19 you, I only know of a single deposition I need to take in this
20 case, is Dr. Dong, with one footnote to that.

21 As I mentioned, there are several of these MUSC witnesses
22 who either don't work -- well, don't work for us anymore, and
23 some are no longer residing in South Carolina. It may be
24 necessary for me to take de bene esse depositions of one or
25 two of those individuals to make sure I have that testimony,

1 given their, over the years, since 2010, departure from MUSC
2 and moving on to other institutions or retired. So that's the
3 one caveat to what I would need to do.

4 But, to summarize that, I believe I can do that fairly
5 efficiently, and -- for the Court, I can do it fairly
6 efficiently. Again, I was prepared to take his deposition in
7 June, so taking his deposition now can happen right away.

8 THE COURT: So you can provide me with a list -- the
9 deposition of the plaintiff is one and possible de bene esse
10 depositions of several other MUSC former employees that are
11 not currently with MUSC?

12 MR. CONLEY: Correct. And live out of state.

13 THE COURT: And live out of state.

14 MR. CONLEY: Yeah, they're living elsewhere. One name
15 that comes up is Steve Lanier. That was mentioned by
16 Dr. Dong. My understanding is -- I mean, Dr. Lanier has been
17 gone from MUSC for probably close to a decade now, Judge. I
18 believe he lives up in the Northeast somewhere.

19 THE COURT: Right.

20 MR. CONLEY: That's just by way of an example.

21 And, then, of course, there's the depositions that
22 Dr. Dong wants to take, and --

23 THE COURT: Have you got a list with you?

24 MR. CONLEY: I do. I have a -- well, I printed out the
25 email that I had gotten from MUSC when I was asking them,

1 specifically, who is still active and who is no longer at
2 MUSC. There's 11 names. I counted it this morning. I think
3 all but three of the 11, most of them are still with us.
4 Those people are giving scheduling issues. For instance, he
5 wants to depose Dr. Cole. Well, as you might imagine,
6 scheduling Dr. Cole does take a little bit of time and effort,
7 just given he's the president of MUSC. So it's not as if he
8 can sort of be scheduled on a quick term.

9 Another one, by way of example, is Lisa Saladin. I
10 believe she's now the provost.

11 So there's -- you know, all of these people are fairly
12 senior people within the institution that he wants to depose,
13 so from my standpoint in trying to schedule these people for
14 him, that does take some time to try and find --

15 THE COURT: Yeah, I understand. And we're going to take
16 a look at this list and see what needs to be done about it. I
17 take it that, while Brown and Cothran dealt with issues, both
18 what could be and what could not be produced, no one yet has
19 dealt with the issue of who he can depose; correct?

20 MR. CONLEY: No. No one has dealt with that issue.

21 THE COURT: So that hasn't been dealt with yet.

22 MR. CONLEY: No, it has not.

23 And, then, the secondary issue that ties in to who he can
24 depose, Judge, there's the secondary issue of -- I believe
25 it's going to be in the Court's assistance in any kind of

1 order on putting some very clear constraints on what -- how
2 depositions have to occur.

3 As you noted a minute ago, there's a stenographic
4 reporter. You can't be recording the deposition on an iPhone
5 as well.

6 Dr. Dong, at some point -- I don't know if this is his
7 intent now -- at some point, he mentioned to me, when I was
8 speaking to him about what the rules require in terms of
9 video --

10 DR. DONG: Would you let me --

11 THE COURT: Dr. Dong, please do not interrupt counsel.
12 Thank you, sir.

13 MR. CONLEY: As the Court knows, under Rule 30, if you're
14 going to take a video deposition, it's a very methodical
15 process you have to go through to do that. You have got to
16 have specific people do the videography and that sort of
17 thing.

18 I don't know what Dr. Dong's intent on that issue is now,
19 but, at some point, he mentioned to me that he was going to
20 video those on his iPhone, and I simply indicated to him that
21 I did not believe, under the rules, that's something --

22 THE COURT: No, that's not the way we're going to conduct
23 any of these.

24 MR. CONLEY: What I don't want to have happen and I want
25 to guard against, to the extent we can, is once Dr. Dong and I

1 have depositions set that the depositions will occur and that
2 we're not going to have --

3 THE COURT: Another disagreement about how they're going
4 to be conducted. I agree.

5 MR. CONLEY: Correct, Your Honor.

6 THE COURT: I think that needs to be done.

7 MR. CONLEY: And the second component of that, I would
8 suggest -- and it's one of the reasons I suggested it to Judge
9 Young several few weeks ago, that a specific judge be assigned
10 to this case, is I think it might be helpful if, once those
11 depositions are set, if the Court were provided a list of the
12 dates and times that those depositions are going to occur, in
13 the event that something did arise that there might be an
14 opportunity to communicate with the Court in realtime to try
15 and resolve any issues so something doesn't have to completely
16 get rescheduled.

17 THE COURT: Yeah, I'm not going to attend all these
18 depositions for sure, and I have other trials that I have got
19 to deal with. This is not, by any means -- but just one of --
20 I manage the whole asbestos docket, and the mediator --
21 federal mediator in a big multi-district litigation case, so
22 I've got a pretty full schedule myself.

23 MR. CONLEY: That wasn't to suggest you attend. It was
24 to suggest that at least the Court were aware of when
25 depositions were scheduled.

1 THE COURT: Sure. So that, if an email or a text comes
2 to me saying we're having a disagreement, I can figure out a
3 way to resolve it.

4 MR. CONLEY: If you were available, you might be able to
5 resolve it on the spot so that we don't have to stop a
6 deposition and reschedule it.

7 THE COURT: Right. I understand.

8 All right. So that's kind of your point of view about
9 discovery. Do you have any recommendations about an actual
10 time schedule?

11 MR. CONLEY: Yeah, I have thought about that a little
12 bit, Judge. And I realize and I appreciate that the Court
13 wants to -- because of the age of this case -- wants and needs
14 to move it. You know, I always get concerned as we get into
15 November and December, it just becomes exceedingly hard.

16 THE COURT: Yeah, you have got seasonal holidays and
17 things of that nature.

18 MR. CONLEY: Sure. My general thought -- and I thought
19 in terms of discovery not really -- I mean, we can talk about
20 mediation and that sort of thing, but --

21 THE COURT: I can tell you about mediation, that I'm
22 going to retain very strict control over mediation and how it
23 occurs, because I am not going to have that turn into a
24 minitrial. That's not going to happen. If this thing can't
25 be mediated successfully, then we're going to recognize that

1 up front and not spin that out into something that prolongs
2 this thing.

3 MR. CONLEY: I understand. My suggestion --

4 THE COURT: But, of course, mediation won't even think
5 about taking place until close to the trial. What will happen
6 before that is a motion for summary judgment will be heard.
7 That's the way I run my docket.

8 In asbestos, sometimes I will have mediations occur
9 before summary judgment is actually heard, but that is only if
10 it's a real straightforward kind of thing. But, in this case,
11 I'm not going to put you through mediation before we hear this
12 motion for summary judgment. That's going to come first.

13 MR. CONLEY: Thank you.

14 My suggestion on discovery, given this is October the
15 4th, is that we consider putting a discovery deadline at the
16 end of February, and that may initially strike the Court as a
17 bit long but, again, my thinking on that is --

18 THE COURT: No, I think that's reasonable.

19 MR. CONLEY: I think if we put it at the end of February,
20 even accounting for holidays and that sort of thing, that
21 should be --

22 THE COURT: But coupled with that is going to have to be
23 -- the discovery deadline is the end of February, and then I'm
24 going to also consult the powers that be on when this can be
25 set for trial. And I'm going to set it for trial, and I'm

1 going to set a pretrial in the scheduling order so that
2 everything will be in there that needs to be in there to move
3 the case along. That's the one thing I can't do on my own as
4 I sit here today. I've got to consult and see what other
5 schedules are in Charleston to set a time to try the case.

6 MR. CONLEY: My other only suggestion to dovetail the --

7 THE COURT: But we don't need to just put an end to
8 discovery. We need to do some setting of specifics of
9 depositions, when they're going to take place and the like,
10 and we're going to start with Dr. Dong's deposition. That's
11 going to be the first one to be taken, and it's going to be
12 taken pretty immediately and it's going to be taken according
13 to the rules of Court, with a court reporter, and all of what
14 is required to have that deposition done. It's not going to
15 be somebody privately videoing or anything like that. That is
16 not permitted, and I'm not going to vary it from this.

17 DR. DONG: That's a misrepresentation --

18 THE COURT: Sir?

19 DR. DONG: That's a misrepresentation, Your Honor, on
20 the --

21 THE COURT: Right. Well, we're going to get to you.

22 But I'm just saying, Dr. Dong's deposition needs to be
23 set today before we leave here.

24 MR. CONLEY: Certainly.

25 THE COURT: Have you got a suggestion?

1 MR. CONLEY: I would suggest we have it sometime here in
2 October.

3 THE COURT: All right. I'm going to look at my calendar
4 right now.

5 Okay. What are you suggesting?

6 DR. DONG: Are you asking me, Your Honor?

7 THE COURT: I'm asking Mr. Conley first. I'm going to
8 come to you. I'm not going to set it based on what he says
9 without asking you, of course.

10 MR. CONLEY: Judge, I would suggest we do it the week of
11 October 17th mainly because I just settled a case at mediation
12 yesterday and a number of depositions that week have fallen
13 off my calendar. So the next two weeks --

14 THE COURT: Okay. Let me just tell you, in terms of my
15 availability. You know, I don't have to be there, obviously,
16 but my availability if some dispute arises.

17 MR. CONLEY: Sure.

18 THE COURT: October 17th or 18th are completely clear for
19 me. On October the 19th, I have a 3:00 conference call on the
20 National Law Enforcement accreditation group that I serve on.
21 We have our hearings for the accreditation for the agencies
22 I'm responsible for, 3 p.m. on the 19th.

23 And just to be safe about it, that generally takes a
24 couple of hours. I would just -- I'd X out the 19th. The
25 20th, I have a pretrial in two big asbestos cases. So that

1 week, the 17th would work for me, the 18th would work for me,
2 or the 21st would work with me.

3 MR. CONLEY: I suggest the 18th.

4 THE COURT: All right. That's a Tuesday.

5 I'm going to turn to you, Dr. Dong. October the 18th at
6 9:30 p.m. [verbatim].

7 MR. CONLEY: 9:30 a.m.

8 THE COURT: 9:30 a.m. in the offices of your law firm?

9 MR. CONLEY: Right. And I'll notice it just like we did
10 with the other one.

11 THE COURT: Now, let's turn to him and see if -- what he
12 feels about it.

13 Dr. Dong?

14 DR. DONG: That's agreeable, Your Honor.

15 THE COURT: Sir?

16 DR. DONG: That's agreeable, Your Honor.

17 THE COURT: That's great. Thank you so much.

18 All right. You then -- while we have got you up,
19 Mr. Conley -- I'm coming back to you for your discovery, of
20 course -- you also have a list of folks that are out of state
21 -- that no longer work for MUSC and live out of state that you
22 want to do de bene esse.

23 And let me just -- frankly, somebody with a Ph.D. and the
24 kind of education Dr. Dong has, I know I'm speaking to someone
25 of big education, so you probably know what a de bene esse

1 deposition is, but I'll put it on the record and explain to
2 you that that is a deposition to preserve testimony and that
3 is why he is going to wherever these people are located to
4 take that deposition. You can go and participate in that
5 deposition if you care too. We cannot video that and allow
6 you to participate by video unless we set up, under the rules,
7 for video depositions. My guess is that Mr. Conley will go to
8 where these individuals are to take the depositions.

9 Mr. Conley, I'm just going to ask you: How do you feel
10 about any video piece of this thing by Dr. Dong? Or do you
11 think he should have to be there? How many people are we
12 talking about?

13 MR. CONLEY: Yeah, I'm looking at the list now. There's
14 a couple of them I haven't verified where they are. It looks
15 to look me like I have -- it looks to me like I've got
16 somewhere from two to four who are no longer -- who are no
17 either -- who are both no longer at MUSC --

18 THE COURT: And not in South Carolina.

19 MR. CONLEY: -- and appears to live out of state. So
20 there's either two or four.

21 THE COURT: Where are they, do you know?

22 MR. CONLEY: One of them, I know, and I mentioned
23 Dr. Lanier. I believe Dr. Lanier is somewhere in the
24 Northeast perhaps. I think the last time maybe he was at
25 Wayne State. I'm not sure where Wayne State is.

1 THE COURT: Wayne State's in Detroit.

2 MR. CONLEY: Then I believe that's where Dr. Lanier still
3 is.

4 The others, I am not for sure, and I've asked MUSC to
5 inquire about that, but I don't have a response back yet. One
6 person is just a former grants administrator of MUSC, and
7 she's, I think, maybe retired now, and I'm not sure where
8 she's living.

9 THE COURT: Okay. Two to four, you're going to have to
10 let us know, and we would then be able to deal with de bene
11 esse.

12 How do you feel about his videotaped appearance if it's
13 done according to the rules of videotaping?

14 MR. CONLEY: Sure, Judge. I have no problem if he wants
15 to attend by way of Zoom or some virtual platform. We can
16 make that arrangement so he could attend.

17 THE COURT: Okay. You feel comfortable about arranging
18 some kind of virtual platform where he could attend?

19 MR. CONLEY: That's correct.

20 THE COURT: And I will explain the rules of the road
21 about depositions before we leave here today to make sure
22 everybody understands how those matters are conducted.

23 All right. Now, what other depositions besides the de
24 bene esse and the deposition of Dong? Anything else?

25 MR. CONLEY: He's got somewhere from six to seven other

1 depositions that he's asked to take of MUSC personnel who, to
2 my knowledge, based upon information I got yesterday, are
3 still at or associated with --

4 THE COURT: All right. And what are the names?

5 MR. CONLEY: So one of them is Mark Sothman. And that's
6 Sothman.

7 THE COURT: S-o--

8 MR. CONLEY: --t-h--

9 THE COURT: --t-h--

10 MR. CONLEY: --m-a-n.

11 THE COURT: --m-a-n.

12 MR. CONLEY: James Norris, who Dr. Dong spoke about.

13 He's also asked to take the deposition of a Michael
14 Schmidt. And that last name is S-c-h-m-i-d-t.

15 He also asked to take the deposition of Steven -- and
16 that's Steven, S-t-e-v-e-n --

17 THE COURT: -p-h-e-n?

18 MR. CONLEY: S-t-e-v-e-n.

19 THE COURT: And what's the last name?

20 MR. CONLEY: The last name is Tomlinson.

21 T-o-m-l-i-n-s-o-n.

22 He's also asked to take the deposition of a Christina --
23 and that's C-h-r-i-s-t-i-n-a. And I'm not sure I'm going to
24 pronounce the last name correctly.

25 THE COURT: Spell it.

1 MR. CONLEY: I think it Voelkel. V-o-e-l--

2 THE COURT: All right. Say it again.

3 MR. CONLEY: V as in "Victor," o-e-l-k-e-l hyphen
4 Johnson.

5 THE COURT: Okay.

6 MR. CONLEY: He's also asked to take the deposition of
7 Dr. Cole, who is the president of MUSC. And he's also asked
8 the take the deposition of Lisa Saladin. And that's
9 S-a-l-a-d-i-n, who, I think her current position is the
10 provost.

11 THE COURT: All right. Is that it?

12 MR. CONLEY: Based on the notices that he had previously
13 given, that's it, Judge. I think that's a total of 11 I
14 counted this morning.

15 THE COURT: There's seven there and then the de bene
16 esses would take it up to 11.

17 MR. CONLEY: Yes.

18 THE COURT: All right. Now, let's talk about how those
19 depositions will be conducted. They are not going to be just
20 conducted at his residence. I'm not going to have any kind of
21 confidence that that kind of location would entail -- and I'm
22 going to make the suggestion -- and you don't have to do it if
23 your firm can't accommodate it, but I would prefer to have all
24 these depositions taken Williams & Conley. Or not Williams &
25 Conley; that's the one in Washington. Cleveland and Conley.

1 MR. CONLEY: Judge, I believe, at some point, I already
2 suggested that perhaps just verbally to Dr. Dong, at some
3 point, he is welcome to take his depositions at our office, in
4 our conference room.

5 THE COURT: I think that's the better way to do it. All
6 right. Set up the conference room. If there's need to attend
7 by virtual, you're set up to do that. That's what I would do.
8 And y'all are amenable if he is?

9 MR. CONLEY: Absolutely. He's welcome to take these
10 depositions at our office.

11 THE COURT: Okay. Now, is there anything else by means
12 of -- when would you, then, think, if we could get these
13 depositions -- the rest of these depositions taken? End of
14 February is going to be a trial target. These depositions
15 need to be taken very soon, here in the fall, and not run into
16 Christmas, if you can avoid it.

17 MR. CONLEY: I guess what I was -- and maybe I misspoke.
18 I think what I was thinking when I said the end of February --

19 THE COURT: Is the deadline for discovery?

20 MR. CONLEY: Exactly, Judge.

21 THE COURT: So you would anticipate some taken now and
22 some taken after the holidays?

23 MR. CONLEY: That's correct, just because I think some of
24 these would be more easily scheduled --

25 THE COURT: That's fine.

1 MR. CONLEY: -- than others.

2 THE COURT: I'm amenable to that.

3 MR. CONLEY: But I had full cooperation of MUSC's
4 in-house counsel to get these scheduled for depositions,
5 whether it's this case or any other I might be involved in.
6 So that coordination --

7 THE COURT: And, then, that would mean something -- if I
8 can arrange it -- something in a -- would then have a summary
9 judgment hearing after that. And then mediation to trial, if
10 we're going to do mediation.

11 MR. CONLEY: Sure. In my mind, I equate -- I do so much
12 work in federal court, Judge, I was sort of thinking along the
13 lines of, you know, typically in federal court, a scheduling
14 order might have a discovery deadline, and, then, what I'm
15 accustomed to dealing with is a dispositive summary judgment
16 deadline that's 30 days after that discovery deadline.

17 THE COURT: Yes.

18 MR. CONLEY: Because that allows adequate time to prepare
19 the motion and the brief but also to get in any straggler
20 transcripts or anything like that. So I'm thinking,
21 generally, if we had a discovery deadline at the end of
22 February --

23 THE COURT: At the end of March would be the time for
24 submission of summary judgment motions and, of course,
25 adequate time for Dr. Dong to answer those summary judgment

1 motions, and then I would schedule a summary judgment -- a big
2 pretrial hearing. If that's the end of March, then I'd
3 probably set a pretrial hearing -- of course, he has ten days
4 to respond to a motion. So he would have ten days or whatever
5 to work out about that.

6 I could then have, at the end of April, a hearing and
7 then try for sometime in early May for trial. I generally
8 like pretrial, and if you're going to mediate, it's going to
9 be one day, some day shortly thereafter. If it can't be
10 mediated, presuming the trial is going forward, we'd try it in
11 May.

12 Okay. That just at least gives me the framework to look
13 at it as I mark down in setting these things. And, again, I
14 can't do what I really love to do and announce it from the
15 bench this morning, but I will attempt to very quickly after I
16 consult with various court administration in Charleston County
17 to see when I can set these various things.

18 Okay. Let's go back to you, now, Dr. Dong, and let's
19 talk about the discovery. First of all, I take it that the
20 end of February for a discovery deadline is suitable?

21 DR. DONG: Yes, Your Honor.

22 THE COURT: Good.

23 DR. DONG: Under the condition they do provide the
24 documents.

25 THE COURT: Well, he says he's given you all the

1 documents these orders require.

2 DR. DONG: That's why I was going to respond.

3 THE COURT: Okay. Well, why don't we do that first.

4 Tell me what he's not given you that the orders of Judge Brown
5 and Judge Cothran entitle you to have.

6 DR. DONG: Right. Okay. Under the rules, actually
7 Judge --

8 THE COURT: Can you just hold on for a minute? I'm not
9 refusing to let you go forward.

10 Mr. Conley, do you happen to have a copy of those two
11 orders?

12 MR. CONLEY: I have a copy of -- I have a copy of one. I
13 may have a copy of both. Actually, I do have a copy of both.

14 THE COURT: I'll give them back to you.

15 MR. CONLEY: No, that's fine. May I approach?

16 THE COURT: You certainly may. Thank you so much.

17 MR. CONLEY: So the top one is Judge Brown's order.

18 THE COURT: All right.

19 MR. CONLEY: The second one is Judge Cothran's order.

20 DR. DONG: May I --

21 THE COURT: If you'd just give me a moment, Dr. Dong, and
22 let me just take a peek at these.

23 (Pause in the proceedings while the Court reviews
24 documents.)

25 THE COURT: Okay. I have now read both of these orders,

1 particularly the part that deals with discovery, and what I
2 understand from Judge Brown's order is that he limited the
3 scope of discovery -- of materials to be produced by the
4 defendant as follows:

5 "The First Request for Production to the defendant.
6 Plaintiff's First Request for Production to the defendant, the
7 scope of discoverable materials shall be limited to relevant
8 documents generated or created no earlier than April 1, 2010.
9 Either party may, at any time prior to the discovery deadline,
10 for good cause, petition the Court to expand its limitation."

11 Then, in responding to Plaintiff's First Request for
12 Production to the defendant, the scope of discoverable
13 materials shall further will be limited to relevant documents
14 generated or created by or sent to or received from Dr. Dong;
15 Mark Sothman, Ph.D.; or Steven Lanier, Ph.D. Either party
16 may, at any time prior to discovery deadlines, for good cause,
17 petition the circuit court to expand this limitation as
18 discovery progresses."

19 So those are the two categories Brown limited for
20 production to Dr. Dong by MUSC. This was an order filed on
21 October the 4th, 2019. And, then, Judge Cothran filed an
22 order on February the 7th, 2022, earlier this year, and he,
23 again, looked at the scope of discoverable materials. And he
24 says this: "On October the 14th, 2019, consistent with Judge
25 Brown's orders, MUSC produced documents to Dr. Dong. Dr. Dong

1 did not subsequently move to further compel production under
2 Judge Brown's October 4th, 2019, order or otherwise assert
3 MUSC failed to comply with Judge Brown's October 4th, 2019,
4 order concerning the documents produced. Instead, Dr. Dong,
5 in January 2020, filed his motion to expand discovery and
6 serve Plaintiff's Second Request for Production. On March 18,
7 2020, MUSC served its responses to Plaintiff's Second Request
8 to Production.

9 "As noted in MUSC's responses to Plaintiff's Second
10 Request to Production, Plaintiff's Second Request to
11 Production are subject to objection and rejection by the Court
12 for two particular reasons: First, Dr. Dong did not obtain
13 leave of the Court to request materials beyond those expressly
14 required by Judge Brown's prior orders; however, even if
15 Dr. Dong's Second Request for Production can be viewed as
16 implied and requesting the Court's permission to request the
17 materials beyond expressed parameters in Judge Brown's October
18 4th, 2019, order, the Court denies Dr. Dong's request.

19 "Dr. Dong, neither in his submission to the Court nor his
20 arguments at the December 13th, 2021, hearing, provided
21 sufficient basis, reason, or good cause for expanding the
22 scope of discovery.

23 "Moreover, and importantly, the request contained in
24 Plaintiff's Second Request for Production are the very same,
25 i.e., identical or virtually identical requests, contained in

1 Plaintiff's First Request for Production, being the request
2 previously ruled upon by Judge Brown in his October 2019
3 order. In particular, Request for Productions 1 through 16 --
4 Request to Production 1 and 16 through 40 in the Plaintiff's
5 Second Request for Production are also in the Plaintiff's
6 First Request for Production. In other words, 26 of the 40
7 requests contained in Plaintiff's Second Request for
8 Production that Dr. Dong moves to compel MUSC to respond to
9 were previously reviewed and limited by Judge Brown in his
10 October 4th, 2019, order.

11 "Finally, even in respect to the remaining 14 requests
12 being Requests 2 through 15 that do not appear to be identical
13 to those contained in Plaintiff's First Request for
14 Production, the noted request seek the very same broad
15 materials sought by Dr. Dong's in Plaintiff's First Request
16 for Production.

17 "For the reasons stated, and based on the submission of
18 the parties and the arguments presented at the hearing on
19 December the 13th, 2021, Dr. Dong's second motion to compel is
20 denied."

21 And that is signed by R. Farrell Cothran, Jr., Circuit
22 Court Judge, filed February the 7th, 2022.

23 Now, based on that, Dr. Dong, I am not going to vary from
24 these previous judges' orders. I am going to take the same
25 position that they took. So, on the issue of production, I

1 find that MUSC has produced to you all of what is required by
2 the orders that I have just read from.

3 DR. DONG: Could I just briefly comment on --

4 THE COURT: Yes, you can comment, but I tell you, when I
5 rule, I rule. The rules say, when I rule, there's no further
6 argument. You can comment very briefly, but I don't want to
7 spend time on something that has already been decided by two
8 judges before me.

9 DR. DONG: I understand. The first order, actually,
10 Judge Brown's order issued -- granted a motion to compel, asks
11 MUSC to --

12 THE COURT: And it limited the production to the things
13 that were contained in Judge Brown's order --

14 MR. DONG: Your Honor --

15 THE COURT: -- and it said that a motion to expand could
16 be made. It didn't say it would be granted. It was made, and
17 Judge Cothran, for the reasons I just read and put on the
18 record out of his order, denied your second motion to compel.

19 Your first motion to compel was granted on a limited
20 basis. They produced what was granted by Judge Brown's order.
21 Now, you came back and asked Judge Cothran to expand that. He
22 denied that motion. I am not going to vary from that.

23 DR. DONG: Actually, if Your Honor may, let me just make
24 a comment of what my concern was. First of all, the -- Judge
25 Brown did granted the motion to compel --

1 THE COURT: Please don't repeat what you just said about
2 Judge Brown's order. I just read the whole thing.

3 DR. DONG: No, that's the second order. Under the
4 conditions, what they presented was --

5 THE COURT: That is the effective order, the one I just
6 read from -- by Judge Craig Brown. That is the order that
7 decides the limitations on production. He did not change that
8 in any respect. That was his order. And Judge Cothran chose
9 to follow that order.

10 DR. DONG: I would make a brief comment. Judge Cothran
11 did comment, granting extension of the --

12 THE COURT: The dates are not what I'm talking about.

13 DR. DONG: That actually was under the order to -- they
14 submitted a proposed order, but all of the things that was
15 discussed was not discussed in the courtroom, was not --

16 THE COURT: I don't need what was discussed in the
17 courtroom. The judge signed an order. That is what is before
18 me.

19 DR. DONG: Right. And that's --

20 THE COURT: And that order limited the production in two
21 ways, that I just read into the record.

22 DR. DONG: I understand.

23 THE COURT: And MUSC produced those materials, about 500
24 pages. Then you moved to compel for the second time and asked
25 to expand beyond Judge Brown's order. And Judge Cothran heard

1 argument on that, and he denied your motion.

2 DR. DONG: That's actually the -- I would just comment:

3 That's the motion subject to motion for reconsideration and

4 was denied -- I think was denied just a couple of days ago.

5 And, actually, based on the rule, the prior discovery is one

6 of the top reasons for interlocutory appeal --

7 THE COURT: No, let me tell you, I sat on the Supreme

8 Court for 27 years. Discovery matters are not directly

9 appealable. You can appeal them after the case is over. If

10 you lose, that can be a grounds for appeal, but you cannot

11 immediately appeal that or stop this trial or anything else.

12 That's what the rules provide. And I'm real familiar with

13 them. I have practiced for 27 years on that Court.

14 DR. DONG: I understand that.

15 THE COURT: So, if I'm wrong about that, you'll just note

16 that for any future use of any appeal you take from what

17 happens with this case, but no, sir, the discovery limitation

18 is effective, it's been ruled on by two judges. I choose, as

19 the third judge, to handle this matter to follow what they

20 have ruled, and we're not going to discuss that matter

21 anymore. They have produced what these judges required that

22 they produce, and that's the end of it in terms of production

23 of documents. Do you understand?

24 DR. DONG: I understand what Your Honor is saying --

25 THE COURT: And you cannot directly appeal that to the

1 Supreme Court. If you try that, they're going to deny it.
2 But you can't stop these proceedings by appealing a discovery
3 motion.

4 DR. DONG: My reading -- excuse me, sorry. I'm not
5 trying to argue, but my reading was, the interlocutory appeal
6 is something depriving discovery --

7 THE COURT: It's a grounds for appeal, Dr. Dong, when the
8 case is appealable at the end of the whole case. It is not
9 immediately appealable, meaning you cannot go and appeal it
10 right now and have it be heard and stop these proceedings. It
11 doesn't work that way. You can note it, and it can be a
12 grounds for appeal if you lose this case.

13 If you win this case, you won't care. If you lose this
14 case, it can be an ultimate grounds for appeal. But it is not
15 a grounds for stopping these proceedings. We're going to go
16 forward with the trial on the limitations of the documents
17 that two judges have ruled upon. Do you understand?

18 DR. DONG: I understand what you're saying.

19 THE COURT: Very good. All right.

20 Now, let's turn -- now, we've got the document production
21 out of the way, let's turn to these depositions. Now, we've
22 got yours scheduled. Your deposition is scheduled October the
23 18th, 2022 at 9:30 a.m. in the offices of Cleveland and Conley
24 here in Charleston, and you are amenable to that, and I
25 appreciate it and thank you for it.

1 Now, we come to -- and that's the only deposition he's
2 taking other than the preservation of testimony, de bene esse
3 depositions. Let's talk about those next.

4 He will go to the location of where these witnesses are
5 and he will take their deposition, but he will allow you to
6 participate by Zoom.

7 Now, let me explain something to you about that. You
8 cannot interrupt these witnesses. You cannot try to stop the
9 deposition. This is a preservation of testimony. If there
10 are problems that you have with that deposition, you may
11 present those to me after the deposition is concluded and it's
12 typed up and you have a copy of it and can look at it. If
13 there are objections that you have, you don't have to note
14 those objections at the time; you can make those objections on
15 the record afterwards. But during the Zoom, you will be
16 listening to him preserve the testimony. Do you understand
17 how that works?

18 DR. DONG: I understand.

19 THE COURT: And that's not something - you're familiar
20 with that? That's not something that is a problem for you, as
21 long as you have good information about participating by Zoom.

22 DR. DONG: I don't know if Zoom changed the situation
23 because I was supposed to raise objections during the
24 deposition.

25 THE COURT: No, sir. You do not raise depositions --

1 objections during the depositions. The rules of discovery are
2 clear about that. And it's really a good thing for an
3 objecting party. You can look at this thing after it's typed
4 up and scrutinize it and you can then make your objections.
5 The only thing you can object to is the form of the question,
6 which is rarely done because that doesn't have anything to do
7 with what information is coming in.

8 DR. DONG: Yes, Your Honor.

9 THE COURT: So you're completely protected in terms of
10 objections, and that is why it's not permitted to put
11 objections on the record during a deposition. But you have
12 got the full ability to do that afterwards, and you certainly
13 will be listened to by me on your objections to anything that
14 goes on in those de bene esse depositions. Do you understand
15 that?

16 DR. DONG: Yes, Your Honor.

17 THE COURT: All right. What I would suggest with these
18 de bene esse depositions, Mr. Conley, is that you propose --
19 copy me, please, on anything y'all are doing with each other.
20 You propose to Mr. -- to Dr. Dong how you're going to line up
21 these depositions, and he's going to cooperate with you as
22 best he can, of course. And I detect that about him; he's
23 going to be cooperative. I don't think there's any problem
24 about that.

25 You know, if he's got some pressing medical appointments

1 or something else that interferes, he'll tell you. And
2 Mr. Conley is a very accommodating lawyer. So he's going to
3 work with you on developing a schedule for these two or four
4 depositions. And those will be the first ones you're taking,
5 and those you can probably get done pretty quickly after your
6 own deposition.

7 And, then, we have got the live depositions of these
8 seven witnesses. And I'm just going to read the names on the
9 record again. That is Mark Sothman, James Norris, Michael
10 Schmidt, Steven Tomlinson, Christina Voelkel-Johnson, Dr. --
11 what is Dr. Cole's first name?

12 DR. DONG: David.

13 THE COURT: David?

14 DR. DONG: Yes.

15 THE COURT: David Cole. And Lisa Saladin.

16 MR. CONLEY: Yeah, Saladin.

17 THE COURT: Saladin. Very good.

18 All right. And what Mr. Conley will do for you is this
19 -- and this is probably the easiest way to set this up. He
20 will communicate with these folks to see when their
21 depositions will be taken. I think he'll do that promptly.

22 DR. DONG: And, also, give me some time to arrange the
23 stenographer.

24 THE COURT: The stenographer part of it. And they'll be
25 taken at the offices of Cleveland and Conley. And please pay

1 attention to the fact that this has to be a certified court
2 reporter. You know the rules about who can take -- what kind
3 of court reporter can take a deposition.

4 DR. DONG: There's no dispute over that.

5 THE COURT: Very good.

6 So y'all will work together and get up a schedule of
7 these depositions. Some of them may not take place, I
8 understand fully, until after the first of the year. So we
9 have a February deadline, end of February, February 28th or
10 29th, whichever it is, for it -- for all discovery to be
11 concluded. So you-all, within that time frame, work out
12 yourselves how to take the depositions.

13 DR. DONG: If they can actually provide a --

14 THE COURT: Sir?

15 DR. DONG: If MUSC can provide the proper date --

16 THE COURT: Exactly. And they'll do that for you.

17 They'll be set out, you know, in an orderly way during the
18 time period we're talking about from now in October until the
19 end of February. We'll set them up and get them taken and so
20 forth.

21 DR. DONG: Thank you, Your Honor.

22 THE COURT: I would very much like to be advised of these
23 deposition dates so I can target my calendar in case I need to
24 be available. I pay close attention to my phone and to texts
25 and this kind of thing, and I'll try to be as available as I

1 can whenever any of these matters are taken care of.

2 DR. DONG: Your Honor, one more thing.

3 THE COURT: Yes, sir.

4 DR. DONG: Actually, Mark Sothman --

5 THE COURT: Mark Sothman?

6 DR. DONG: Sothman, correct.

7 THE COURT: Yes, sir.

8 DR. DONG: The reason I never -- I do know -- I did not
9 know him, I just know him by name, the reason is, I was taking
10 his deposition in case he knew something about it, he was not
11 directly involved, but the MUSC request my communication
12 limited to him. He has nothing to do with it.

13 So a judge, actually Cothran, made comment during the
14 hearing and said you can go ahead and do the deposition. With
15 the new deposition, you can decide what document you're going
16 to require.

17 THE COURT: I'm not going to get into any more documents
18 than what documents have --

19 DR. DONG: Correct.

20 THE COURT: So, please --

21 DR. DONG: So I can -- can I actually substitute Mark
22 Sothman with another -- with another witness?

23 THE COURT: Who is it?

24 DR. DONG: Just anybody --

25 THE COURT: No, no. We're going to decide the witnesses

1 right now today, so you need to tell me --

2 DR. DONG: With his time slot, I will provide them --

3 THE COURT: No, no, no. You've got to provide -- if I'm
4 going to strike a witness that was identified as the witness
5 before, I'm not going to let you substitute them unless you
6 tell me who it is now so that I will know --

7 DR. DONG: Semyon Rubinchik.

8 THE COURT: Sir?

9 DR. DONG: Dr. Semyon Rubinchik. R-u-b-i--

10 THE COURT: R-u-b-i--

11 DR. DONG: --i-n-c-h--

12 THE COURT: V?

13 DR. DONG: C.

14 THE COURT: C.

15 DR. DONG: H-i-c -- i-k. C-h-i-k. Yes.

16 THE COURT: All right. I'm going to hear from Mr. Conley
17 on the subject of whether you can do that. It's well beyond
18 the notice of -- we're not into complete discovery. We're not
19 into adding to discovery at this point. That's been set.

20 So I'm going to have to inquire of Mr. Conley as far as
21 striking Sothman and adding Rubinchik as something he will
22 agree to; otherwise, I'm not doing to do it. So hold there
23 for a minute.

24 Mr. Conley?

25 MR. CONLEY: Judge, I don't know anything about this new

1 witness he's identified, but with that said, I don't have a
2 problem with him telling us today he's not going to take Mark
3 Sothman's deposition and he wants to take this other
4 individual's.

5 What I will tell the Court is, as I was able to
6 articulate some of these witnesses, where they are, whether
7 they still work for us or whether they're elsewhere, I don't
8 know anything about this witness.

9 THE COURT: Who is this person, Dr. Dong?

10 DR. DONG: He was the person -- he worked for me in my
11 laboratory, and he was named associate director of gene --

12 THE COURT: Where is he now?

13 DR. DONG: I think he moved to Chicago. I think actually
14 in the University of Chicago.

15 THE COURT: So that would have to be a de bene esse
16 deposition.

17 Can you answer today or do you want to give me an answer,
18 Mr. Conley?

19 MR. CONLEY: Again, I don't have a problem giving you the
20 answer today, Judge. We're going to substitute this doctor
21 for Dr. Sothman.

22 THE COURT: Okay. Very good. It's done.

23 DR. DONG: Thank you, Your Honor.

24 THE COURT: We will strike Mark Sothman and we will add
25 Semyon Rubinchik.

1 DR. DONG: Correct.

2 THE COURT: All right. That's done.

3 DR. DONG: Thank you, Your Honor.

4 THE COURT: Now, let's see --

5 MR. CONLEY: Judge, the only thing I want to be clear
6 about is we're striking Sothman as somebody who is going to be
7 deposed. I'm not striking him -- he's not being struck as a
8 potential witness.

9 THE COURT: Oh, I understand. We're simply doing
10 depositions and trying to set that up. This is discovery. We
11 get the witness list way on down the road. Okay.

12 Here's what I want to do now. It's 11:25. Our court
13 reporter has been very patiently taking all this down. I
14 would like to take a break and get the documents that both
15 sides have given me copied, which I can get done while I take
16 a break, and let y'all take a break, and then we'll come back
17 and conclude our hearing and see what else we've got left that
18 needs attention. Is that suitable to everyone?

19 DR. DONG: Yes, Judge.

20 MR. CONLEY: Yes.

21 THE COURT: Let's take a 15-minute recess, and we will
22 reconvene at a quarter of.

23 MR. CONLEY: Judge, if you'd like some kind of a notebook
24 put together --

25 THE COURT: I would very much.

1 And, of course, Dr. Dong, please understand that anything
2 Mr. Conley gives me by way of a judge's notebook, you'll be
3 supplied with a copy of it, of course.

4 MR. CONLEY: That's correct.

5 THE COURT: But, yes, that would be very, very helpful.

6 And the same is true of you, Dr. Dong. If there are
7 things that you have that will assist me before we move
8 forward, certainly, you may have them.

9 And just for the record, let me give you my contact
10 information. Do you need an extra sheet of paper? I got it
11 one.

12 DR. DONG: I got one. Thank you.

13 THE COURT: Okay. It's Chief Justice Retired Jean,
14 J-e-a-n, middle initial H, last name Toal, T as in "Thomas,"
15 T-o-a-l. My P.O. Box is P.O. Box 12456, Columbia, 29211.

16 I have chambers in the Richland County Courthouse, but
17 lawyers quite frequently mail me or deliver to me at my home,
18 documents, so I'm going to give you my home address, and I'll
19 be happy to -- if something is just so big you don't know if
20 it's going to fit in a mailbox at the post office, it will be
21 mailed to my home, which is, 2418 Wheat Street, W-h-e-a-t
22 Street, in Columbia. The ZIP is 29205.

23 Now, my email address is JToal@sccourts.org. And my cell
24 phone I use for everything -- and don't mind y'all having it;
25 and I can be texted or called -- (803) 530-0457.

1 And let me explain to you what you'd be using these
2 contact points for. If you contact me, you'll always let the
3 other side know that you've contacted me by copying the email
4 and copying the mail. If you text me, you'll be sure that
5 they know you've done that. It's probably better that I not
6 receive phone conversations except for just technical matters,
7 in other words, not communicating about rulings on the case or
8 things of that nature, because everybody needs to be included
9 when I do anything in that regard.

10 But all my lawyers at home will know all my contact and
11 it facilitates getting things to me since I am supposedly
12 part-time active but seems like I'm more active sometimes than
13 just part time.

14 But, in any event, that information is yours to make use
15 of as you need to.

16 DR. DONG: Thank you.

17 THE COURT: Okay. I'm going to take a little break.

18 (A brief recess was taken at 11:32 a.m. to 11:57 a.m.)

19 DR. DONG: I gave the wrong name is Semyon Rubinchik
20 twice. Sorry. It's a different spelling. It's S-e-m-y-o-n.
21 S-e-m-y-o-n.

22 COURT REPORTER: Thank you.

23 (Pause in the proceedings.)

24 THE COURT: Thank you for your indulgence. I'm sorry to
25 delay, but that's where I was, just saying hello to Julie, the

1 clerk of court, Julie Armstrong, who was one of my right hands
2 when I was chief. She came by to visit for a moment, so I'm
3 sorry for the delay, but that's where I was, just saying hello
4 to her.

5 Okay. It looks to me like -- and I spoke with her. She
6 said she can make a May date happen for trial and she can
7 certainly accommodate pretrial hearings in April or so. I
8 think we've just got to look at the schedule that Court
9 Administration gives me. I will select something very, very
10 shortly. Let me just ask on the front end: Is there anything
11 that you two know now that you have planned in May?

12 MR. CONLEY: I do not, Judge.

13 THE COURT: How about you, Dr. Dong?

14 DR. DONG: I have nothing planned.

15 THE COURT: Wonderful. Well, the sooner I get this to
16 you, then, the better, because you can then plan around those
17 kind of dates. So I will get that plugged in pretty quickly.

18 So I almost think we're done in terms of having a
19 schedule of how we go. We have got discovery going until the
20 end of February. We have got Dr. Dong's deposition set.
21 We've got a plan of action for deposing the other witnesses,
22 both the out-of-state ones and the in-state ones.

23 You'll get me the schedule when you have it and who is
24 going to be deposed when. I'll plug that into my calendar in
25 case I need to be reached, and I will let you know if any of

1 those dates coincide with other things I'm doing so you'll
2 know kind of where I am if I'm needed.

3 I have ruled on the discovery matters, and we now know
4 that discovery of documents is complete. All right. Not to
5 everybody's satisfaction, but discovery of documents is done.
6 So discovery -- interrogatories are done. So all we're
7 talking about in discovery --

8 DR. DONG: I haven't submitted interrogatories.

9 THE COURT: What's that?

10 DR. DONG: I have not submitted interrogatories yet
11 because all the delays in the --

12 THE COURT: You have not submitted interrogatories --

13 DR. DONG: Correct.

14 THE COURT: -- to MUSC?

15 The time for submitting interrogatories has long since
16 passed, even under expirations. Why have you not?

17 DR. DONG: Because, actually, all the other issues has
18 been complete --

19 THE COURT: Okay. Well, let's talk right now about
20 interrogatories. The interrogatories are really one of the
21 first things you do in a lawsuit. It doesn't really depend on
22 all these other issues that develop. But let's just...

23 Mr. Conley, what were the deadlines on interrogatories?

24 MR. CONLEY: The most recent deadline under Judge
25 Cothran's order, June 30th --

1 THE COURT: I mean, that was the deadline. It doesn't
2 depend on any other discovery matters, Dr. Dong.

3 DR. DONG: That was not the deadline, my understanding --

4 THE COURT: Sir?

5 DR. DONG: Your Honor, what's the June 30th deadline?

6 MR. CONLEY: Judge, June 30th was --

7 THE COURT: Sir?

8 MR. CONLEY: June 30th, 2022, was the discovery deadline
9 set by Judge Cothran.

10 THE COURT: By Farrell Cothran. That's what --

11 DR. DONG: He extended it.

12 MR. CONLEY: So other than depositions which this Court
13 has allowed -- as I understand it, I should say, my
14 understanding is you have allowed the extension of the
15 discovery deadline --

16 THE COURT: For these depositions.

17 MR. CONLEY: -- so take these depositions.

18 THE COURT: That's correct.

19 MR. CONLEY: Any interrogatories and that sort of thing
20 should have been done by June 30th. There would have been no
21 -- that I know -- there would have been no impediment to
22 those.

23 DR. DONG: That's not in the order.

24 THE COURT: Sir?

25 DR. DONG: There is no statute of limitations --

1 THE COURT: No, this is not a statute. This is --

2 DR. DONG: That order was --

3 THE COURT: Dr. Dong, scheduling orders are orders that
4 schedule and define the dates for things to be done in
5 pretrial discovery. In Charleston, they do it in a standing
6 order of Judge Young -- I mean, yeah, from Judge Roger Young,
7 that talks about preparation for discovery and things of that
8 nature.

9 In this case, discovery has been set several different
10 times with deadlines not just for depositions but for
11 interrogatories and production. Brown did it the first time.
12 Brown did a modification. And, then, Farrell Cothran, in
13 December of this last year -- I think that was -- or February
14 of this year, set the dates one more time for the completion
15 of discovery, and that date was June of 2020 -- June 30th of
16 2022.

17 That doesn't change -- there's no other rule that changes
18 that. An order of the Court is an order of the Court. And
19 when the order is made, that is the deadline. That's why you
20 had to get those things changed. That's why you moved to
21 reschedule.

22 So I don't understand what you're saying that you don't
23 understand that was the deadline.

24 DR. DONG: Actually, that was -- all the delays was
25 because they filed a motion or, actually, filed a motion was

1 not hearing way past the deadline before actually the pending
2 motion was dealt with, and also, none of the deadline came due
3 to maturation because the very issue, MUSC refused to produce
4 the document, and I was asking --

5 THE COURT: MUSC -- I'll repeat one more time -- has not
6 refused to produce documents. The same discovery orders we're
7 talking about now that deal with deadlines for
8 interrogatories, set limitations on the production that MUSC
9 was required to make. There's no dispute of things they
10 didn't give you. They have given you everything that is
11 required they give you pursuant to two judges' orders, and I
12 have denied your motion to expand that.

13 So production of documents is complete. And the same is
14 true on depositions and on interrogatories or any other
15 discovery mechanisms. Cothran set some deadlines. Y'all have
16 moved to expand those deadlines with respect to these
17 depositions, and I have set depositions and a new deposition
18 date, which is February -- end of February of next year.

19 There has been no motion by you to expand the
20 interrogatory deadlines. So I don't understand how that is --
21 you can't just kind of decide, "Hey, once I take these
22 depositions, I'm going to go back and take some more
23 interrogatories."

24 DR. DONG: How about the amendment of the complaint?
25 Actually, that was supposedly --

1 THE COURT: The amendment of the complaint can only be
2 made if I grant your motion to amend your complaint. If you
3 amend your complaint, which you have not done so far --

4 DR. DONG: And that has to be based on information that
5 I'm getting through the discovery.

6 THE COURT: Well, I may or may not grant your motion to
7 amend.

8 DR. DONG: I understand that. I understand that.

9 THE COURT: But that's something you'll have to do at
10 that time. But with respect to your interrogatories, the time
11 has passed for the interrogatories.

12 DR. DONG: Thank you, Your Honor.

13 THE COURT: All right. Mr. Conley, anything further?

14 MR. CONLEY: I do not. Thank you, Judge.

15 THE COURT: Here what's I want done: I would like an
16 order that reflects the deadlines we just talked about to be
17 prepared by you, Mr. Conley, with a copy to you, Dr. Dong.

18 Dr. Dong, when you get this proposed order, if it does
19 not comport with what you think I ruled in this hearing, you
20 let me know immediately. I am not going to sign anything
21 until I have received your comments, and then we'll have
22 something that's in the record. That's the main thing I was
23 is to have something that's on file so that, when you look
24 your case up, you'll see exactly what's going to happen. And
25 that is going to depend on these -- scheduling of these

1 depositions. And I'd like that to be in the order.

2 So it's going to be a couple of days before -- or maybe a
3 little bit more than that before Mr. Conley can give us some
4 information about when these things can be scheduled.

5 So, Mr. Conley, what I'm taxing you with is, after you
6 have completed the consultations you need to see how the
7 de bene esses can be scheduled and how the in-persons can be
8 scheduled, then you will prepare an order with regard to them.
9 Separately from that and -- gotten to us more immediately --
10 is the general order for the deadline for discovery, the
11 pretrial, the fact that a pretrial will take place, the fact
12 that a mediation will take place, the fact that a trial will
13 take place, and the months that those things will take place,
14 and I will plug in the deadline -- the actual dates as soon as
15 I get that information.

16 So the first thing is just a general outline of the
17 schedule, and then, the second thing is, once you get the
18 listing of all these witnesses and exactly when the
19 depositions can be scheduled, then -- and that's going to take
20 some consultation with him because Dr. Dong is going to be the
21 one to do the question-asking for his witnesses that are MUSC
22 people. You'll coordinate when those are going to take place.

23 And I suggest this, Dr. Dong: Let him get some times
24 from these people when they can be available, consult with
25 you, and then we can get it plugged in in a way that suits

1 both of you. But, Mr. Conley, I think, will work with you to
2 make that happen.

3 DR. DONG: That's fair, Your Honor.

4 THE COURT: And we'll go from there. But that will be a
5 separate order.

6 And I just do that, frankly, to protect y'all. I mean,
7 these witnesses are not voluntary witnesses by any means, but
8 an order from me saying that their depositions will be taken
9 pursuant to this agreed-upon schedule, I think, will protect
10 everybody. So that's what we'll do.

11 DR. DONG: Yes, Your Honor.

12 THE COURT: Anything further, Dr. Dong?

13 DR. DONG: Not at this time, Your Honor.

14 THE COURT: Thank you so much.

15 DR. DONG: Thank you.

16 THE COURT: Anything further, Mr. Conley?

17 MR. CONLEY: No, Judge. Thank you very much.

18 THE COURT: All right. Gentlemen, I appreciate your
19 attention in these details, I appreciate the very professional
20 way you have conducted yourself in these proceedings, and I
21 promise you, I'll try to meet your standard of professionalism
22 in how I conduct our hearings and the trial of this case.

23 Thank you so much. This matter is adjourned.

24 (At 12:09 p.m., the above hearing concluded.)

25

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) Case No.:2016CP1006683
)
Jian-Yun Dong,)
)
 Plaintiff,)
)
 v.)
)
Medical University of South)
Carolina,)
)
 Defendant.)
) May 26, 2023

TRANSCRIPT OF MOTION

BEFORE THE HONORABLE JEAN HOEFER TOAL
Special Acting Circuit Court Judge, presiding

APPEARANCES:

For Plaintiff: Jian-Yun Dong, M.D., Ph.D.
 Pro Se

For Defendant: Robert Conley, Esquire
 Attorney at Law

Transcribed by:
Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
P.O. Box 2812
Greenville, S.C. 29602

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NO.

DESCRIPTION

ID EV

(No exhibits offered.)

P R O C E E D I N G S

1
2 **THE COURT:** All right. Please be seated.

3 Dr. Dong?

4 **MR. DONG:** Thank you, Your Honor.

5 **THE COURT:** Yes, sir.

6 **MR. DONG:** Before I start to address MUSC's
7 motion for summary judgment, I have a couple of
8 issues of my own I would like to present to the
9 Court.

10 **THE COURT:** Okay. Speak up so we could all
11 hear you.

12 **MR. DONG:** Yes.

13 Before I start addressing the summary
14 judgment filed by MUSC, I have a few issues I
15 would like to present to the Court and to at
16 least put on record.

17 First of all, I understand Your Judge --
18 Your Honor already denied my motion for
19 continuance, but I'd like to say, under due
20 process, I -- I'm entitled to be heard. And
21 also, the reasons for continuance also have
22 implications for the following response. With --
23 with -- with regard to MUSC's claim, there was
24 no evidence provided, no depositions taken, no,
25 actually, affidavit provided. And all of this

1 because the strict -- the strict timelines,
2 short timelines set at the request by MUSC
3 without any conference -- status conference to
4 get report from both side with regard to the due
5 process progress.

6 And secondly, I would like to request the
7 Court to give me leeways and latitude in
8 presenting my case and following less stringent
9 standard and -- in term of scheduled deadlines
10 as well as the content, for -- for better way to
11 say it. I can quote numerous cases from Supreme
12 Court to Appellate Court of United States as
13 well as the appellate court -- Court of Appeals
14 of South Carolina.

15 Give me a minute. I can try to locate the
16 -- the cases and also as well as provide by the
17 Court -- South Carolina's Rule of Civil
18 Procedures. Particularly, actually, even the
19 one at issue, Rule 56. There is actually
20 clearly statutes when the party cannot provide
21 affidavit of sufficient evidence, the Court may
22 order continuance for this affidavit -- for this
23 affidavits to be obtained or depositions to be
24 taken or discovery to be had. One may take --
25 one may make such order as a judge.

1 So actually there's -- rules of discovery
2 as assured by due process, arbitrary timelines
3 is at the Court's convenience after due process
4 has been satisfied. So there is plenty rulings
5 from Supreme Court down to Court of Appeals of
6 South Carolina. The due process interests
7 overweigh the deadline -- (inaudible) deadline
8 interest of the Court, even when the deadline is
9 authorized by statute. But the scheduling order
10 is not authorized by statute, is at the
11 discretion of the Court when the due process has
12 been fully satisfied.

13 Actually, I can read some of the -- with
14 your permission, I can read some of the cases --
15 cite some of the cases from Supreme Court as
16 well as to -- they are circuit courts as well as
17 due process -- the Court of Appeals of South
18 Carolina.

19 All right. In Haines versus Kermer --
20 Kerner, H- --

21 **THE COURT:** Spell that for me, please.

22 **MR. DONG:** H-a-i-n-e-s versus Kerner, K-e-
23 r-n-e-r.

24 **THE COURT:** All right.

25 **MR. DONG:** It's 404 U.S. 1- -- 119.

1 **THE COURT:** All right.

2 **MR. DONG:** In this case, the United States
3 Supreme Court held proceeds -- pleadings should
4 be held with less stringent standards than those
5 drafted by attorneys, it says contact. And also
6 this extent to the entire presentation and
7 process in prosecuting her case. The Court
8 explains pro se complaint, however inartfully
9 pleaded, must be held less stringent standards
10 than formal pleadings drafted by lawyers.

11 In *Estelle versus Gamble*, E-s-t-e-l-l-e
12 versus Gamble, G-a-b-l-e [sic], 429 U.S. 97, in
13 this case, Supreme Court held that pro se
14 pleadings in civil rights cases should be given
15 certain degree of latitude in presenting their
16 cases. And there's -- there's at least four,
17 five, six cases I don't have too.

18 In *Erickson versus Pardus*, E-r-i-c-k-s-o-n
19 versus P-a-r-d-u-s, 5- -- 551 U.S. 89, in this
20 case, Supreme Court reaffirmed the principal
21 that pro se pleadings should be held less
22 stringent standards than those drafted by
23 attorneys. And the Court stated pro se
24 complaint must be -- complaint must be literally
25 construed and held to less stringent standards

1 than formal pleadings drafted by lawyers. And
2 there is also rulings literally construed means
3 even in the pleaders do not artfully represent
4 the case, the Court has to consider as if the
5 pleader for why they write argument, because
6 based on the issue the pleader raised. And
7 actually there is also specifically regarding to
8 the procedural latitude.

9 In *Rand versus Rowland*, R-a-n-d versus R-o-
10 w-l-a-n-d, 154 Fed. 3d Edition, 592, this is
11 Ninth Circuit. In this case, Ninth Circuit
12 Court of Appeals held pro se litigant should be
13 held to the -- should not be held to the same
14 stringent standards as attorneys with respect to
15 procedural requirements such as filing
16 guidelines. Actually, this echoed in many
17 cases.

18 The Fourth Circuit, which is more relevant
19 to -- to this circuit, also held that pro se
20 litigants should be given leeway in complying
21 with procedural rules and guidelines,
22 particularly where the litigant is incarcerated,
23 but this does not apply here, as well has
24 limited access to legal resources. But as the
25 layman is well-established rules by Supreme

1 Court. And no matter how much education the
2 person may have, would not be able to comprehend
3 the --

4 **THE COURT:** What's the name of the Fourth
5 Circuit case?

6 **MR. DONG:** All right. Sorry.

7 *Anderson versus Angelone*, A-n-d-r-s-o-n
8 [sic], A- -- versus A-n-g-e-l-o-n-e, 86 Fed 3d.
9 Edition, 932. It's Fourth Circuit, 1996.
10 Tracing this, particularly, there's plenty
11 rulings. The pro se pleadings should not --
12 layman should not be asked for following -- or
13 should give leeways to in term the deadlines
14 with -- even with the statute authorization, for
15 example, the appeal -- appellate deadlines,
16 because the due process overweigh the procedural
17 deadlines.

18 So in -- in this case, actually, the
19 overall scheme of the entire case is the
20 defendant set up the limitations for discovery,
21 limiting the scope and the timeline, for
22 example, as ridiculous as limiting discovery
23 only to e-mail from or to the plaintiff during a
24 certain period of time. That's unheard of.
25 Absolutely no legal basis for -- for the

1 defendant to ask the Court to limit the scope of
2 discovery. And then they follow it by limiting
3 the time for discovery. So everything --
4 there's a scheduling order. That order has not
5 -- not been able to change. But at the expense,
6 the plaintiff cannot conduct discovery. For
7 example, in this case, the notice deposition --
8 we did not abandon the notice deposition.
9 That's after a series of delay, give me -- give
10 me very little time. Then, I have
11 uncontrollable situations.

12 I had to file the motion to extend the
13 discovery. The motion was clear denied without
14 state a rule or a reason. And basically,
15 because the -- it's complex, where the very
16 issue we're talking is the scheduling order.

17 So -- and also with regard to protection
18 order, when I filed the protection order with my
19 eye surgeries, I will -- I will not be able to
20 schedule my eye surgery with both my eyes just
21 to cause delay for the -- for filing report of
22 summary judgment. And I was trying to -- with
23 my eyes and the operation, actually, I still
24 feel sand in my eyes, but my vision is a day-
25 and-night different after surgery. But I could

1 not -- right now, it's getting a lot better. I
2 could not open my eye for a long period of time
3 because I feel the sand in my eyes, and any
4 blinking will cause hurt, irritation, and
5 tearing. So I had to close my eye for a period
6 of time. So I have not followed -- did much
7 reading. And especially I'm a pro se pleader, I
8 have not been able to read and write effectively
9 without my -- my vision fully restored.

10 And then, I can address the issue -- to
11 save time, address the issue of breach of
12 contract. All right. And that's -- yes,
13 summary judgment. Okay. Summary judgment,
14 based on Rule 56, has to be supported by
15 pleadings, evidence, and interrogatories, and
16 most importantly, affidavit. The defendant
17 claimed the plaintiff does not have affidavit
18 and did not file any memorandum. It's not
19 without trying. Because I was given a short
20 time. And during the time, I was not able to do
21 so and have a half-way finished memorandum
22 prepared. But I was preparing it until I got
23 into surgery, and then I could not do it.

24 And also the timeline was at least 10 days
25 -- not 10 days. MUSC asked for 10 days. The

1 Court first deadline granted for 10 days. And
2 after the -- although the Court changed the date
3 of hearing after -- in essence, granted the
4 motion for protection, but only give me one day
5 after protection to come to this hearing. So
6 actually I was -- if I'm protected during the
7 period of time, I'm not able to attend any legal
8 proceedings.

9 But after that period, I only get one day
10 to prepare for this hearing. I think -- that's,
11 for lack of a better word, is a violation of due
12 process, especially considering the Court
13 rulings. I should be given latitude and leeways
14 and more time to support -- to prepare for the
15 response and argument.

16 So I will not -- I do not have the -- as
17 MUSA -- MUSC said, I could not conduct the --
18 could not conduct the deposition, not because I
19 abandon it. Because I filed the motion for
20 protection and also filed the -- the motion to
21 extend the discovery. And during the motion
22 filing period, the deadline should be
23 automatically extended until ruling, even the
24 Court -- the -- the motion being denied. And in
25 those cases, it was not.

1 And also for same reason, I know MUSC is
2 not the moving party of the complaint. But once
3 MUSC filed the motion for summary judgment, this
4 summary judgment, MUSC as the moving party, has
5 the burden to support the supporting documents
6 as required as -- by Rule 56. MUSC provided
7 none. The reason is they could not provide it
8 because MUSC did not want to produce any of the
9 victim -- I'm sorry -- vic- -- witness. Because
10 they denied the witness to me, and they said
11 they could not produce the witness to provide
12 affidavits to -- to verify the documents or the
13 claims MUSC has made by -- by counsel.

14 Even if he saying my client said that, the
15 client did not testify. The client did not say
16 under oath on the record what testified by the
17 counsel. So those test -- testimony was made by
18 counsel, mostly false. Not only without
19 support, but was false. Did not actually cite
20 any evidence, even citing the deposition --
21 sorry -- the deposition taken of me. So the --
22 the -- first of all, the summary judgment has to
23 be supported by the documents as required as in
24 Rule 56. And MUSC provided none.

25 All right. Secondly, the -- the basics for

1 summary judgment is there's no genuine issue
2 that's controversy to -- for trial. And MUSC
3 failed to say there was no -- to prove with the
4 support of the documents there was no genuine
5 issue. That burden is not MUSC's.

6 Secondly, the MUSC raised two issues. One
7 is statute of limitations. Made extensive
8 statements, a significant portion of those are
9 false to claim the statute of limitation barred
10 the claim.

11 First of all, it's foregone conclusion.
12 The Court has accepted complaint. And actually,
13 the complaint was filed on the basis of the
14 agreement as a whole, not each particular item
15 was treated separately.

16 And also, the agreement is under the
17 obligation by the employer of the clause in
18 honesty and fair dealing. There's clearly, as
19 demonstrated by MUSC counsel, try to -- try to
20 provide alternative interpretations of wording,
21 which was done by a professional attorney of
22 MUSC. In -- if faced with a faculty member at
23 the time, only goal was to get back to research.
24 I'll get into the -- the agreement a little
25 time.

1 And also, the agreement should be treated
2 as a whole, as not with specific date when, for
3 example, the breach is not on the date of
4 signing. The date is when the MUSC failed to
5 honor each and every one of the agreement,
6 right? It's not barred because one of the
7 breach agreement, one of the 20 conditions may
8 or may not be breached at certain time and the
9 rest of the other -- entire agreement breach
10 will be following that schedule and also has to
11 be knowingly -- the breach has to be known to
12 the party or should have known when the MUSC
13 engaging a continued discussion working of the
14 process.

15 So the -- the -- whether or not its good
16 faith or not, maybe party believe MUSC is
17 working on it, is in the process. So that
18 breach has not been -- that agreement has not
19 been breached. Especially in the entire
20 document as a whole, the -- the -- the contract
21 has not been breached. Until the date the
22 contract expire, MUSC did not honor most of, if
23 not any, of the conditions that are in favor of
24 Dr. Dong.

25 The -- secondly, I'll -- I'll get into

1 specifics. Secondly, MUSC keep relying on --
2 the plaintiff cannot fail to not be able to
3 present sufficient evidence. I think that by
4 nature, that's a question to be determined by
5 trial. Sufficient evidence should be determined
6 by trial, not by summary judgment.

7 And with the regard to if there is
8 sufficient evidence, there -- there are. But
9 some of the lack of documents because the -the
10 plaintiff was never given any chance for
11 discovery, all because the MUSC's wishlist to
12 limit the discovery in terms of scope only to --
13 for e-mails to and from the plaintiffs that
14 complete defeat the purpose of discovery. And
15 again, discovery is assured by law under the
16 constitution as a due process right -- due
17 process rights of parties.

18 And -- and secondly is the short and rigid
19 timelines for discoveries. The timelines should
20 be changed at the request for motion -- based on
21 motion. And especially for pro se pleadings and
22 for conditions out of the control of the
23 parties. But in this case, the -- all the
24 delays was caused by MUSC.

25 The record will show they would not provide

1 response or not provide the date for discovery
2 months at a time. Sometimes the discovery
3 request was given a year later. MUSC did not
4 provide a response or provide the response by
5 law. Clearly inadequate. It's a general
6 overall denial.

7 So those are all violations of the law and
8 violations of due process. So therefore, up to
9 date, Plaintiff have not been able to conduct
10 any meaningful discovery all because the -- the
11 deadlines and the orders to limit the scope of
12 discovery without any statute authorization,
13 without any established case law, but in
14 contrary, completely against the statutes and
15 the case -- numerous case -- case laws.

16 So actually, there are plenty evidence to
17 support -- sufficient evidence to support there
18 is a violation breach of violations as well as
19 admitted by the MUSC defendant. The major one
20 is the MUSC failed to transfer any of the
21 research material essential for -- for Dr. Dong
22 to continue his research and education, his
23 career, and his income -- maintain his income at
24 MUSC.

25 I will not -- I will give two answers to

1 each of the specific terms MUSC just presented
2 -- argued about.

3 I don't have the -- sorry. I can't locate
4 the...

5 I can't -- I only can (inaudible) short --
6 I will -- I'll try to -- if you give me a
7 minute, I will -- if Your Honor give me a
8 minute, I'll locate the contract, the agreement.

9 **MR. CONLEY:** (Inaudible) the agreement is?

10 **MR. DONG:** The original agreement.

11 **MR. CONLEY:** It's attached to your complaint,
12 Dr. Dong. It's attached to our memorandum as well.
13 It's in two different locations.

14 **MR. DONG:** Right. But where is it located in
15 this stack here?

16 **MR. CONLEY:** I don't know what that stack is,
17 Dr. Dong.

18 **MR. DONG:** This is your Exhibit 2.

19 **MR. CONLEY:** If you let me see it, I'll look at
20 it. What are you wanting to -- (inaudible)
21 agreement, contract agreement?

22 **MR. DONG:** Thank you.

23 And I can argue MUSC breached nearly all the
24 terms listed in the -- in the contract. First of
25 all, actually is a matter of honesty and fair

1 dealing clause by the employer versus employee,
2 which is the individual. And there is laws, plenty
3 case laws, suggesting it's a fraud when the employer
4 abandon the principle of honesty and fair dealing
5 when dealing with the employees, especially with the
6 employment contract issues.

7 But first of all, this -- the title of
8 agreement is -- have a different meaning from what
9 MUSC tried to --

10 **THE COURT:** Let me get -- we've got two things
11 going here. We've got the agreement, and then we've
12 got the way Mr. Conley framed his argument.

13 **MR. DONG:** Right.

14 **THE COURT:** He went through 20 different
15 obligations that he contended were the essence of
16 the agreement.

17 **MR. DONG:** Yes.

18 **THE COURT:** Now, are you going -- are you
19 looking at the agreement itself or are you looking
20 at the list he gave of the 20 things?

21 **MR. DONG:** I will -- list -- basically, the two
22 are the same, but I will point out --

23 **THE COURT:** Hang on for a minute. I've got a
24 list of the 20 things. Let me see if I can get my
25 hands to the agreement. I've got it right here.

1 **MR. DONG:** Right.

2 **THE COURT:** It's attached to your complaint.

3 **MR. DONG:** Right.

4 **THE COURT:** What you are looking at is
5 something called a Final Separation Agreement
6 Between Medical University of South Carolina
7 including its College of Medicine and Dr. Jian Yun
8 Dong, Professor of Microbiology and Immunology. Is
9 that what you've been talking about? And the date
10 is May 3, 2010.

11 **MR. DONG:** Yes, Your Honor.

12 **THE COURT:** All right.

13 **MR. DONG:** I think the -- it's basically the
14 same order, but the reason I --

15 **THE COURT:** Sure. But you do -- however you
16 want to do it is fine with me. I've got what you're
17 talking about.

18 **MR. DONG:** Yes. Yes, Your Honor. The reason I
19 tried to bring the two together is because there is
20 a lot of misrepresentations in --

21 **THE COURT:** All right. Well, just go ahead and
22 go down the list of things.

23 **MR. DONG:** Right.

24 **THE COURT:** The first one is payment of faculty
25 compensation.

1 **MR. DONG:** Yeah. I want to address the title
2 first.

3 **THE COURT:** The title? Final Separation
4 Agreement?

5 **MR. DONG:** Right.

6 **THE COURT:** All right, sir. What about it?

7 **MR. DONG:** The title of Final Separation
8 Agreement was presented to me as what the discussion
9 led to the agreement. There was extensive
10 discussion. Plenty events happened what led to the
11 agreement. No tenured faculty after years
12 education, research, and career in the end give up
13 tenure. There's a --

14 **THE COURT:** What does that have to do -- this
15 -- this thing says a Final Separation Agreement
16 between MUSC and Dr. Dong. That doesn't say
17 anything about anything other than it's a final
18 separation agreement. You signed it, right?

19 **MR. DONG:** I understand.

20 **THE COURT:** Okay. So --

21 **MR. DONG:** If -- if -- if I may --

22 **THE COURT:** -- what's the problem with the
23 title?

24 **MR. DONG:** Right. There is two
25 explanations of the title. And we can read

1 through the -- what MUSC tried -- tried to
2 present is the final severance agreement, which
3 is not the wording. But that appeared to be --
4 this title was drafted by attorney did leave
5 room for misinterpretation of title. The title,
6 Final, referring to several versions of the
7 separation agreement until we reached the final
8 to be signed is not a final --

9 **THE COURT:** Okay. I -- I get what you're
10 saying. He hasn't said anything one way or
11 another about that.

12 **MR. DONG:** Let -- let me actually present
13 the way I said. The secondly is separation, a
14 separation of the two parties. Moving one party
15 out of MUSC to -- for a cool down period is not
16 separation from MUSC. Not severance. It's --
17 the way that counsel presented is interpreted as
18 a severance. It's not severance as what the
19 word say in the separation, physical separation,
20 and also illustrated in the entire agreement as
21 to transfer a faculty to off campus, you know,
22 to separate the two parties, because the other
23 party is the chairman of the department and also
24 the provost.

25 **THE COURT:** Dr. Dong, this agreement says

1 in a number of different places that it is an
2 agreement and you've got the final separation
3 agreement. Go down two -- two, three more
4 paragraphs. It says during the term of this
5 final agreement, the University will continue
6 Dr. Dong's employment, faculty appointment, and
7 make scheduled salary payments to him. In
8 consideration, Dr. Dong acknowledges that this
9 final agreement constitutes his irrevocable
10 resignation of his tenured faculty appointment
11 to be effective no later than March 31, 2012.
12 Dr. Dong will retain his faculty appointment,
13 tenure, and title until the effective date of
14 his resignation. You signed that, did you not?

15 **MR. DONG:** I understand.

16 **THE COURT:** All right.

17 **MR. DONG:** Before you -- Your Honor arguing
18 with -- with me, provide argument for MUSC, if
19 -- if you may allow me to actually -- some
20 leeway to --

21 **THE COURT:** I'm going to give you -- I'm
22 going to give you plenty of chance to do it.

23 **MR. DONG:** Right.

24 **THE COURT:** But you're saying this is not a
25 cooldown, not a severance and so forth. That's

1 not what that paragraph says, is it?

2 **MR. DONG:** That's -- well, there's the
3 under the conditions. If under the condition, I
4 have a chance to move to another university,
5 obtain the position, I will formally resign.
6 Actually, that's part of the agreement --
7 continuous -- continuous in -- in -- integral
8 part of the same agreement. So if I -- there's
9 clearly says support my continuous research and
10 I have the right to find another employment.

11 And also there was a statement they termed
12 as they have to right to rehire me, but that
13 wasn't presented to me as their right. Because
14 once it -- that goes back to another honesty and
15 fair dealings.

16 And also the reason to what lead to this
17 agreement is also critically important. We
18 can't just take it -- extract it in a vacuum and
19 say, Well, you signed this, the agreement, and
20 now you're gone. So there's all conditions
21 listed for me to honor the agreement at the same
22 time for MUSC to honor agreement.

23 So the -- the -- what's presented to me at
24 a time is a separation, physical separation.
25 Yes, there is terms for me to resign, but after

1 I was able to obtain another -- another faculty
2 employment at other universities or MUSC, based
3 on all they're saying, if you continue
4 performing as you have, we'll rehire you --
5 rehire you. So they -- that's -- the clause
6 would not -- so my resignation would not take
7 effect because MUSC (inaudible) has the right to
8 retain my employment. Even if -- if I interpret
9 it literally, MUSC have the right to reinstate
10 my employment. Even (inaudible) leave, that's
11 the right of MUSC. That's could not be -- that
12 could not be true.

13 So MUSC expressed the intent and the
14 promise to recruit me if I perform continuous as
15 what I have been at MUSC. And not in the term
16 -- in the contract say anything that I had bad
17 performance.

18 In the -- in the discovery, I request
19 specific request my record, faculty record, my
20 performance, my evaluations, all denied in a way
21 by the limiting scope, because that's not the
22 scope. (Inaudible) my performance, my -- my
23 evaluations was given to me and kept at MUSC,
24 and MUSC failed to produce it.

25 So the -- the -- the reason that -- that's

1 what I'm saying. The whole spirit of this
2 agreement presented to me as I understood at the
3 time was a temporary separation while continuing
4 my employment gave me opportunity to -- to -- to
5 perform the same or the better. And MUSC will
6 -- after the period of time, MUSC will, in a
7 way, reinstate my position or continue my
8 employment at MUSC, although it's worded as
9 MUSC's right by -- by lawyer. So I was a layman
10 at the time.

11 But regardless, that's the spirit of MUSC
12 saying with the agreement give me the
13 opportunity to continue doing my research. If I
14 improve my performance the same level or better,
15 then I will be continued employed at MUSC. I
16 will also resign as a faculty member based on
17 the clause. If I get a chance to be recruited
18 by another university, I will resign from MUSC.
19 That's also consistent with the spirit of the --
20 the temporary separation and allow me to
21 continue my research and education.

22 So actually the first clause is the, of
23 course, during the employment -- I don't even
24 see how this is -- actually, the third paragraph
25 is -- is Dr. Dong employment will continue

1 doctor's employment -- faculty employment,
2 making scheduled salary payments. In
3 consideration, Dr. Dong acknowledges that final
4 agreement constitute his -- the same paragraph
5 you just made, right? But the employment -- the
6 -- the only obligation MUSC has honored is -- in
7 a way, is the continued salary for the period of
8 time until I have a reason to resign or be
9 continued employed by MUSC.

10 In this case, I did not have a reason to
11 resign. I did not have -- MUSC did not continue
12 -- continue to employ me, and also in violation
13 many of the terms. So the first term is not
14 just a salary. It's a continued employment.
15 That comes all my activities of teaching,
16 especially research, because -- sorry --
17 teaching and education, because my research
18 would be conducted at the company established by
19 MUSC, FRD, and a group of investors from new
20 York.

21 All right. The -- so they -- they did not
22 honor as my employment because I have to have
23 all the faculty activities at MUSC. Access to
24 graduate students, teaching graduate students,
25 and teaching graduate students in published

1 articles and actually leading post-docs is one
2 person's achievement, academic achievement.
3 When you're a professor, you doctoral mentor,
4 taking way your students -- taking your teaching
5 ability, taking your access to postdoctoral
6 fellows, that's not employment -- that's a
7 violation of term.

8 Okay. I do not know the second -- MUSC
9 retained the rights -- actually, that's -- those
10 are lawyer's terms, what represent me MUSC will
11 continue my employment --

12 **THE COURT:** Where are you -- where are you
13 reading, Dr. Dong?

14 **MR. DONG:** One, two, three, four, fourth
15 paragraph on the first page.

16 **THE COURT:** Oh, okay. He hasn't numbered
17 it like that. His numbers were --

18 **MR. DONG:** Right.

19 **THE COURT:** -- his obligation --

20 **MR. DONG:** Right. So I cannot completely
21 follow his order --

22 **THE COURT:** Okay.

23 **MR. DONG:** -- because it's -- not only
24 misrepresentations and also is extracted to his
25 interests.

1 And yes, there's faculty compensations.
2 And I may have to add actually my salary was
3 reduced before by the chairman as well as by the
4 Vice President for Research, Dr. Stephen Lanier,
5 as a pressure for me to leave MUSC and while
6 taking all my research material, research
7 projects, research data, and also spending my
8 research money and taking over my records to
9 graduate students and employees.

10 But as I said, yes, the only thing they did
11 was pay me a reduced salary for the -- for the
12 duration of the -- the contract. So that part,
13 specific part item was not violated and
14 testified truthfully.

15 The retention faculty employment and
16 faculty duties, the appointment is not empty
17 title as what Mr. -- Mr. Conley stated. If we
18 named Mr. Conley a lawyer but prevented him from
19 practicing, that title is meaningless. And I --
20 when I give you a faculty appointment, I
21 actually give also faculty duties. That's the
22 part of the agreement. I have to my appointment
23 -- I have to continue my faculty activities at
24 the University in terms teaching, education,
25 leading postdoc -- training postdoc fellows and

1 access to all facilities. MUSC give me none,
2 except they did not openly say take -- take away
3 my title. And also MUSC removed my faculty
4 profile on their website, closed my homeroom,
5 and stopped me from using faculty member e-
6 mails. That stopped all my communications as a
7 faculty member with my peers, with colleagues,
8 with funding agencies. Those are violation,
9 clear violation of terms by MUSC.

10 Right. Specifically, doctor agrees to
11 carry his customary shares of teaching,
12 lecturing, intellectual responsibilities as well
13 as assigned -- communicated him in writing the
14 chairman of each department. Those are taken
15 away from me.

16 Basically, I was not allowed to come to
17 campus. My lab -- my lab was completely closed.
18 All my employees was taken away by the chairman.
19 That's a complete violation of term agreement.

20 And during this period, Dr. Dong may use
21 the title of Director of Biotherapeutics and
22 Vaccine Development, because I have a sender at
23 MUSC. It's not just using the title. I have to
24 (inaudible) the title. I have to do my duties
25 for fellow therapeutics and vaccine development.

1 That has -- that's -- it's not the title. It's
2 not -- Mr. Conley is the title of attorney but
3 not allowed to practice. Take away his -- take
4 away his office, take away his staff, not allow
5 him to practice. Surgeons need equipment;
6 researchers need all the equipment documented
7 with their materials in order to conduct
8 research.

9 The -- the type of medical research I was
10 conducting is not to study someone else data,
11 not study academic result. Has to be done to
12 test you, hands-on, all -- with all the
13 material, priority materials and also my
14 intellectual properties. You can't start --
15 advanced research start from scratch. You rely
16 on all the knowledge and materials and the
17 technologies and protocols and data you
18 accumulate through hard work over the years.
19 Not only it just hard work. Without funding,
20 it's also impossible. So those are the result
21 of tens of millions of dollars academic funding,
22 federal funding, grants, and contract I obtained
23 through competition. The funding rate in age
24 was less than 10 percent, not general
25 population, out of nationwide top scientists.

1 Did -- did -- did counsel get -- get two
2 and 30 -- two hour and 30 minutes?

3 **THE COURT:** What's that?

4 **MR. DONG:** MUSC got two hours -- two hours
5 and 30 minutes.

6 **THE COURT:** Dr. Dong, you need to
7 concentrate on what you're doing and not worry
8 where I'm looking.

9 **MR. DONG:** All right. Sorry.

10 **THE COURT:** All right, sir. But what
11 you're doing here is something that you could
12 have done by filing a document that said what
13 you're saying right now. You're going through
14 this contract and trying to say what you
15 disagree with about the contract.

16 **MR. DONG:** So is --

17 **THE COURT:** The contract is something you
18 signed.

19 **MR. DONG:** I understand. That's why --

20 **THE COURT:** Yes, sir.

21 **MR. DONG:** -- I'm going --

22 **THE COURT:** And now you're going through
23 trying to say how unfair you think all of it is
24 and how you shouldn't have been required to do
25 that. That's what -- you just got to faculty

1 duties.

2 **MR. DONG:** I --

3 **THE COURT:** So keep on going, but please
4 understand that there -- there is nothing that
5 you have filed so far that details what you're
6 now standing up doing. You could have well done
7 that before --

8 **MR. DONG:** I did not have time, because I
9 was --

10 **THE COURT:** I -- I don't -- you have said
11 that so many times, I think I understand what
12 your position is about that.

13 **MR. DONG:** All right.

14 **THE COURT:** All right, sir.

15 **MR. DONG:** May I -- may I continue,
16 Your Honor?

17 **THE COURT:** Yes, you may.

18 **MR. DONG:** And also there is -- "Dr. Dong
19 is free to seek academic research collaborations
20 including secondary employment within MUSC
21 during the remainder of the agreement." And they
22 completely blocked all my ability to conduct my
23 research, what I'm going to use for -- for
24 continuing my collaboration. I cannot even do
25 my own research. The whole purpose of the

1 agreement is for me to have a separation period
2 so I can continue -- continue my research and
3 education. That's the major part of the
4 agreement for the entire duration for me to
5 continue my research, not each specific payment,
6 not each specific time within how many days
7 they're going to start, or the attempt. So how
8 we define attempt?

9 MUSC was -- did they attempt -- that's
10 actually obviously -- obviously dishonesty and
11 in bad faith. Right. That's actually the
12 clause. MUSC is obligated when dealing with
13 employees. They have to under the clause --
14 honesty and fair dealing clause, to -- for --
15 for any agreement for them to -- to claim they
16 have honored. So actually, they did not -- of
17 course, all of these are conditions we talked --
18 we discussed prior to my separate myself
19 physically from MUSC from the fighting with the
20 department chairman about his taking over my
21 research and material, research projects and
22 employees, fundings and completely blocked me
23 from conducting my research, not because I did
24 badly, because I was (inaudible).

25 I gained -- I obtained more federal funding

1 than the chairman and I published more paper
2 than the chairman. I led more graduate students
3 and post-doc fellows than the chairman at the
4 time. That's why he took over my research
5 projects. In the end, he has to rely on the
6 research material as well because that's
7 accumulate my years of work. So he has took
8 them from me with help of Stephen Lanier, which
9 is his close friend when they both working --
10 try to compete for chairmanship during the time.
11 And that's -- that's how -- how they reach
12 agreement.

13 Breaching the agreement enabled Jim Norris,
14 the chairman of department, and Stephen Lanier
15 to take over my research projects, my ability to
16 conduct research. And not only they took -- it
17 wasn't enough for them to take over my research
18 ability and research, they actually have to
19 block me from competing with him. Because I was
20 the expert; he's not. That's why they shut me
21 off from my --

22 **THE COURT:** Mr. Dong, we're going to spend
23 a lot more time arguing about the very specific
24 nature of your disagreements with MUSC. What
25 you need to do is to talk about how they

1 breached this agreement. What you're talking
2 about is all the things that happened that led
3 to this agreement.

4 MR. DONG: Actually, Your Honor, that's
5 where actually I failed to make my point
6 clear --

7 THE COURT: I -- I -- I'm not following it.

8 MR. DONG: Right.

9 THE COURT: I can tell you that.

10 MR. DONG: I appreciate you asked the same
11 question as counsel. I'm -- I'm going to
12 explain. Right? The breach of the contract is
13 in the terms -- what the terms mean to me or to
14 a faculty member to assign this based on this
15 agreement different maybe to a legal profession
16 or actually to a -- to a layman. But that's not
17 the spirit of the term. If we know the spirit
18 of the term what it -- what it says by
19 maintaining employment, not by paying a salary.

20 If I'm just an ordinary hourly worker with
21 payment salary, I'd go home. I'd be happy. But
22 I'm a scientist. I'm a doctor. I have a
23 career. My career is in the trending upwards
24 path. It's -- my career, my future all depends
25 on how I perform. So it's not a surgeon, you

1 take away his ability to perform surgery and you
2 name him surgeon that --

3 **THE COURT:** Your philosophy of that is not
4 lined up with my understanding with what I'm
5 here to look at, which are the terms of this
6 agreement --

7 **MR. DONG:** Right.

8 **THE COURT:** -- and whether they were
9 violated. So I look on the language of the
10 terms, and they say --

11 **MR. DONG:** Maintain my employment.

12 **THE COURT:** -- they say you commit to
13 submitting and irrevocable letter of
14 recommendation -- of resignation effective no
15 later than March 31, 2012. It doesn't say this
16 is some kind of temporary situation. It says --

17 **MR. DONG:** I understand, but there's other
18 conditions, Your Honor. There's other
19 conditions. You --

20 **THE COURT:** Well, then let's go through
21 that without going through every argument and
22 disagreement you've got or suspicion you have
23 about Dr. Lanier or Dr. Norris and all that kind
24 of thing. That -- that doesn't help me go
25 through this agreement and figure out whether

1 there are breaches of the agreement. And that's
2 what you're suing for. You're suing for
3 breaches of this agreement.

4 MR. DONG: Right. But actually MUSC
5 provide their version of the interpretation --

6 THE COURT: No, sir.

7 MR. DONG: -- and you allowed them to do
8 so, while I'm saying what is the employment --
9 maintain employment means.

10 THE COURT: And -- and -- and --

11 MR. DONG: It's --

12 THE COURT: -- what I want you to --

13 MR. DONG: -- not paying salary.

14 THE COURT: I want you to look at this
15 agreement, Dr. Dong, and tell me how they
16 breached.

17 MR. DONG: Right. They denied maintain --
18 giving me the ability to continue my research as
19 part of the employment. So employment by MUSC
20 for a scientist, for a doctor, is not give him a
21 title, give him payment. They have -- they
22 allowed him to conduct research and have access
23 to the facilities and function normally as any
24 faculty members will do at MUSC.

25 THE COURT: Well, I thought the -- the --

1 the foundation of this agreement would be that
2 you would be at GenPhar and you would have your
3 labs there and not at MUSC. Am I wrong about
4 that?

5 **MR. DONG:** I'm also talking about academic
6 teaching and training postdoctoral fellows.
7 Actually, I cannot do at MUS- -- at GenPhar
8 because that's a commercial company, have strict
9 standards what they can operate on. They only
10 lend me laboratory space for me to perform the
11 -- the duties of MUSC. That's what the contract
12 says. They didn't ask me to -- say, "Well, go
13 work for GenPhar. Tell us bye-bye. We'll call
14 the end of it," right?

15 It clearly says I'm given the continuous
16 appointment obligations, duties, as a faculty
17 member, tenured professor at MUSC. So I will be
18 have -- have to be able to do what any regular
19 faculty members, tenured professor could do at
20 MUSC. They took that away. So with taking that
21 away, I would not be able to honor the final
22 resignation. Take that away because I could
23 not, as I said, seeking -- actually seeking
24 employment at another university, not at another
25 packing facility, butchering facility, ginger

1 facility to seek second employment. It has to
2 be universities for medical doctors for research
3 scientists to obtain grants. Without -- taking
4 away my ability, I could not conduct any -- any
5 of those. That's the violation of the contract.

6 **THE COURT:** Let me ask you this: Post
7 May 3, 2010, when you signed this --

8 **MR. DONG:** Yes.

9 **THE COURT:** -- were -- were you teaching at
10 MUSC?

11 **MR. DONG:** No. That was -- that was --
12 they taking away my ability to teach MUSC.
13 Actually, my graduate students, even during the
14 graduation, chairman took over the mentorship he
15 graduate student as one of his graduates.

16 **THE COURT:** I understand that. So your
17 contention is that they -- this agreement would
18 have allowed you to continue to teach and
19 perform normal faculty duties, right?

20 **MR. DONG:** Correct. Like -- like any
21 other --

22 **THE COURT:** You said they immediately shut
23 those off.

24 **MR. DONG:** No. They actually -- it's
25 actually a negotiation process. So they was --

1 they gave -- for the period of time of the
2 agreement, they can't start what they want --
3 they choose -- it's a complicated operation. So
4 even if they say, Well, you can do it today, how
5 -- how can I get access to the graduate
6 students? There's no new graduate students
7 coming in. I will not be able to interview
8 graduate students.

9 It's complicated more than a layman can
10 understand. But it's -- that needs to be
11 determined as a fact. What is the extent of
12 agreement? What is the appointment of --
13 faculty appointment? It's just a title or a
14 salary? Or is it lot more than that?

15 **THE COURT:** Well, you're explaining that
16 it's a lot more than that. I'm just trying to
17 figure out when they breached the agreement.

18 **MR. DONG:** They breached the agreement at
19 end of this agreement. They terminate me -- my
20 employment. Actually, they -- but they did not
21 do anything during this period of time as they
22 specified.

23 **THE COURT:** Well, you -- so you're saying
24 that from the time they signed -- y'all signed
25 this agreement in 2010, they did not allow you

1 to teach at MUSC? Are you saying that?

2 **MR. DONG:** It's in the process. They did
3 not say, well, the process, I have to restart.
4 It's not -- it's not a day one, let's do
5 research. Until I -- I realized the new coming
6 graduate student, they didn't allow me to
7 interview them. So I would not be -- I wasn't
8 assigned to the course. Maybe not the first
9 quarter, not the second quarter, maybe not the
10 third quarter. But it's the process, until they
11 completely (inaudible) -- even during this time,
12 I wasn't -- the agreement is the -- the -- is
13 not practically implemented on one day. It's a
14 negotiation process.

15 **THE COURT:** Okay. I understand what you're
16 saying now. All right. All right. I
17 understand what you're talking about now about
18 faculty duties. And you say it was something
19 that happened over time, but the bottom line
20 was, you never got any graduate -- any students
21 assigned to you or that you could interact with
22 after this agreement was signed, right?

23 **MR. DONG:** That's limited. If you want an
24 example of what's the facility duties. Facility
25 appointment embodies a huge amount of

1 responsibility activities academically that's
2 closely associated with any faculty members --

3 **THE COURT:** Okay. I get all that. But
4 what you're saying is that after you signed this
5 agreement with them, they didn't allow you to
6 have those normal kinds of interactions of
7 faculty duties including --

8 **MR. DONG:** I understand what Your Honor
9 wants me to give a specific date, I could not
10 but it's a continuing process.

11 **THE COURT:** Right. But it -- obviously, if
12 you look back on it now, it started when you
13 signed this agreement, right?

14 **MR. DONG:** No, it started before --

15 **THE COURT:** Or even before it?

16 **MR. DONG:** Right. Because that's -- the
17 contract has not -- for example, they took my
18 material, the contract is within the period of
19 time give me a set period of time to
20 transitional in -- in the research, restart my
21 research until actually they continue my
22 employment or I find another employment and
23 permanently resign from MUSC. That's the spirit
24 of the --

25 **THE COURT:** So even before this agreement

1 was signed, they --

2 **MR. DONG:** I'm not saying --

3 **THE COURT:** -- they were blocking your
4 ability to --

5 **MR. DONG:** Part of it was the blocking.
6 That's why I settled with the agreement. And I
7 give them the process, a time period --

8 **THE COURT:** Okay.

9 **MR. DONG:** -- to resolve the issue, to allow
10 me to (inaudible). That's the purpose of the
11 contract.

12 **THE COURT:** I understand. I got it now. And
13 then by -- as it turned out, you were never able
14 to -- you were never allowed to go back and
15 start interacting with students or do things
16 that a normal faculty member would do, am I
17 right?

18 **MR. DONG:** That's correct.

19 **THE COURT:** Okay. All right. Keep on
20 going. This -- we're going to take forever on
21 this thing if we need at this snail's pace. I
22 understand the teaching thing now. Keep on
23 going.

24 **MR. DONG:** Right.

25 **THE COURT:** The next --

1 **MR. DONG:** Also -- also not only teaching.
2 It says research obligations -- collaborations.

3 **THE COURT:** I understand all that.

4 **MR. DONG:** And to take away my equipment, I
5 can't do research.

6 **THE COURT:** Okay. I understand that.

7 **MR. DONG:** But this is what was supposedly
8 a process. During this time, they allow me to
9 reestablish my research. And those are the --
10 there was bad faith negotiations. One, there is
11 none. I contact MUSC and I was negotiating when
12 they start. So it become a stonewalling. They
13 say, Well, we'll do this, talk to this, talk to
14 so-and-so until it back circle.

15 We didn't get the order. It didn't tell me
16 what to do. So actually it's a delay tactic, a
17 stonewalling, and a delay tactic by MUSC because
18 I was given the bad -- bad faith negotiation.
19 That's go back again they violate the honesty
20 and fair dealing clause when dealing with the
21 employees.

22 And actually, the faculty have a faculty
23 contract, there are faculty books. And tenure
24 has tenure. (Inaudible) tenure. Tenure has
25 rights. Everybody was competing for tenure.

1 Right? You can't terminate a person, even new
2 regulations, within seven years.

3 So actually, that's all part of the breach.
4 If you allow me to -- to explain what is the
5 breach, not what MUSC just saying that could be
6 interpreted, "You have the title. You have the
7 payment. That's all." That's not all.

8 And also, there is clearly -- there is --
9 it says there was -- the Vector Core equipment
10 will be moved. So -- will have -- before the
11 equipment moved as opposed to operating Vector
12 Core as part of the Center of Biotherapeutics.
13 So actually, the language for layman is hard to
14 understand. And I'll have to -- that's why I
15 need to explain what it is based on my
16 understanding and the parties signing.

17 So what is the -- MUSC can testify what is
18 the Vector Core and what's the Vector equipment
19 for? And why the Vector Core equipment has to
20 be transferred. And that has to be -- I
21 explained my understanding, unless they find
22 somebody else to explain otherwise, because I'm
23 a party --

24 **THE COURT:** Well, what's preventing you
25 from doing that or having filed something?

1 That's Exhibit B.

2 **MR. DONG:** Because the timing. Because the
3 timing.

4 **THE COURT:** No, no, no, no. This suit has
5 been going on since 2014. There could have been
6 plenty of time since 2014 for you to sit down
7 and explain what your position is about this
8 contract.

9 **MR. DONG:** Without discovery?

10 **THE COURT:** What's that?

11 **MR. DONG:** Without deposition? I was
12 trying -- trying to file the process to do
13 deposition. I was trying to file -- file the
14 process to get the documents from -- through
15 discovery, and it was all denied by the Court
16 limiting the scope of discovery to the only
17 information I had. And then they did not
18 provide all the information.

19 **THE COURT:** Well, Dr. Dong, by the time I
20 got in this case, the Craig Brown orders, the
21 Ferrell Cothran orders, and a whole bunch of
22 other orders had already been issued in this
23 case about discovery that were not something I
24 asked -- was asked to change, nor would I --

25 **MR. DONG:** I did file motions.

1 **THE COURT:** No, sir. Not on all the
2 discovery that had been done beforehand. All I
3 was asked to do was take this case as it was
4 then presented to me and deal with moving it
5 forward for trial, which is what I did.

6 Now, I don't know what went on in the
7 background about discovery. But I asked you a
8 very simple question about this contract when
9 you began to talk about Vector Core, and that
10 is, a lot of the contract related to, in terms
11 of your ability to keep up with that contract --

12 **MR. DONG:** Right.

13 **THE COURT:** -- the material in Exhibit B.
14 Why was Exhibit B never made a part of this
15 contract to facilitate the transfer of that
16 material to you at your new location?

17 **MR. DONG:** No, that's -- that's a clerical
18 error. (Inaudible). Exhibit B was transferring
19 the research materials. That's actually in the
20 Exhibit -- Exhibit A. There was specific
21 material things -- Exhibit B is the listing
22 material to be transferred. Research material
23 document and everything else.

24 So you allowed MUSC counsel testify to
25 explain their version of the agreement.

1 Actually, that's why --

2 **THE COURT:** Dr. Dong, please quit doing
3 that.

4 **MR. DONG:** Sorry.

5 **THE COURT:** All right. Your approach this
6 case has so many times been when you're asked a
7 question, to turn around and attack the
8 questioner, whether it be the lawyer, whether it
9 be the judge involved or something like that.
10 Please don't do that.

11 We're here to go through this contract and
12 I'm allowing you as much time as you need to go
13 through this contract and give your impression
14 of it. What I don't need is this constant
15 interjection of complaints about the other
16 lawyer and about the other judges and about me
17 as a judge. Just explain what your position is
18 about this contract, and we'll do fine.

19 **MR. DONG:** All right. Thank you,
20 Your Honor.

21 So actually, each one of -- has significant
22 implications in the -- in my performance, for
23 example, the Vector Core equipment, because --

24 **THE COURT:** All right. Just a second.

25 **THE COURT REPORTER:** He has paper covering

1 my microphone. If he could move that, please.

2 **THE COURT:** All right.

3 Dr. Dong, please take the paper off from
4 covering her microphone. Otherwise, it won't
5 pick up what she's trying to pick up.

6 **MR. DONG:** Thank you.

7 **THE COURT:** All right.

8 **MR. DONG:** Sorry.

9 **THE COURT:** All right.

10 **MR. DONG:** And the additional Vector Core
11 equipment, actually, that was the -- asked me to
12 submit to be attached in Exhibit B, which I did
13 not submit additional Vector Core equipment.
14 That means they did not violate whatever the
15 additional list I'm supposed to provide. But my
16 understanding, this -- this Vector Core list is
17 part of my equipment as well.

18 This actually equipment is not MUSC's
19 equipment while I'm an employment -- employee at
20 MUSC. Those -- yes, those are MUSC equipment.
21 When I'm not longer employee at MUSC, those are
22 my equipment. Because --

23 **THE COURT:** Well, I -- I got the impression
24 with the listing on Exhibit A that a lot of it
25 was equipment that you bought with you, was your

1 equipment, not them. They were agreeing to move
2 all of it to GenPhar.

3 **MR. DONG:** Yes, Your Honor.

4 **THE COURT:** And I assume that would mean
5 what you're talking about right now. Their --
6 their agreement wasn't limited to just what was
7 their equipment. They were going to move
8 everything in your lab to this new location;
9 isn't that right?

10 **MR. DONG:** That's correct.

11 **THE COURT:** Okay.

12 **MR. DONG:** Any -- any equipment, my
13 equipment.

14 **THE COURT:** That's right. Anything that
15 you used, anything that was either your
16 equipment or their equipment which you were
17 using, it was all going to your new location as
18 I understand it.

19 **MR. DONG:** There is no "their" equipment
20 for me to use and belongs to me. The equipment
21 has to be purchased under my grants.

22 **THE COURT:** Well, that's fine. But
23 everything that you were using equipment-wise
24 was supposed to be moved to your new location,
25 right?

1 **MR. DONG:** Correct. They did not do, as --
2 as they admit it. But that also is not a
3 one-day thing. It's continued --

4 **THE COURT:** And they -- they say they
5 didn't do it because the location was never able
6 to receive it for the lack of government
7 permits, occupation certificates, and this kind
8 of thing. Was that so or not so?

9 **MR. DONG:** Not so. Actually, the -- the
10 company has all the certificate and documents in
11 order to receive federal contract. The company
12 did receive tens of millions federal contract.
13 So those are already in place, and they knew it.
14 That was to say, as a formality matter, we have
15 to -- we could only transfer the material
16 research equipment, some of the biological
17 material, to a location that you have to show us
18 there is a permit to do so. Otherwise, they
19 violate the law -- law by transfer the material,
20 the biological material, to a site was not
21 approved. They know -- they knew it, and it
22 wasn't presented to them. GenPhar had all the
23 federal approvals and certificates.

24 **THE COURT:** Okay. The -- there are federal
25 approvals, and then in addition to that, there

1 are certificates of occupancy. That's
2 construction certificates that are issued by a
3 local government. There are --

4 **MR. DONG:** I understand that.

5 **THE COURT REPORTER:** -- insurance things.
6 GenPhar, did they have all of that?

7 **MR. DONG:** Of course, they had. How they
8 -- how they have that many employees in the room
9 operating without actually --

10 **THE COURT:** All right.

11 **MR. DONG:** -- completing the contract.

12 **THE COURT:** (Inaudible) the same. You
13 could have done that much sooner by filing some
14 sort of affidavit saying that that was --

15 **MR. DONG:** I was working on it until
16 actually --

17 **THE COURT:** Continue.

18 **MR. DONG:** MUSC still haven't filed any
19 affidavits, Your Honor.

20 **THE COURT:** I asked you please don't phrase
21 it that way again. They took your deposition
22 and filed that sworn document as part of their
23 factual filing. That's what they did.

24 **MR. DONG:** But I wasn't allowed to.

25 **THE COURT:** No, sir. I'm not going to get

1 into that argument right now. You stay on this
2 agreement and what your position is about it.

3 **MR. DONG:** And here -- here is this --
4 there's no argument. MUSC agreed to relocate
5 the equipment as listed in Exhibit B -- Exhibit
6 A. So actually --

7 **THE COURT:** Yeah. We know that. And they
8 say that they couldn't relocate it because the
9 -- no certificate of occupancy was ever given to
10 them. You say that you had the certificate of
11 occupancy. You haven't said yet whether they
12 were ever presented to MUSC. I don't know.

13 **MR. DONG:** Actually were. Actually, the
14 information come to Your Honor. Actually, I did
15 not know.

16 **THE COURT:** Sir --

17 **MR. DONG:** MUSC did not actually even say
18 that. I didn't say that.

19 **THE COURT:** This is exasperating, Dr. Dong.
20 Whenever you disagree with something, you just
21 try to turn it on somebody else.

22 **MR. DONG:** No, actually you --

23 **THE COURT:** This contract --

24 **MR. DONG:** -- made the statement --

25 **THE COURT:** This contract -- wait a minute.

1 Just one minute.

2 This contract specifies that certificates
3 of occupancy, insurance coverage, and the like,
4 will be given to MUSC. And in that event, they
5 will transfer your equipment to GenPhar. They
6 say they were never given those certificates of
7 occupancy and insurance and the like. And now
8 your -- I don't know what you're saying. But
9 it's mostly attacking them because you say may
10 be it's not in the contract. I don't know. But
11 the contract says that specifically, and all I'm
12 asking you is, Was MUSC given those
13 certificates?

14 **MR. DONG:** Yes. They actually -- the --
15 the fact -- they want to reassure they have
16 those certificates. Those certificates is
17 access of the company. So actually, the company
18 operates -- as I said --

19 **THE COURT:** They're just asking for a
20 photocopy of the certificate, Dr. Dong. And
21 they are asking for them from whoever has them,
22 certificates of occupancy, governmental permits,
23 and insurance coverage. And they are in the
24 place of that site. That's what this contract
25 says is to be provided to MUSC. And when it's

1 provided to them, they will then move the Vector
2 Core equipment in addition to all the stuff in
3 Exhibit A.

4 And all I'm asking is, you know, what's --
5 how are they (inaudible), were they supplying,
6 that is MUSC, supply those things I read out of
7 the contract?

8 **MR. DONG:** Yes. Actually, they did not
9 specifically what form. Actually, I destroyed
10 (inaudible) they knew it, how the company can
11 operate without those certificates, how the
12 company being awarded federal contract without
13 the certificate. Those are given. There's
14 actually not only -- there's documents to show
15 that. Actually, there is public information to
16 say -- how they have the Office of Science
17 Research conducting this vaccine development
18 against Ebola and Marburg for the military
19 personnel under a facility. There is no
20 certificate. How the government will issue a
21 contract to -- to a company without any
22 certificate? Those actually was given. You
23 prevent me from discovering, prevent me to --

24 **THE COURT:** I did not prevent you from any
25 discovery. No, sir. Please do not say that to

1 me again. Orders were in effect about this
2 thing long before I came in the case. I set up
3 a scheduling order. You noticed the taking of
4 depositions, and then you withdrew those
5 notices. Why? I don't know. But I did not
6 interpose one order whatsoever to prevented you
7 from engaging in discovery.

8 MR. DONG: The schedule limitation --

9 THE COURT: No, sir. No, sir.

10 MR. DONG: Yes, there is.

11 THE COURT: No, sir. The limitations on
12 other discovery by the way of interrogatories
13 and everything else has been put in place long
14 before I came into this case. I have an order
15 that said scheduling discovery, depositions
16 only. That's all I had to deal with.

17 MR. DONG: Right. But, and also I actually
18 thought because the circumstances were out of my
19 control --

20 THE COURT: I'm not going to get into that
21 argument again. Go on and finish what you've
22 got to say about the contract please, sir.

23 MR. DONG: I would respectfully --
24 respectfully ask to have the opportunity to be
25 heard when you addressing I did not file this --

1 file those documents, I can say why I did not
2 file the document. So that's actually -- I'm
3 entitled to -- now you are -- Your Honor is
4 saying I did not file this. You have -- you had
5 the time to file this. You didn't file this, so
6 it's all yours.

7 THE COURT: That's exactly what I'm saying.

8 MR. DONG: Right. But that's not fair.

9 THE COURT: It is fair. It's true.

10 MR. DONG: Because actually what I'm
11 saying, that's why I'm -- I'm -- I'm entitled to
12 be heard --

13 THE COURT: You're -- you're -- you're
14 being heard at great length here. And that's
15 what I'm asking you to do is to get back on this
16 contract that you said you wanted to do and go
17 through the provisions of it.

18 MR. DONG: Right. Actually, you asked me
19 why I did not file it. Because I -- the reason
20 stated. I could not file because my motion been
21 denied. So they -- they -- during this time,
22 actually is the spirit of the agreement. It's
23 not a one-day thing. So they -- (inaudible) my
24 material. The significance is not transferring
25 my material. It is taking away my ability to

1 conduct my research, taking away my -- taking
2 away my ability to advance my career, which also
3 (inaudible) my income. But they did terminate
4 my income without -- without giving me the
5 opportunity to find new employment, without
6 actually giving me opportunity to -- I did
7 obtain \$4 million contract for MUSC, Stephen
8 Lanier specifically rejected, because that will
9 actually bring me back to MUSC.

10 Without any -- that's a complete violation
11 of faculty rights as specified at MUSC and also
12 against MUSC interests. Those are federal
13 grants awarded to -- to me under the application
14 at MUSC by the National Institute of Health.
15 That's the vast majority of university grants
16 coming from. Actually, I don't know if I have
17 anything to do with its departure, but that's
18 against MUSC interests as well.

19 So -- and there's specific e-mail
20 communications he stop me using after date,
21 because the awarding date is after the contract.
22 Although the comfort was submitted during the --
23 is taken over a year, year and a half to obtain
24 federal contract. So I obtained the federal
25 contract for four and half million dollars for

1 MUSC and awarding time is after the agreement
2 terminate. And he sent me an e-mail telling me
3 stop using the faculty, appointment title, can't
4 use MUSC, as MUSC declined receiving any grants
5 awarded to you. To that effect. I'm not
6 quoting exactly.

7 And I'm supposed to have campus facility --
8 access to campus facilities. When I'm a faculty
9 member, I should have faculty access to
10 facilities. But at the same time, it's not as
11 simple as say, Well, you can walk in. Because I
12 have to have a research project to use the
13 facilities, actually give another notice.
14 Actually, Stephen Lanier specifically denied a
15 federal grant of mine and had a concept contract
16 with a director for animal facility to use
17 animal facilities. So that has come out from
18 discovery. That's actually -- that's also a
19 violation of the access to the facility. That's
20 one example.

21 And also --

22 **THE COURT REPORTER:** Excuse me, Doctor --

23 **MR. DONG:** Also, as specified -- specified
24 on page 2, second paragraph, doctor "will
25 transfer any... material including genetic

1 material, DNA constructs, viral and plasmid
2 vectors, antibodies, enzymes... doctors new
3 research location from his continued research,
4 including the materials which were provided by
5 Dr. Dong to Vector Core for services while
6 Dr. Dong was the director. Any vectors provided
7 to the faculty members during the period --
8 operation of Vector Core will remain with the
9 respective faculty members who acquire the
10 products."

11 So those are all very specific terms, but
12 without laboring through, I can say all the
13 terms were violated. If Your Honor want me to
14 name the date, I cannot.

15 And even the third paragraph from the top.
16 "In recognition of his offer to perform Vector
17 Core services for his off-campus location for
18 the proximity -- approximately 23 month inter-
19 -- interval above, so it's 23 months, University
20 will pay Dr. Dong sum of \$30 -- \$30,000 directly
21 to -- from chairman's budget in the Department
22 of Microbiology to pay no later than 50
23 following the signing -- day 50 following the
24 signing of the agreement."

25 The only thing they honored is to pay me

1 \$30,000, which I used on graduate students. And
2 -- but didn't honor the rest of the terms, the
3 \$30 -- the \$30,000 was for me to operate the
4 Vector Core facility off-campus. So that's also
5 breach. But they -- they did not breach the 30
6 -- 50 days to pay it. They did pay it. But
7 they breached the agreement for me to operate
8 the Vector Core facility off-campus.

9 This actually at the direction of Dr. Yusuf
10 Hannun, who is the Chairman of the Department of
11 Biochemistry, which also would be the chairman
12 of my second appointment. And those material
13 would be transferred -- again, they insert
14 attempt. So "attempt," that nullify all the
15 other -- all the other terms, because they just
16 attempt. They have no obligation. They just
17 make attempt. Who define attempt? That's
18 create bad faith and dishonest dealings. And
19 any additional will be provided by Dr. Dong was
20 never provided.

21 They also provide active grant service.
22 They did not. They actually declined. So
23 actually, honestly, I had to use the company
24 resources for submission to grant on behalf of
25 MUSC to NIH grant. The company has different --

1 research projects has to be clearly separated
2 from the -- by MUSC activities. So they did not
3 provide any financial services in the grant and
4 management offices. Those grant have to be
5 submitted through using resources, which
6 honestly, it was not appropriate from the
7 company. And eventually, when I obtained the
8 grants, that take up to a year and a half
9 (inaudible) worded because the contract was
10 terminated. Stephen Lanier declined receiving
11 the four-and-a-half-million-dollar NIH grant.

12 **THE COURT:** This -- this grant was -- was
13 this affected by the events that took place on
14 September 29, 2011, when the revision letter was
15 sent to you from MUSC.

16 **MR. DONG:** Actually, there is a question
17 about the revision letter.

18 **THE COURT:** Well, I'm asking a pretty
19 direct question. You're talking about a grant.
20 And in this revision letter, it says in part we
21 understand that you have received positive
22 feedback regarding a pending grant application
23 that you submitted to NIH. Is that what you're
24 talking about, this four-million-dollar grant?

25 **MR. DONG:** Could be. Because I had

1 received --

2 THE COURT: Because apparently interrupted
3 that, at least from what this letter says is the
4 notification of your indictment by the United
5 States Government.

6 MR. DONG: First of all, there is no test
7 -- witness to testify that that letter is true.

8 Secondly, actually I will say --

9 THE COURT: You put this letter in your --

10 MR. DONG: I was provided --

11 THE COURT: You -- you put this letter in
12 your complaint.

13 MR. DONG: Wait -- wait a minute. Let me
14 actually present my case first if you --

15 THE COURT: Well, did you not put this very
16 letter with that --

17 MR. DONG: That was included by the counsel
18 at the time who was competing for the General
19 Counsel at MUSC.

20 THE COURT: All right. Dr. Dong --
21 Dr. Dong --

22 MR. DONG: What I'm saying --

23 THE COURT: Your complaint was filed with
24 this letter attached to it and your answer is
25 not addressing that. Your answer is attacking

1 the bona fides of your counsel.

2 MR. DONG: No, no, no.

3 THE COURT: This case is not about that.

4 MR. DONG: Let me finish -- let me finish,
5 Your Honor, please.

6 THE COURT: Well, just answer my question.

7 MR. DONG: Right. The letter was included
8 to show the bad faith from MUSC because that
9 letter was generated at the time we actually
10 filed the complaint. That's three years before
11 the indicted the company misuse of the contract.
12 If I wasn't pushed -- pushed to the company, I
13 would not be indicted with the co-conspirator.

14 But the -- the thing is the indictment is
15 within -- first of all, happened in 2013 by a
16 grand jury within a month, although -- the third
17 indictment was within a month. After the
18 indictment, there is a sealed order by a federal
19 judge for a year and a half because they -- once
20 they release the indictment, there is speedy
21 trial.

22 So this is all beyond this case. But that
23 was -- the timeline doesn't match. The timeline
24 clearly indicate that letter was generated by
25 Stephen Lanier to cover up his mis -- misdoing

1 -- wrongdoing and put excuse whether you let --
2 Your Honor believe or not. And Your Honor is
3 shaking your head. But that has to be based on
4 fact.

5 The indictment is released in 2014. The
6 trial was 2015. So there is a speedy trial
7 clause under the constitution. So it is a
8 federal crime, felony crime, for anybody who
9 disclose the indictment before it actually was
10 publicly released. And anybody accusing a
11 federal prosecutor, actually violate the law --
12 actually violates the direct federal judge's
13 order, maybe they do -- did it. But the -- the
14 -- the people who signed the letter testify.
15 They said on oath that letter was not generated
16 -- generated after the fact. Who informed them
17 of the indictment?

18 I disclose indictment. All it says is
19 contract -- the company misused the contract
20 funding for an improper purpose, including build
21 new facility. That's all. I wasn't taking any
22 money, doing any conspiracy to get -- get rich
23 myself. I would not have any interest for the
24 -- for the company to build facility for the
25 DOD. I would be indicted for -- for -- for

1 crime. If we want to introduce this evidence,
2 actually that has to be in trial.

3 THE COURT: In 20- -- September 2, 2014,
4 you placed that letter as an exhibit to your
5 complaint filed September 2, 2014.

6 MR. DONG: Right. Because --

7 THE COURT: I don't know this other
8 background you're talking about. But I do know
9 --

10 MR. DONG: Right. But -- but --

11 THE COURT: -- you filed that in a
12 complaint. You authorize the filing.

13 MR. DONG: There other things in the
14 contract to allege --

15 THE COURT: I'm not alleging anything. I'm
16 just reading --

17 MR. DONG: No. I'm saying the complaint
18 allege. There is actually a bad faith and also
19 wrongdoing in the contract -- bad faith and
20 unfair dealings. Actually, there's -- there's
21 other things.

22 THE COURT: You know this old -- good faith
23 and fair dealing is one of the oldest maxims
24 there is from Meinhard versus Salmon. I'm very
25 aware of that. It doesn't explain each and

1 everything that's involved in this case. But
2 let's go on forward and get to the end of this
3 contract please, sir.

4 **MR. DONG:** Right.

5 **THE COURT:** I think you're just about
6 there. You just finished with access to campus
7 research laboratory --

8 **MR. DONG:** Right. Actually, that's what
9 actually --

10 **THE COURT:** And now, you're at active
11 grants at the time of resignation.

12 **MR. DONG:** Right. Actually, they -- they
13 did not actually transfer any money to me. They
14 did not do any -- transfer any -- (inaudible)
15 that I need to have is to continue the grants.
16 So they did not relinquish the -- the grants.
17 Basically, the chairman, Jim Norris, kept them
18 all. So actually (inaudible) didn't mean
19 anything to was the genetic material, was the
20 DNA, was the plasmid, was the vector not
21 transferred. It means a lot for me to offer it.
22 We don't have to understand what's the scaffold,
23 what's the hemostat. But actually to -- to
24 understand, if you take away the surgeon's
25 ability to perform surgery, he can't advance his

1 career.

2 And this the 20,000-dollar legal fee, all
3 the money I obtained from MUSC was used on the
4 graduate students. Because at the time, I was
5 obligated to pay them, even my money was taken
6 away by the chairman. I have no access to the
7 money I got from the grants, so they did not
8 relinquish the grant or financials. So
9 actually, that -- I'm not alleging they did not
10 pay me \$20,000. That was not a violation.

11 The violation is the spirit of the contract
12 to allow me to reestablish my research ability
13 at a different location. That's the spirit of
14 separation so I will continue to have full
15 employment at MUSC to function as any normal
16 faculty member would do and advance my career
17 and also I have the opportunity to obtain
18 employment from other universities and then I
19 will find -- find -- (inaudible) resign, because
20 that's a condition. It does not say out the
21 blue, "We didn't -- we don't want to do anything
22 for you. You go ahead and resign, and I will
23 pay your, whatever, 18 months." That's not what
24 the contract said.

25 The contract spirit was said a separation

1 period allow me to conduct research at different
2 location and continued to advance my career and
3 obtain federal contract. And if I especially
4 obtained federal grants, if I obtained the
5 grants, MUSC will continue my -- my employment.
6 And in the event I find another location --
7 sorry -- employment, I will resign and terminate
8 my employ -- employ -- employ -- employment at
9 MUSC, so MUSC won't no longer have any
10 obligation to finish the remainder of the -- the
11 agreement.

12 But MUSC has to -- obligated to do what
13 MUSC did, which is satisfy my requirement to
14 allow me to continue my research and -- and
15 education to advance my career. In that sense,
16 the MUSC completely breached the contract at the
17 end of the contract. And also there was also
18 through the continued negotiation leading the
19 pathway after certain time -- timelines. But
20 that's not material. None of this -- they have
21 to transfer it within 50 days. They can't
22 transfer it on the same day of the materials.
23 They have to locate it, do everything.

24 To be honest, the vice president himself
25 would not be able to transfer. Certain

1 equipment requires installation, requires
2 improvement function at the location in order to
3 generate reliable data for vaccines, for
4 therapeutics that potentially used in clinical
5 trial for patients is more complicated than what
6 -- just provide title and provide payment.

7 So there is -- there has to be the same
8 function, same access to education, to
9 performance by a regular faculty member and
10 tenured professor with multiple federal grants
11 and with a large number of graduate students
12 still under my obligation and the postdoctoral
13 fellows.

14 And my -- my conclusion is, I cannot find
15 -- I'm sorry. My conclusion is MUSC violated
16 the majority part of the contract, caused
17 extensive damage, and there is a -- truly
18 genuine issues to be determined by a jury. I
19 bring the list in just a second. (Pause.)

20 I cannot find my list. But I will say
21 there's -- basically, there is no dispute --
22 there's no dispute MUSC has violated the
23 contract, breached the contract. As they
24 admitted, they did not transfer all the genetic
25 research materials and equipment in -- in -- in

1 the agreement.

2 Also, they try to nail it down a single
3 day, especially tried to nail on certain days
4 that they signed the contract. That's not --
5 that's not the case. The equipment has to be
6 moved through a process. And also during this
7 process, MUSC engaged in negotiation -- bad
8 faith negotiation and dragged out the entire
9 contract. Because the equipment not only just
10 transferred, it has to be installed and
11 certified and become operational and accurate
12 enough to generate research data that's reliable
13 to publish. Otherwise, those would be wasted
14 data, wasted time, wasted money.

15 So it's a continuous process. Also during
16 this time, I was led into continuous negotiation
17 until the time period they said, Well, you're
18 gone. The -- the time -- the contract take
19 time.

20 So there's no dispute. As MUSC already
21 admitted, they did not transfer material. They
22 tried to say they -- they provided -- actually,
23 there's a clause -- clause to transfer -- to
24 give me the money. They did give me the money.
25 But they give me the money to duplicate the --

1 some of the vectors -- the research materials
2 and copy notebooks. But they have to give me
3 the notebooks to copy. They have to give me
4 materials to duplicate. I can't create the note
5 from the beginning. That put me back 30 years.
6 I don't have 30 years to -- to continue my
7 research.

8 So there is no question the breach --
9 there's other issues, mostly, the continued
10 employment that lasts until -- until they say,
11 well, we don't want to employ you anymore. And
12 that's our right. That's (inaudible) our right
13 to employ you. And you -- you already signed
14 the irrevocable resignation. But that's a
15 condition to find new employment at another
16 university, not a sanitation facility somewhere,
17 also not McDonald. So that I require my -- my
18 ability to conduct my research, publish
19 scientific articles and contribute to science
20 and carry on my existing funding projects. They
21 stopped all of that.

22 And also, I would like to say, my -- they
23 reached their agreement is not because of my
24 poor performance. That's -- I wanted to show my
25 performance. How was -- how I was a rising

1 star. I was leading scientist in the research
2 -- research field of gene therapy for cancer and
3 genetic disease and developing biological
4 factors to transfer therapeutic genes to
5 patients for the purpose of therapy. And the
6 extension of that and also has the ability to
7 have a number of patents, patent disclosures for
8 commercial -- commercially-viable therapeutic
9 approaches. And that has been testified by FRD,
10 which I was not able to. So they took -- so
11 genetic material including those technologies,
12 (inaudible) technologies I developed at MUSC.
13 They took them all.

14 So they breached the contract. It was not
15 for the facilities which was \$5 million at that
16 time. But what they take is all my research
17 inventions, the patents, everything generated
18 during -- during my time of faculty at the
19 University. I had the most graduate students,
20 most postdoctoral fellows, more grants, and more
21 publications than the chairman and most of the
22 faculty members at MUSC. That is why he
23 gradually took over my research facilities. And
24 in the end, complete with help of Stephen
25 Lanier, shut me off, prevent me from competing

1 with him.

2 And he was in a decline curve as the
3 research. He was conducting chemical oncology
4 at the time. So all of this will mean something
5 to expert, but to legal profession, to a laymen
6 say what -- what is that the contract violated.
7 The contract basically violated to the degree --
8 complete -- continued black in my career
9 development, my ability to do research at MUSC,
10 not because I did something wrong, because my
11 performance was excellent as rated -- evaluated
12 by the chairman himself. He had no other ways
13 to really evaluate my research.

14 And that was accommodated by Dean -- Dean
15 Reves for my contribution to the University
16 under the state mandate to developing
17 high-paying jobs, create biotech company --
18 biotech companies for the state to create jobs
19 for trained doctors, scientists, so they don't
20 have to graduate and move on to another state.
21 And I believe I did as to every bit in the best
22 interest of the University. I did my best to
23 contribute to the science, to the -- to the --
24 to the community, to the faculty member and also
25 brought my expertise and know-hows, the

1 biotechnology companies development in
2 subsequent area because I was recruited from the
3 medical university -- I'm sorry -- from the
4 University of California in San Francisco to the
5 medical university of South Carolina. I wasn't
6 somebody they picked me up off the street and
7 kicked me out the door.

8 So my career was completely destroyed by
9 his -- by his illegal activity against me as a
10 faculty member. And I will not be able to
11 provide -- again, I will -- give me some time.
12 I would like to provide response and also based
13 on the rule when I could not provide affidavit,
14 provide -- the remedies continues, allow me to
15 have discovery under Rule 56(f).

16 **THE COURT:** Yes, sir. All right.

17 **MR. DONG:** So I will plead to the Court to
18 allow me time to submit supplements.
19 (Inaudible) already submitted the motion in
20 time. And also I would plead to the Court to
21 give me some leeways in actually in dealing with
22 this timeline and deadlines for me to actually
23 do something. I have not had an opportunity --

24 **THE COURT:** I understand your position
25 about that, Dr. Dong.

1 MR. DONG: And I would also like to submit
2 when Your Honor is in charge of whole case,
3 Your Honor is responsible for all the events
4 that happened in this case.

5 THE COURT: I'm responsible for what now?

6 MR. DONG: All the events happened, present
7 -- the rulings, previous rulings of the other
8 judges. Actually, that's --

9 THE COURT: I'm responsible for all of
10 those other rulings?

11 MR. DONG: You have the discretion to
12 correct --

13 THE COURT: I was not asked to correct
14 anything in that regard, Dr. Dong. When we sat
15 right here in this courtroom in October of last
16 year and -- or in September of last year, all I
17 was asked to do was to schedule from that time
18 forward. I was not -- I had to read a whole lot
19 of stuff about this case on the backside. I --
20 I -- I got that hearing done within a very short
21 time. I was appointed on this case just to get
22 it moving with discovery.

23 There had been a whole lot of water under
24 the bridge before. And neither you nor
25 Mr. Conley asked me to get back into

1 interrogatories or anything else. My order
2 because you-all -- that's what you asked me to
3 do was to schedule depositions, and that's what
4 I did. So please don't go there with me.

5 **MR. DONG:** Your Honor, actually, I --

6 **THE COURT:** Don't go there with me,
7 Dr. Dong.

8 **MR. DONG:** I think --

9 **THE COURT:** This business of -- your whole
10 approach to this case is to attack other people
11 --

12 **MR. DONG:** No. Your Honor --

13 **THE COURT:** -- rather than to talk about
14 what you've done.

15 **MR. DONG:** I'm just --

16 **THE COURT:** I'm not going -- I'm not going
17 to (inaudible) that anymore.

18 **MR. DONG:** I'm not attacking anybody.

19 **THE COURT:** Yes, you are.

20 **MR. DONG:** I'm stating a fact. I did raise
21 the issue of the order to limit the time --
22 limit the scope of discovery and due process. I
23 -- I think I did order the transcript.

24 Your Honor said, That's done by other judge.

25 I'm not going to --

1 **THE COURT:** That's correct. That's exactly
2 what I said.

3 **MR. DONG:** Right. That's all I'm saying.

4 **THE COURT:** We have an agreement about
5 that.

6 **MR. DONG:** Yes.

7 **THE COURT:** I said I would not go where
8 other judges have gone with the length of time
9 this case has been pending. I absolutely did
10 say that.

11 **MR. DONG:** Yes. My -- my proposition is
12 when -- once Your Honor take over the case, I
13 think Your Honor is in charge of the whole case.

14 **THE COURT:** All right.

15 **MR. DONG:** Thank you.

16 **THE COURT:** All right, sir.

17 **MR. DONG:** Thank you.

18 **THE COURT:** Mr. Conley, any reply?

19 **MR. CONLEY:** Your Honor, I'm going to be --
20 I'm going to be very brief, Judge.

21 **THE COURT:** Yes, sir.

22 **MR. CONLEY:** I want to harken back to what
23 I said and I think what some of your questions
24 were directed at. Despite Dr. Dong's two hours
25 -- just short of two hours of standing up here,

1 most of what he represented to the Court does
2 not appear in the record at this point.

3 His argument today cannot stand in the
4 place of him submitting evidence and by way of
5 affidavits or otherwise under Rule 56. Him
6 standing here and making factual
7 representations, etc., today to the Court is
8 just not sufficient under Rule 56.

9 The cases Dr. Dong cited -- and again, I'm
10 sorry if I jump around. I just made my notes.
11 I'm just going to quickly go through them,
12 Judge. Dr. Dong cited several federal cases to
13 you, a Ninth Circuit case --

14 **THE COURT:** Those cases are about
15 pleadings. The first line of cases he cited say
16 that we have to be flexible about the pleadings
17 of a pro se litigant. Nobody has been anything
18 -- no request has been made of me to deal with
19 any defects in the pleadings. The pleadings
20 were drawn by an attorney, and it's -- that's
21 not the problem here.

22 **MR. CONLEY:** Correct.

23 **THE COURT:** The problem here is whether or
24 not the statute of limitations has run because
25 of when the breaches occurred. But the -- the

1 cases he cited, that original line of federal
2 cases, Erickson and the like, are about
3 pleadings.

4 **MR. CONLEY:** Correct. In the Ninth Circuit
5 case, Judge, I actually pulled it up while I was
6 sitting there, that deals with pleadings of
7 prisoner litigants.

8 **THE COURT:** That's correct.

9 **MR. CONLEY:** Dr. Dong talk -- talked about
10 a lack of honesty and fair dealing. I only want
11 to point out something that I mentioned during
12 my rendition of those obligations that MUSC had.
13 And within that agreement itself was a 45-day
14 period for Dr. Dong to revoke the agreement. In
15 other words, he had 45 days -- 45 days after
16 May 10 to revoke the agreement.

17 Just bear with me, Judge. I've got a lot
18 of notes. But I'm going to -- I'm not going to
19 touch on all of them.

20 Judge, Dr. Dong, by way of his argument
21 today, appears to me to -- this is just my
22 perception obviously. He's trying to create an
23 ambiguity of certain provisions of the contract
24 by way of his argument. It's simply our
25 position that he just cannot do that. This goes

1 back to the lack of affidavits, the lack of
2 evidence that would create the ambiguity.

3 In regard to the statute of limitations
4 issue, it appears to me, Judge, that Dr. Dong's
5 position is that his ability to do many of the
6 things he did as a professor, as a tenured
7 professor, as a researcher, were taken away
8 immediately in May 3, 2010, or immediately after
9 May 3, 2010. I even heard him in -- I even
10 heard him in response to some of your questions
11 or at least one of them, indicate that perhaps
12 some had occurred even prior to entering into
13 the agreement May 3, 2010.

14 Dr. Dong mentioned several times during his
15 argument the fact that he is not a lawyer, that
16 he is a layman, that he is representing himself.
17 I only want to mention to the Court something I
18 didn't mention during my initial presentation
19 because I don't think it was germane to the
20 contract issues in terms of whether they were
21 breached or not, but Dr. Dong made very clear at
22 his deposition, and I note this in a footnote
23 actually in my memorandum, but Dr. Dong admitted
24 before signing the agreement he did not read it.
25 According to Dr. Dong, he only scanned it

1 briefly.

2 I want to touch on the GenPhar
3 certification for a moment, Judge. You had --
4 you asked Dr. Dong about those. I talked about
5 them. The bottom line as we stand here today
6 is, there is no evidence Dr. Dong has given to
7 this Court other than his representation during
8 argument today that somehow he ever provide MUSC
9 with any certificates of occupancy, any
10 insurance policies or -- I'm trying to think of
11 the other. There's a -- there's a third
12 component of that. I don't have --

13 **THE COURT:** Governmental permit.

14 **MR. CONLEY:** Governmental permits. There's
15 no evidence in the record before the Court that
16 Dr. Dong ever provided those things to MUSC. He
17 certainly made that representation during
18 argument today, but that's not sufficient under
19 Rule 56.

20 **THE COURT:** I understood his argument to
21 really be that these were a matter of public
22 record and could be researched as public
23 knowledge and things of that nature. Your
24 argument is the contract provides that those
25 certificates should be provided to MUSC.

1 **MR. CONLEY:** Correct.

2 **THE COURT:** And that's what you say did not
3 happen.

4 **MR. CONLEY:** Exactly. And -- and the other
5 component of that, Judge, is -- is on some
6 level, it doesn't matter. And the reason it
7 doesn't matter is that part of the contract,
8 that part of the agreement, MUSC was required to
9 do that explicitly within 45 days of the signing
10 of the agreement. Taking that into account, the
11 statute of limitations as to that component of
12 the agreement, and Dr. Dong's knowing they
13 didn't do it within 45 days, would have expired
14 in June 2013, Judge, 15 months -- 16 months
15 before Dr. Dong filed his complaint.

16 Those are the main topics I wanted to
17 mention just in -- in reply, Judge. Otherwise,
18 I would just stand upon our initial presentation
19 to the Court -- unless the Court has particular
20 inquiry.

21 **THE COURT:** I do not.

22 **MR. CONLEY:** Thank you, Judge.

23 **MR. DONG:** Brief rebuttal?

24 **THE COURT:** There is no such thing as that
25 understand.

1 **MR. DONG:** I understand. But you give him
2 the opportunity --

3 **THE COURT:** Dr. Dong, there is no such
4 thing as a rebuttal to his argument. We are now
5 -- I am trying very hard to get this thing done
6 without having to take any kind of break.

7 Elizabeth, how are you feeling?

8 **THE COURT REPORTER:** I'm okay.

9 **THE COURT:** You're okay?

10 All right. It is 1:30. I will give you
11 five minutes in rebuttal. That's it.

12 **MR. DONG:** Thank you, Your Honor.

13 Actually, the counsel was saying 45 days to
14 revoke. I was -- I wasn't revoke. That does
15 not mean the contract was not -- I wasn't revoke
16 the contract -- the agreement, because I gave
17 the impression that MUSC was (inaudible) to
18 honor it. That's No. 1.

19 So No. 2, I was not able to provide the
20 document I provide to MUSC because those
21 documents was under the exclusion order.
22 Because other than direct e-mails I sent
23 (inaudible) to MUSC and everything is outside
24 the scope of the discovery.

25 Secondly, that document has to be provided

1 by MUSC. So MUSC asked for the document. I
2 failed to provide it. Those actually -- that's
3 -- that's the -- the document was provided. And
4 during the negotiation, I was leading to
5 continuous negotiate -- negotiate --
6 negotiation. As I said, it's unrealistic say --
7 someone say, well, transfer started no later
8 than 45 days. You can't transfer all the
9 equipment, can't certify, can't do everything.
10 You just can't dump in somebody's parking lot
11 and be done with it.

12 So it is a process. You start 45 days.
13 You still have to -- to -- to do the process.
14 It may take longer; it may take shorter. But
15 the process, transfer biological equipment and
16 material -- research equipment has -- has to
17 so-called -- has to be calculated to the point
18 not accurate enough. And that has to be
19 document and verified. So it's a process that
20 only scientists can understand. So it's a
21 continuous process until the -- they're clear
22 they're not going to do it, but they're going to
23 do otherwise all the things they're going to do
24 against you. That is where the contract was
25 breached.

1 And also, during the process, I could not
2 know they had no intention to honor the contract
3 because they were continually engaging in
4 discussion, continuous effort, they're going to
5 do this, do that, to -- to establish the
6 contract.

7 And also -- actually, I lost track of what
8 the counsel said.

9 You remember what the -- the other two
10 points?

11 **MR. CONLEY:** I don't remember.

12 **MR. DONG:** All right. So what they -- I
13 cannot provide the affidavit because I could not
14 do the -- the contract. I'm not attack anybody.
15 I'm just saying I -- I was incapable to answer
16 the timeline to file -- to conduct discovery
17 when they refused to give me dates talking about
18 they have to discuss with their clients. Right?
19 They have to get dates, coordinate with their
20 clients because it involved too many people. I
21 have e-mails to show that. That's not beyond my
22 control when the -- the owner says when they are
23 available. The owners to me to give deposition
24 is the date. I have to give the date, the
25 deposition on that date. But the order for MUSC

1 to give deposition is when they able and
2 available.

3 So -- and that contract, MUSC was not
4 giving me sufficient time to conduct the
5 deposition until events happened that I would
6 not be able to conduct deposition, because I
7 have more important things to do. I did file
8 show cause -- good cause motion. I was
9 expecting when the motion been filed the process
10 would be continued until the motion had been
11 ruled. So I will have time until the motion
12 denied and actually in the -- the standard is to
13 show good cause.

14 I do believe my cause is better than MUSC's
15 cause, career -- counselors take vacations. My
16 cause is essential surgeries and also, more
17 important, appeal under the order of the US
18 Court of Appeals. So I provide those documents
19 and also my causes of illness with lung
20 infection. I have provided the letter for -- to
21 -- to the Court, the referral letters to refer
22 me to a nonspecialist. So I was not -- not able
23 to conduct the deposition, not I canceled it,
24 not I recalled it, but because I was not able
25 under the circumstances. That's all I have.

1 Thank you.

2 **THE COURT:** All right.

3 Ruling of the Court is as follows: I will
4 grant a motion for summary judgment on the basis
5 that the lawsuit pursuing this matter was bought
6 on September 2, 2014, after the statute of
7 limitations had expired on the continued
8 breaches of the agreement between the parties
9 dated May 3, 2010.

10 I will direct Mr. Conley to prepare a
11 proposed order granting summary judgment of this
12 matter on the basis of the basic outline as
13 contained in MUSC's memorandum accompanying its
14 March 31 motion for summary judgment. That --
15 that proposed order should be filed with the
16 Court by June 6 -- the proposed order shall be
17 sent to me, copied to Dr. Dong, filed by June 9.
18 Dr. Dong will have until June 23, which is two
19 weeks from -- which is a week from the ninth --
20 excuse me, two weeks from the ninth to serve and
21 file his objections.

22 **MR. CONLEY:** The 23rd? Your Honor, the
23 23rd?

24 **THE COURT:** This is June 23. This matter
25 is scheduled for trial on July 24. I will keep

1 this date, in effect, because my final decision
2 and my final order would not be effective until
3 filed. And I reserve the right to change this
4 ruling if a filing from Dr. Dong persuades me
5 otherwise.

6 Dr. Dong is also, from the very beginning
7 of this matter, in the setting of the initial
8 deadlines in the scheduling order in this
9 matter, filed a notice of civil appeal of a
10 nonappealable order which was remitted to the
11 Court of Appeals about a month and a half, to
12 his -- motions, so-called motions for protective
13 order, which were really motions for scheduling,
14 changes, delays or continuances. There has not
15 been one deadline I have set that has not
16 resulted in a motion or other form of filing by
17 Dr. Dong attempting to delay the requirements
18 that I have set forth.

19 I was appointed in this very old case to
20 try to move it along in an expeditious way.
21 I've tried to do that. I'm going to continue to
22 try to do that, because that's what I've been
23 assigned to do. I think that has been done with
24 due regard for everyone's rights to be fully
25 heard, and I will continue to do that.

1 But cases must have a beginning and end.
2 This is a very old case. Things that Dr. Dong
3 had recited on the record today could very
4 easily have been developed long ago and reduced
5 to some sort of affidavit or filing, but they
6 had not been.

7 This motion for summary judgment was filed
8 in March of this year. There's been plenty of
9 time since then to do what was done today in
10 filing some sort of response. The contention
11 that somehow or another Dr. Dong is
12 disadvantaged because of his status pro se is
13 not so. He is very much (inaudible) by the
14 record in this matter.

15 I did grant Dr. Dong a stay with regard to
16 his cataract surgery, even though that surgery
17 was not scheduled until after this matter was
18 scheduled. I myself had my first cataract
19 removed two days ago and I am sitting here in
20 this hearing with the ability to participate.
21 I'm 79. Dr. Dong is about 66.

22 The constant assertion of medical issues
23 and the like, in my view, is an attempt to delay
24 these proceedings, and I'm not quite sure I
25 understand that. I don't know whether Dr. Dong

1 thinks that there is some other activity that's
2 going to take place in his other litigation that
3 will affect this litigation. But as I look at
4 the filings from the Fourth Circuit about his
5 litigation there that is related to the
6 conviction and sentencing and service of the
7 seven-year sentence in connection with his
8 federal criminal matters, I don't know exactly
9 what that Fourth Circuit filing now is about,
10 but I observe with interest that despite
11 discussion of that since early this year, he is
12 still requesting and receiving delays from
13 having to respond and deal with his obligations
14 to his other filings. I -- I -- if you've got
15 litigation you're trying to proceed with in good
16 faith, then you've got some obligation to attend
17 to your business in good faith.

18 I think I've dealt with everything that's
19 outstanding. I will say to you that I
20 considered carefully what I regard as
21 unreasonable delay by Dr. Dong in these
22 proceedings. And that's what I meant in my
23 communication of Friday, May 5, in the e-mail
24 where I discussed this hearing and reset it and
25 said I would consider whether I should take any

1 further action regarding the violation of my
2 order setting this hearing at an earlier time.
3 I will not take any further action in that
4 regard. But the deadlines that I set on a going
5 forward basis need to be observed and move this
6 case along. I think that completes what I need
7 to place upon the record.

8 Anything further, Mr. Conley?

9 **MR. CONLEY:** I have one quick question,
10 Judge, in regards to the proposed order you
11 desire that I provide you. Do I understand the
12 Court that you want that proposed order to be
13 based upon, in general, the things outlining
14 MUSC's memorandum?

15 **THE COURT:** Yes.

16 **MR. CONLEY:** And the corollary to that,
17 because I probably misheard, that -- that
18 proposed order shouldn't solely be listed --
19 solely be limited -- excuse me, to the statute
20 of limitations, it should encompass the other
21 issues?

22 **THE COURT:** That is correct.

23 **MR. CONLEY:** Thank you, Judge.

24 **THE COURT:** That is correct. That is
25 correct.

1 **MR. CONLEY:** Thank you.

2 **THE COURT:** With regard to I -- what I
3 tried to make clear is that with regard to the
4 matter of the statute of limitations issue, that
5 is in part a review of the contract provision by
6 provision. And that's what I say should be a
7 part of the order. Of course, there are
8 encompassing issues as well. Those should be
9 covered as well.

10 **MR. CONLEY:** Thank you, Judge. That's what
11 I wanted to know.

12 **THE COURT:** Okay. All right.
13 Anything further, Dr. Dong?

14 **MR. DONG:** I would just like to make a
15 comment and ask a question of MUSC counsel.

16 **THE COURT:** Come -- stand up and come to
17 the podium. Yes, sir.

18 **MR. DONG:** I would like to make a comment
19 that MUSC counsel just made. I think the
20 question was a suggestion of indication and that
21 was not in the -- Your Honor's order declaring
22 the Court --

23 **THE COURT:** Dr. Dong, don't go there. I
24 asked him to prepare a proposed order for me.
25 And all he's trying to do is get straight

1 whether it should be a broad encompassing order
2 with all the issues we've talked about, and I
3 said yes to that. I want to be sure that as
4 part of that, he tick down the provisions of the
5 contract as he did.

6 That's not my order. I will make my own
7 order. I will look at that, and I will look
8 very carefully at what you file as well. This
9 is a means of getting in front of me. I am one
10 judge with one law clerk whom I share with other
11 judges. This facilitates my ability to get this
12 order out within about a month, which is what
13 I'm trying to do now.

14 **MR. DONG:** I understand.

15 **THE COURT:** Any suggestion that Mr. Conley
16 is somehow trying to do something that's
17 improper by his question is something I will
18 reject.

19 **MR. DONG:** Yes, Your Honor. I also would
20 like to explain myself. I wasn't have any
21 intention to so-called delay due process.
22 Doesn't --

23 **THE COURT:** What that is -- that is
24 certainly not in keeping with what's happened so
25 far, Dr. Dong. I hope you live up to that --

1 **MR. DONG:** Would you, Your Honor, let me
2 finish? Because the delay -- any delay does not
3 actually to my benefit. So I -- I -- I have the
4 right to file motions. I did not have the
5 intention -- I did not have any intention to
6 violate your judge order. I was only asking
7 Your Honor to consider the timeline, the short
8 timeline to pro se litigant not as hard to
9 follow.

10 Under the circumstances, I've controlled
11 myself and I have stated the reasons of myself
12 in my motions. So I will say I was not
13 intending to violate Your Honor's rules, because
14 I followed every -- every order -- schedule
15 order, I filed a motion. But the same -- it's
16 true, every motion, every request filed by MUSC
17 was 100 percent granted by the Court.

18 **THE COURT:** Dr. Dong, let me tell you
19 something: Half the time you sent things
20 saying, "I didn't get this" or "I didn't see
21 that" or something wasn't filed or something. I
22 don't know whether somebody else was helping you
23 that develops those arguments for you or whether
24 you develop those yourself. But I'm going to
25 tell you, I send those things every time in

1 accordance with the way they're supposed to be
2 done. My law clerk, when there are orders,
3 files them also in the filing system.

4 You get -- you reply to the e-mails you
5 want to reply to. But when you don't want to
6 reply, you take the position you haven't
7 received them. That's not borne out by my
8 records about the thing, and that's what I want
9 to stop now. That's trifling with the court.

10 You may have your good faith reasons why
11 you think you want a delay. I don't really
12 understand myself why you continue to delay
13 every single deadline. And I particularly don't
14 understand why you would notice 13 depositions
15 and then not take so much as one of them. But
16 that's a --

17 **MR. DONG:** For the reason I --

18 **THE COURT:** But that's --

19 **MR. DONG:** -- the reason I filed --

20 **THE COURT:** Wait a minute. That's your
21 decision. No one's forcing down on you. That's
22 your decision as to how you want to handle this.

23 **MR. DONG:** I do not have time -- with the
24 delays by the counsel, I will not have the time
25 to take the deposition. And also I was ordered

1 to take deposition only in his office. And --

2 **THE COURT:** Yes, sir. I did not allow you
3 to take depositions in your home. I think that
4 is --

5 **MR. DONG:** It can be anywhere else. It
6 could be --

7 **THE COURT:** No, sir. That's not what you
8 proposed. You proposed --

9 **MR. DONG:** I did not propose.

10 **THE COURT:** -- to take depositions in your
11 home.

12 **MR. DONG:** That was the presentation,
13 again, by MUSC counsel, not by me. Thank you,
14 Your Honor.

15 **THE COURT:** Well, all right, sir. All
16 right.

17 Okay. Court -- court will be adjourned.

18 - END OF TRANSCRIPT -

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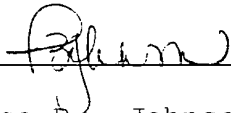
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CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter, do hereby certify that I transcribed the electronic recording of the remote hearing in this matter; and that the foregoing is a true transcript of said electronic recording.

I do further certify that I am not a relative, employee, attorney, or counsel of any of the parties connected with the action, nor am I financially interested in the action.

Dated: June 20, 2023



Teresa B. Johnson, CVR-M-CM, RVR, RVR-M
Official Court Reporter

Email is not considered by courts as proper notice. Therefore, neither the email from judge's clerk nor the one from defendant's attorney served as proper notice. Dr. Dong received the court notice at a much later time than July 17. Dr. Dong completed and dated his motion on the 27th, instead of mailing it that would take 2 to 3 days for the court to enter into the ECF, Dr. Dong hand-delivered a copy to the court and entered into the ECF on the 28th. Based on the legal standard, the motion was filed on the 27th.

Even to assume, were the defendant's attorney's claim correct, but it is not; email sent by the judge's clerk were a proper notice; were a per se litigant not entitled to the extra mailing time, from July 17 to July 28 are exactly 10 days which is strictly within the timeline provided by the statute. Therefore, the Attorney's claim that Dr. Dong did not file or serve the motion within 10 days of July 17, 2023, is patently false.

The remainder of the defendant's argument is also meritless. Because defendant's attorney has access to the courts electronic filing system, the proper notice he receives is the electronic notification sent by the court electronically, no written notice is required. However, for a party who has no access to the electronic filing system, the only proper notice is a copy of the written notice sent by the court using "first class mail" of the United States Postal Service.

Here, the defendant's attorney attempts to mislead the court by first claiming July 28 is 11 days after July 17; second, claiming Defendant was not properly noticed because Dr. Dong did not mail a written notice to the defendant after filing the motion; thirdly, claiming email to a party who does not have access to the ECF system serves as proper notice and “the written notice sent by court shall not be necessary to parties who have already received notice.”

In contrary, this argument is self-defeating because the attorney received proper notice from the court through the CF system; Dr. Dong should be noticed with “a written copy sent by court through first-class mail” as required by law. (Because the nature of email, such as easily lost, caught in filters, modifiable, and automatically deleted by the server after a period, it has never be legally recognized as a proper notice.)

Therefore, Defendant’s argument that Dr. Dong’s motion is untimely fails.

II. The Defendant’s Response is untimely as statutorily prescribed.

The Defendant did not file a Response withing the statutorily prescribed 10-day limit and did not file a motion for extension of time based on good cause. Thefedor, Dr. Dong’s motion should be granted as unopposed motion under the standard established by the United State Supreme Court and the South Carolina Court of Appeals. See Dr. Dong’s Motion for argument and citations. Here, Dr. Dong also adopts Defendant’s argument as its admission that Defendant, who is

represented by attorney, did not file a timely response within the 10-day limitation prescribed by the Rules. The Defendant has abandoned its procedural right to file a response, and the Court does not have the jurisdiction to grant a response that is filed outside the statutory limitation or the authority to grant Defendant a second chance to file the response outside the statutory limit. (The Court erroneously granted defendant extra time *sua sponte* and without the Defendant filing a motion for extension prior to the deadline.) Therefore, the Defendant's Response is untimely, and Dr. Dong's motion should be granted as unopposed motion under the authority established by the Supreme Court of the United States and the South Carolina Court of Appeals. See motion for argument and citations.

III. Defendant's response is unresponsive to plaintiff's motion.

Dr. Dong stands by his motion for amendment and the arguments made within. Without a valid response, the Defendant twisted Dr. Dong's arguments by summarily "paraphrasing" them without citing Dr. Dong's motion and argued against its self-made statements. For this reason alone, the Court should Grant Dr. Dong's Motion for Amendment based on the issues raised to which Defendant failed to make a response.

Here, Dr. Dong would not reiterate what have been stated in his motion but only to cite a few examples of the defendant's tactics of substituting principals to mislead the court.

Example 1.

Dr. Dong's first issue is that court is obligated to enforce the statute as written. The statute goblins summary judgment, Rule 56(c) requires the party seeking summary judgment to prove "there is no genuine issue as to any material fact with pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." In this case, the Defendant raised two issues, "if the statute of limitation applies" and "if the plaintiff can provide sufficient evidence to show the breach of a contract." These do not prove "there is no genuine issues as to any material fact" and cannot be the basis for summary judgment. In contrary, these are questions of material fact need to be determined by a jury.

Secondly, MUSC did not produce any witness, deposition, ulcers to interrogatories, admissions on file, and affidavits to support its summary judgment as required by the law. These are undisputable effects.

Instead of responding to the issue, the Defendant substituted the principal of the question with a false and conclusive statement, saying "it is indisputable MUSC provided evidence in support his motion for summary judgment. Most notably, MUSC provided the court with Dr. Dong's deposition testimony and the contract." *Response, P4, pp4*. This is false because none of Dr. Dong's testimony supports the two issues raised by the defendant, and the contract itself does not support the defendant's argument that Dr. Dong could not produce sufficient evidence to show

the breach of contract. As the result, Defendant failed to cite any Dr. Dong's testimony or the contract to support is argument. Instead, the attorney made up the statement and testified for it without any witness.

Furthermore, the defendant admits it failed to prove the lack of genuine issue of fact by stating that "to the extent either party failed to provide the court with deposition testimony, affidavits, interrogatory responses, or responses to requests for admission." See Response, P4,pp5. Defendants further attempted to mislead the court by shifting the burden of proof to Dr. Dong by saying "it is Dr. Dong who failed to provide the court with such materials in opposition to MUSC's motion for summary judgment." *Id.* Such statement is erroneous because the law requires the moving party, the party who is seeking a summary judgment, to provide such statutorily required materials. In this case, it is MUSC who is seeking the summary judgment, and who has the burden to prove the lack of genuine issue of fact; not Dr. Dong.

The fact is undisputed, MUSC violated the contract by not returning Dr. Dong's research assets, depriving Dr. Dong's rights to his assets to conduct research and advance his career. MUSC also did not allow Dr. Dong to continue his academic operation on campus at a tenured professor and director for biopharmaceutical development. MUSC admitted that it did not transfer Dr. Dong's research assets to

Dr. Dong based on the Agreement. However, MUSC erroneously claims that MUSC “did not take away his title for director.” This claim is false, because MUSC did not allow Dr. Dong to operate under the title, and there was nothing more to take away from Dr. Dong.

Example 2:

Defendant’s Response to the court violated the statutes and Dr. Dong's due process right is misleading and erroneous.

As stated in Dr. Dong's motion, the Supreme Court of United States has a long-established: the essential elements of due process of law and opportunity to defend.

Here, the Defendant’s Response is misleading for several reasons.

First, email has not been recognized as “proper notice” by judicial system. The notice from the court is the minimally required official notice.

Secondly, once a motion to alter a timeline is filed, the timeline is suspended until the motion is decided. Therefore, even were the emails to qualify as proper notice, the date was continued until the Court granted Dr. Dong's motion for protective order due to his eye surgeries. Record show that the Court only follows this rule in favor of MUSC, but not Dr. Dong. For example, when MUSC filed a protection motion for the allegedly that Dr. Dong want to record his deposition and

to take MUSC's deposition at his home office, while there is no rules against such practice, the dates of the deposition were suspended and delayed for months at the expenses of taking away Dr. Dong's already shortened discovery time.

Thirdly, the statute requires the motion for summary judgment to be filed at least 10 days before the hearing so that the nonmoving party have sufficient time to be prepared. Furthermore, the parties can file extensions for good cause. In this case, Dr. Dong did file motions for extension, and for protection. However, these motions were denied by the Court without the defense attorney to file an opposition and without a legitimate reason but accusing Dr. Dong "delaying due process" and "will not be tolerated." As the defendant admitted, an email was sent three days before the hearing date informing Dr. Dong that he is motion for protection was finally "granted", but the date of hearing was set only one day after the protected time for surgery. This gave no time for Dr. Dong to prepare for his hearing, no time to complete his opposition to the summary judgment, and no time to file his memorandum and affidavit. If this is not a violation of due process, then nothing is.

Example 3.

Defendant did not directly respond to court's violation rule 56, which requires MUSC to provide the statutorily required evidence "along with affidavits to show there is no genuine issue of material fact." Further, Response failed to argue against the fact the Court violated Rule 56(f) which prescribes that "when affidavits are

unavailable”, such as in this case, “the court may refuse the application for judgment or may order continuance to permit affidavits to be obtained, or depositions to be taken or discovery to be had.”

Rule 56(f) specifically applies to the current situation because the reason that Dr. Dong could not provide this material is because the unreasonably strictive time limitations the Court has enforced on Dr. Dong only. Under the Rule, Dr. Dong should have been allowed additional time to conduct discovery, deposition, and submit affidavit. Under the authority of this Rule, Dr. Dong did submit this memorandum and affidavit along with a motion for a rehearing of the summary judgment. However, once again, the court denied Dr. Dong's motion without a legal basis or the defendant's opposition and did not conduct a hearing on Dr. Dong's motion and newly submitted memorandum and affidavit. The Defendant's Response provides no argument for why these conducts are not violations of statutes and Dr. Dong's due process rights.

VI. It is undisputable that MUSC violated the Agreement.

Most importantly, Defendant's Response failed to address the issue that MUSC violated the Contract by not returning and transferring Dr. Dong's research assets in order for him to continue his research off-campus. These are Dr. Dong's personal assets, which were illegally taken from Dr. Dong by the chairman of the department, James Norris for his personal benefit. The Defendant openly admits that

Dr. Dong's research assets "were not transferred," but blames such breach of contract on Dr. Dong. The Defendant's attorney claims that Dr. Dong did not show any evidence that "he provided MUSC with the prerequisite certificates for such transfer." This statement is false because there is no requirement to return Dr. Dong's personal assets. The stipulation that Dr. Dong would provide MUSC with the certificates for biological research operation at GenPhar was for protecting MUSC from violating regulations when Dr. Dong conducting his research on behalf of MUSC at the off-campus location. However, as Dr. Dong stated under oath, these certificates had been provided to MUSC when Dr. Dong submitted research proposals on behalf of MUSC to the federal agencies. Furthermore, MUSC did not provide any proof that Dr. Dong failed to provide these certificates; the burden to prove is on MUSC even if were such certificates a prerequisite for returning Dr. Dong's assets, but it is not. MUSC did admit that it did not return and transfer Dr. Dong's assets, deprived Dr. Dong's right to use his assets to conduct research and advance his career. As Dr. Dong testified in his deposition, by these actions, MUSC prevented Dr. Dong from obtaining a professorship at other universities and destroyed Dr. Dong's career. Obtaining a professorship at other universities is the prerequisite for Dr. Dong to resign from MUSC. However, after blocking Dr. Dong's ability to obtain a position at other universities, MUSC unilaterally terminated Dr.

Dong's tenure professorship, which cannot be terminated unless with proven causes through the due process specified in the faculty handbook and the University Policy.

The second undisputed violation of the agreement was that MUSC did not give Dr. Dong the access to MUSC facilities for academic operations, including the authority under the title of Director for Center of Biopharmaceutical Development. Defendant attorney does not deny that it did not allow Dr. Dong to conduct academic operations at MUSC but claims that “MUSC did not take away Dr. Dong's title.” This defense is meritless because MUSC did not allow Dr. Dong to operate under such title to begin with.

Furthermore, MUSC provides no evidence as required by the statute to support its claim. The defendant's attorney made such claim by himself without any witness or the required evidence. It is an alimentary error for the Court to allow the defense attorney to testify and rely on the attorney's testimony for the court's decision. In this case, as the defendant admitted, both the court and the defendant's attorney joined the defense by criticizing Dr. Dong for not be able to submit his affidavits in time and making the false claim that MUSC did not return Dr. Dong's research materials and equipment because of that Dr. Dong did not prove that he provided the operating certificates. Response, P7, pp4.

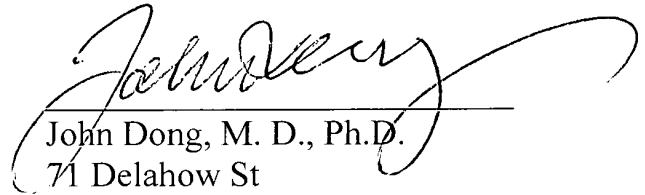
These are not only violations of due process, but also the courts obligation to be impartial and equally enforce the law.

CONCLUSION

For reasons stated above and those stated in Plaintiff's Motions, Dr. Dong respectfully requests the honorable Court to Grant the Motion to Amend the decision of granting the defendant's Motion for Summary Judgment in the interest of justice.

Sept 5, 2023
Charleston, South Carolina

Respectfully submitted, pro se,



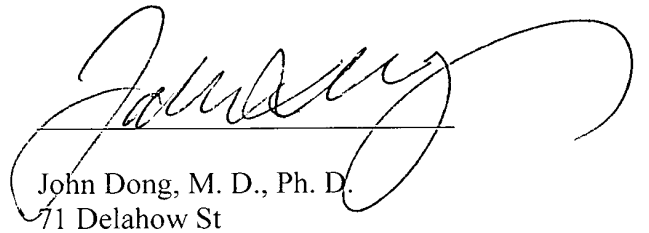
John Dong, M. D., Ph.D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332

CERTIFICATE OF SERVICE

This is to certify that I have on this 5th day of July 2023, served a copy of the Plaintiff's Reply to Defendant's Response to Motion for Amendment to the ECF system, which will notify all parties electronically. In addition, a copy of this motion is served via email at bconley@clevelandlaborlaw.com and United States Mail Services addressed to the following:

Bob J. Conley, Esq.
Cleveland & Conley LLC
171 Church Street, suite 310
Charleston, South Carolina 29401

FILED
2023 SEP 28 AM 11:51
JULIE J. ANDERSON
CLERK OF COURT
JP



John Dong, M. D., Ph. D.
71 Delahow St
Charleston, SC 29492
Email: johny.dong@gmail.com
Phone: 843-991-2332