IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ANI PHARMACEUTICALS, INC. f/k/a BIOSANTE PHARMACEUTICALS, INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. N24C-03-022 SKR (CCLD)
CG ONCOLOGY, INC.,	)	
Defendant.	)	

Submitted: April 10, 2026
Decided: July 16, 2026

MEMORANDUM OPINION AND ORDER

Upon Consideration of Plaintiff's Motion for a New Trial and for Judgment as a Matter of Law:

DENIED.

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RENNIE, J.

I. INTRODUCTION

Plaintiff sold Defendant the foundational biological and intellectual property building blocks for CG0070, a genetically modified virus that could potentially be developed into a cancer drug. As part of a multi-faceted exchange of consideration, Defendant contracted to pay Plaintiff perpetual royalties on the net sales of CG0070.

Following the expiration of the primary patent covering CG0070, Defendant determined that it did not have a contractual obligation to pay any future royalties, prompting Plaintiff to initiate this action. Shortly before trial, upon consideration of cross-motions for summary judgment, the Court determined that the perpetual royalty provision was unenforceable as a matter of law under the *Brulotte* doctrine. This threshold legal ruling directly implicated the severability provision in § 7.7 of the parties' agreement, which provided that a term was not severable if the unenforceability of that term affected the economic or legal substance of the transactions contemplated by the parties' Agreement in a manner materially adverse to any party.

In the same summary judgment decision, the Court determined that the "materiality" of its ruling was an issue of fact for the jury. The parties proceeded to trial. At its conclusion, the jury returned a verdict finding that the invalidation of the royalty provision did not alter the economic or legal substance of the transactions contemplated by the agreement in a manner materially adverse to Plaintiff. Because the contract survived via severability, the contract remained in force, and the jury did not reach Plaintiff's alternative theory of unjust enrichment. Plaintiff now moves for a new trial, and for judgment as a matter of law in its favor. For the reasons set forth below, Plaintiff's motion is **DENIED**.

II. BACKGROUND

A. The Agreement and Initiation of this Action

In November 2010, Plaintiff ANI Pharmaceuticals Inc., f/k/a BioSante Pharmaceuticals, Inc. ("ANI"), and Defendant CG Oncology, Inc., f/k/a Cold Genesys, Inc. ("CG") entered into an Assignment and Technology Transfer Agreement (the "Agreement").[1] Pursuant to the Agreement, ANI sold CG certain biomaterials, patents, and other intellectual property used to develop CG0070, an oncolytic virus aimed at treating bladder cancer.[2] In exchange, CG provided ANI with a cash payment of approximately $90,000, a 30% sublicensing revenue share, a 5% running royalty on net sales of CG0070, representation on CG's board of directors, and a 19.9% equity interest in CG.[3]

On January 24, 2024—more than a decade after the parties executed the Agreement—CG completed its initial public offering.[4] Shortly thereafter, ANI

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[1] *See* PTX-001 (hereinafter the "Agreement").
[2] *Id.*
[3] *Id.* at §§ 3.1–3.7. Although the Agreement also provided that ANI would be paid another type of royalties, they are not at issue in this action. *See* PTX-001 at § 3.3 (defining royalties owed by CG to ANI).
[4] *See* PTX-074.

contacted CG via email to inquire about the issuance of its contractual shares and to verify that CG had paid all required milestone payments and royalties.[5] CG initially responded with confusion,[6] asserting that it owed no royalty obligations to ANI.[7] On March 4, 2024, six days after the parties' final email exchange,[8] ANI initiated this action. ANI seeks a declaratory judgment that CG is obligated to pay the royalties outlined in § 3.3 of the Agreement.[9]

B. Key Provisions of the Agreement

The Agreement is governed by New York law.[10] For purposes of resolving the instant motion, the critical provision is the severability clause, contained in § 7.7, which states:

> If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.[11]

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5 PTX-081
6 *See* PTX-083; PTX-092; PTX-335; PTX-336.
7 PTX-335.
8 *Id.*
9 D.I. No. 1. ANI amended its complaint the next day. D.I. No. 2.
10 Agreement at § 7.4.
11 *Id.* at § 7.7.

As interpreted by the Court in its summary judgment rulings and applied by the jury at trial, this provision enabled a jury to conclude that the remainder of the Agreement survived notwithstanding the invalidation of the royalty obligation.

C. First Summary Judgment

On November 18, 2024, the Court issued a memorandum opinion and order denying CG's Motion for Judgment on the Pleadings, or in the Alternative, Summary Judgment.[12] In that opinion, the Court explained that the validity of the § 3.3 royalty obligation turned on whether the royalty provision was the product of impermissible patent leverage and whether it required royalty payments based on the post-expiration use of the assigned patents.[13]

D. Second Summary Judgment

Shortly before trial, the Court issued an oral ruling resolving several cross-motions for summary judgment.[14] The Court determined that under *Brulotte v. Thys Co.*[15] and its progeny, § 3.3 constituted an impermissible perpetual royalty that unlawfully extended patent leverage.[16]

Because this ruling rendered § 3.3 unenforceable, the remaining threshold question was whether the royalty provision was severable from the rest of the

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[12] *ANI Pharm., Inc. v. CG Oncology, Inc.*, 2024 WL 4986509 (Del. Super. Nov. 18, 2024).
[13] *Id*. at *1.
[14] D.I. No. 309, Ex. 4 ("July 16 Tr.").
[15] 79 U.S. 29 (1964).
[16] July 16 Tr. at 15:15–19.

Agreement. The Court first determined that § 7.7 demonstrated a clear mutual intent to sever unenforceable provisions provided that the loss of the provision did not affect the economic or legal substance of the transactions contemplated by the Agreement in any manner materially adverse to either party.[17] Conversely, if the severed clause altered the core substance of the bargain to a party's material detriment, the Agreement as a whole would fail.[18]

Second, the Court determined that the materiality of the severed provision presented a genuine issue of material fact for the factfinder, in this case a jury, to resolve.[19] The pivotal issue at trial was whether invalidating § 3.3 affected the economic or legal substance of the contemplated transactions in a manner materially adverse to ANI.[20] If the jury found no material adversity, the provision was severable and the remainder of the Agreement continued to govern the parties' relationship.[21] If the jury found material adversity, the Agreement failed in its entirety, allowing ANI to proceed under an alternative theory of unjust enrichment.[22]

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[17] *See Id.* at 21:21–23:18.
[18] *See Id.*; Agreement at § 7.7.
[19] July 16 Tr. at 23:8–18.
[20] *Id.* at 23:8–14.
[21] *Id.*
[22] *Id.* at 23:14–18.

E. Trial and Post-Trial Motions

A six-day jury trial commenced on July 21, 2025 and concluded on July 28, 2025.[23] Following the presentation of evidence from both parties, the Court instructed the jury.[24] Although the parties agreed on most of the final instructions,[25] they submitted competing proposals regarding the legal standard for materiality.[26] After evaluating each proposal, the Court adopted an instruction that substantially mirrored CG's proposed language. Issued as Instruction No. 14 (the "Materiality Instruction"), the final instruction states:

> ANI claims under Section 7.7 of the 2010 Agreement that it has been materially adversely affected by the finding that it cannot collect royalties past the expiration of the relevant patents. It will be up to you to determine whether the unenforceability of CG Oncology's royalty obligation in § 3.3 of the parties' contract affects the economic or legal substance of the transactions contemplated in the agreement in a manner that is "materially adverse" to ANI. ANI must prove this by a preponderance of the evidence.
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> Materiality must be measured based on the parties' expectations at the time they entered into the contract. In deciding whether ANI has been materially adversely impacted, you may consider:
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> - The financial impact on the affected party.
> - Whether the remaining contract still reflects the parties' original intentions.
> - Whether the remaining terms are fair and workable.
> - Any evidence presented about how the contract was negotiated and what the parties expected.[27]

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[23] *See* D.I. No. 296.

[24] D.I. No. 292, Jury Instructions.

[25] *See* D.I. No. 288 (noting the parties' agreement on what became Instruction Nos. 1–11, 17, and 18–22).

[26] *See Id.* at Instruction No. 22 (containing the competing proposals for materiality instructions).

[27] D.I. No. 292, Jury Instructions at 16.

To guide the jury through these interconnected issues, the jury was provided a special verdict form. The final form synthesized competing templates submitted by each party.[28] The Court adopted CG's language about the burden of proof, but incorporated the operative liability question directly from ANI's proposal. Specifically, the form asked the jury whether: "the unenforceability of § 3.3 of the parties' contract affected the economic or legal substance of the transactions contemplated thereby in a manner that was materially adverse to ANI[.]"[29]

On July 29, 2025, the jury returned a verdict—answering the operative question in the negative—finding that the invalidation of § 3.3 did not affect the economic or legal substance of the contemplated transactions in a manner materially adverse to ANI.[30] Pursuant to the explicit instructions on the verdict form, the jury did not reach ANI's alternative claim for unjust enrichment.[31]

Following the entry of the verdict, ANI timely moved for judgment as a matter of law under Superior Court Civil Rule 50(b) and, alternatively, for a new trial under Superior Court Civil Rule 59(a).[32] CG opposed the motion,[33] and ANI filed a reply.[34]

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[28] *Compare* D.I. No. 292, Verdict Form *with* D.I. Nos. 289, 290.
[29] *Compare* D.I. No. 289 *with* D.I. No. 292, Verdict Form.
[30] D.I. No. 292, Verdict Form.
[31] *See Id.*
[32] D.I. No. 308 (hereinafter "Mot."). CG also moved for its costs, D.I. No. 310, but the parties stipulated that briefing on that motion would continue as needed following this ruling. D.I. No. 311.
[33] D.I. No. 313 (hereinafter "Opp'n").
[34] D.I. No. 314 (hereinafter "Reply").

The Court heard oral argument on April 10, 2026. The matter is now ripe for adjudication.

III. STANDARD OF REVIEW

A. Superior Court Civil Rule 59(a)

Under Superior Court Civil Rule 59(a), the Court may grant a new trial "as to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior Court."[35] A jury verdict carries a presumption of correctness.[36] However, the Court may grant a new trial if its own legal error tainted the verdict, provided the moving part demonstrates resulting prejudice.[37]

B. Superior Court Civil Rule 50

The Court will grant a motion for judgment as a matter of law under Rule 50 only if "'there is no legally sufficient evidentiary basis for a reasonable jury to find' for [the] non-moving party."[38] In making this determination, "the Court must view the evidence and draw all reasonable inferences 'in a light most favorable to the non-

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[35] Super. Ct. Civ. R. 59(a).
[36] *Streetie v. Progressive Classic Ins. Co.*, 35 A.3d 419, 2011 WL 6307823, at *1 (Del. 2011) (TABLE) (citing *Dunn v. Riley*, 864 A.2d 905, 906 (Del. 2004)).
[37] *Cohen-Thomas v. Lewullis*, 2016 WL 721009, at *3 (Del. Super. Jan. 29, 2016).
[38] *LCT Cap., LLC v. NGL Energy P'rs LP*, 249 A.3d 77, 89 (Del. 2021) (quoting Super. Ct. Civ. R. 50(a)).

moving party.'"[39] The moving party bears "the burden of demonstrating both the absence of a material fact and entitlement to judgment as a matter of law."[40]

IV. MOTION FOR A NEW TRIAL

A. Alleged Legal Errors

ANI's primary ground for seeking a new trial rests on a challenge to Jury Instruction No. 14 (the "Materiality Instruction"). Specifically, ANI contends that the Materiality Instruction: (1) departed from the plain and ordinary meaning of "materiality" by shifting the focus from objective contractual language to subjective party expectations;[41] (2) artificially restricted the temporal scope of the evidence the jury could consider;[42] (3) improperly invited the jury to consider parol and extrinsic evidence;[43] (4) outlined four guiding factors that misstated applicable law;[44] and (5) compounded those errors when the Court rejected ANI's other proposed instructions.[45]

B. Requirements for Valid Jury Instructions

Under Delaware law, jury instructions are not held to a standard of absolute perfection.[46] Viewed as a whole, the instructions must give a correct statement of the

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[39] *Id*. (quoting *Blue Hen Lines, Inc. v. Turbitt*, 787 A.2d 74, 77 (Del. 2001)).
[40] *Id*. at *90 (quoting *Blue Hen Lines*, 787 A.2d at 77).
[41] Mot. at 5–6.
[42] Mot. at 6–9.
[43] Mot. at 9–12.
[44] Mot. at 12–14.
[45] Mot. at 14–19.
[46] *See Baker v. Reid*, 57 A.2d 103, 125 (Del. 1947) ("[S]ome inaccuracies and inaptness in statement are to be expected in any charge.").

substantive law, provide reasonably informative guidance, and avoid misleading the jury.[47]

A party does not possess a right to a particular instruction or a specifical verbal form.[48] In framing instructions, the Court retains broad discretion to provide specific factors to assist the jury in understanding and applying the law to the facts.[49] Further, by adopting a specific jury instruction, the Court does not necessarily subscribe to every underlying argument or legal rationale advanced by the proposing party in support of the instruction.[50]

C. The Materiality Instruction

1. *The Court Properly Elucidated Ordinary Meaning Beyond a Bare Dictionary Definition.*

ANI's proposed instruction sought to define materiality by stringing together isolated excerpts from the Agreement alongside verbatim definitions from Merriam-Webster's Dictionary. ANI argued that because "materiality" is an ordinary term, the jury required no further elaboration.[51] The Court agrees that § 7.7 is unambiguous and that its terms must be given their plain meaning. However, the fundamental purpose of a jury instruction is to inform lay jurors how to apply substantive legal

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[47] *Corbitt v. Tatagari*, 804 A.2d 1057, 1062 (Del. 2002).
[48] *Harris v. Cochran Oil Co.*, 70 A.3d 205, 2011 WL 3074419, at *3 (Del. Jul. 26, 2011) (TABLE).
[49] *See Haas v. United Techs. Corp.*, 450 A.2d 1173, 1178–79 (Del. 1982).
[50] D.I. No. 297 ("July 28 A.M. Tr.") at 4:1–3.
[51] *See* D.I. No. 288 at Proposed Instruction No. 22.

concepts to the facts found at trial.[52] The Court determined that a bare dictionary definition provided insufficient guidance for a complex commercial severability analysis. A more comprehensive, legally contextualized instruction was necessary.

2. *The Materiality Instruction Correctly Anchored the Materiality Analysis in the Parties' Bargained-for Expectations.*

ANI argues that the Materiality Instruction improperly substituted an objective standard—the substance of the transactions contemplated by the Agreement—with a subjective standard focused on the parties' expectations.[53] This argument is an untimely collateral attack on the Court's second summary judgment ruling, which held that materiality under § 7.7 presented a genuine issue of material fact for the jury. If the jury's role was confined strictly to reading the text of the Agreement alongside the Court's prior ruling on the unenforceability of § 3.3, the issue would be one of law for the court, not fact for the jury.

Under New York law, which governs the Agreement, courts evaluating severability are not confined to the four corners of the instrument.[54] Where, as here, a jury must determine whether a severed clause is material to the overall bargain, it

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[52] *See, e.g., State v. Merritt*, 2012 WL 5944433, at *7 (Del. Super. Nov. 20, 2012).

[53] Mot. at 5–6.

[54] *See Christian v. Christian*, 365 N.E.2d 849, 856 (N.Y. 1977) ("Whether a contract is entire or severable generally is a question of intention to be determined from the language employed by the parties *viewed in light of the circumstances surrounding them at the time they contracted*.") (emphasis added)(citation omitted).

is not error to permit them to consider the parties' expectations at the time of contracting.

3. *The Temporal Scope of the Materiality Analysis Properly Maintained Focus on the Date of Contract Execution.*

ANI alleges that the Materiality Instruction erred by anchoring the materiality analysis to time of contracting, thereby preventing the jury from considering § 3.3's potential for a massive future commercial payout.[55] In making this argument, ANI conflates the Court's separate legal rulings regarding the valuation date for an unjust enrichment remedy with the proper timing framework for a contractual severability analysis.[56]

The Materiality Instruction guided the jury in determining whether the invalidation of § 3.3 was fatal to the contract. Because they jury found no material adversity, the clause was severed and the remainder of the contract survived. The temporal limitation embedded in the instruction strictly tracks New York precedent, which evaluates contract formation, intent, and severability based on the facts existing at the time of execution.[57]

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[55] Mot. at 6–9.

[56] Mot. at 6–9.

[57] *See Huron Gp., Inc. v. Pataki*, 785 N.Y.S.2d 827, 856 (Sup. Ct. 2004) ("With respect to severability of contracts, whether the provisions of a contract are severable depends largely upon the intent of the parties as reflected in the language they employ and the particular circumstantial milieu in which the agreement came into being.") (internal quotation marks omitted), *aff'd*, 803 N.Y.S.2d (App. Div. 2005).

4. The Materiality Instruction Appropriately Addressed the Trial Evidence Without Violating the Parol Evidence Rule.

It is a foundational principle of contract law that parol evidence is inadmissible to vary, add to, or contradict the terms of an integrated, unambiguous written instrument.[58] ANI contends that the Materiality Instruction improperly invited the jury to violate this rule.[59]

This challenge fails because the instruction did not direct the jury to interpret, alter, or contradict the terms of the Agreement. Rather, the jury's factual mandate was to determine whether an independent event—the operation of law rendering § 3.3 unenforceable—fundamentally disrupted the economic or legal substance of the deal to ANI's material detriment. To resolve this question, the jury necessarily had to apply extrinsic facts developed at trial to the framework of the Agreement.

The Court is surprised by ANI's current position, given that ANI vigorously fought to introduce this identical category of evidence in the pretrial phase.[60] Before a jury returned an adverse verdict, ANI openly recognized that the jury needed to evaluate how exogenous commercial events stacked up against what the contracting parties deemed material.[61]

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[58] *See, e.g., Moloney v. Weingarten*, 500 N.Y.S.2d 320, 322 (App. Div. 1986).
[59] Mot. at 9–12.
[60] *See* D.I. No. 326 ("July 17 P.M. Tr.") at 96:13–99:12.
[61] *See* July 17 P.M. Tr. at 97:12-18.

Because the instruction properly permitted the jury to weigh the contextual evidence of the transaction, no error occurred.

5. *The Four Exemplar Factors Accurately and Substantively Reflect New York Severability Law.*

To assist the jury in determining whether the unenforceability of § 3.3 was material, the Court provided four illustrative factors:

- The financial impact on the affected party.
- Whether the remaining contract still reflects the parties' original intentions.
- Whether the remaining terms are fair and workable.
- Any evidence presented about how the contract was negotiated and what the parties expected.[62]

These factors did not alter the core definition of materiality; instead, they properly identified the categories of trial evidence the jury could weigh to evaluate material adversity.

i. *The Financial Impact on the Affected Party*

ANI does not raise a direct legal challenge to this factor.[63]

ii. *Whether the Remaining Contract Still Reflects the Parties' Original Intentions*

ANI challenges this factor on two grounds: first, that it lacks support in the legal authority originally cited by CG in support of its proposed instructions;[64] and

[62] D.I. 292, Jury Instructions at 16.
[63] *See* Mot. at 13 (discussing the first factor as "whether ANI has been materially adversely impacted"); Reply at 12–13 (also not discussing this factor).
[64] Mot. at 13.

second, that it permitted the jury to find a lack of material adversity based on "intentions" even if the express terms of the text proved otherwise.[65]

ANI's first argument is misplaced because the jury never saw the case citations in the parties' proposed instructions.[66] Hence, ANI cannot prevail merely by distinguishing the authority CG cited in its proposal. Instead, ANI must show that the Materiality Instruction incorrectly stated the law—a burden it fails to meet. As noted in Section IV.C.2 *supra*, New York law permits the factfinder to evaluate the parties' original intent when determining the severability of a failed clause. Accordingly, the Court properly included this factor.

iii. Whether the Remaining Terms are Fair and Workable

ANI challenges this factor as alien to the meaning of "materially adverse." ANI miscomprehends its burden. This factor was provided to guide the jury's assessment of whether the contract remained viable without the royalty provision. In making severability determinations, New York Courts consistently evaluate whether the excision of an illegal clause leaves behind a functional, equitable, and workable agreement.[67] Including this factor was not error.

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[65] Mot. at 13.

[66] *Compare* D.I. No. 288, Proposed Instruction No. 22 *with* D.I No. 327 ("July 28 PM Tr.") at 98:11–20.

[67] *See Lanza v. Carbone*, 13 N.Y.S.3d 472, 476 (App. Div. 2015) ("Where an agreement consists of an unlawful objective in part and a lawful objective in party, the court may sever the illegal aspect and enforce the legal one, so long as the illegal aspects are incidental to the legal aspects and are not the main objective of the agreement.") (internal citation omitted).

iv. Any Evidence Presented About How the Contract was Negotiated and What the Parties Expected

ANI's opposition to this factor merely restates its broader parol evidence objection, which the Court rejected in Section IV.C.4. Because the party expectations and negotiation history remain a proper part of a factual severability inquiry under New York law, this factor did not mislead the jury.[68]

D. The Court's Resolution of ANI's Alternative Instructions Rested on Sound Discretion and Caused No Prejudicial Harm.

ANI does not argue that the failure to give its other requested instructions constitutes independent legal error. [69] Instead, ANI asserts that these omissions compounded the allegedly prejudicial effect of the Materiality Instruction.[70]

Because the Materiality Instruction correctly stated the law, there was no foundational prejudice to exacerbate. Nevertheless, for the sake of completeness, the Court addresses each rejected instruction.

1. ANI Proposed Instruction 22

Proposed instruction No. 22 was ANI's alternative version of the Materiality Instruction. As previously noted, this proposal relied on isolated contract snippets and dictionary definitions. Because the Court properly determined that a bare

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[68] *See Matter of Wilson's Estate*, 405 N.E.2d 220, 223 (N.Y. 1980) ("[W]hether the provisions of a contract are severable depends largely upon the intent of the parties as reflected in the language they employ and the particular circumstantial milieu in which the agreement came into being.")
[69] *See* Mot. at 14–19.
[70] Mot. at 14.

dictionary definition provided inadequate guidance for a complex commercial severability analysis, the rejection of this instruction was well within the Court's discretion.

2. ANI Proposed Instruction 14

This instruction contained ANI's proposed statement of the case. ANI's draft heavily emphasized CG's contractual obligation to pay royalties—an obligation this Court had already ruled was unenforceable as a matter of law. ANI claims that by refusing this instruction, the Court permitted CG to pretend it had honored the contract and deprived the jury of critical information regarding the scope of CG's original promises.[71]

The Court disagrees. The jury was provided with an accurate neutral statement of the case.[72] Section 3.3 was available to the jury in its entirety during its deliberations; they were not deprived of any information regarding the original scope of the royalty promise. Further, as discussed below, a party does not dishonor its contract by failing to comply with an impermissible, severable provision. Refusing this instruction was not erroneous.

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[71] Mot. at 16.
[72] D.I. No. 292, Jury Instructions at Instruction No. 12.

3. *ANI Proposed Instruction No. 19*

ANI requested an instruction on contractual repudiation, arguing it was appropriate because the Court did not bar use of the term at trial.[73] However, the jury never reached a stage of analysis where repudiation could become relevant. The jury resolved the threshold question by finding the facts necessary to conclude that a valid, enforceable contract continued to govern the parties' relationship. Because a severed contract remained in force, there was no legal baseline upon which the jury could find that the contract had been repudiated. Therefore, failure to give this instruction was not an error.

4. *ANI Proposed Instructions 16–18 and 20*

These instructions all addressed the alternative theory of unjust enrichment and the calculation of restitution damages based on subsequent events, which the jury never reached. ANI argues that by rejecting these instructions while giving the Materiality Instruction, the Court contradicted its prior summary judgment rulings.[74] ANI again misstates the Court's refusal to dismiss unjust enrichment at the summary judgment stage as an endorsement of the merits of that claim. This was not the case. Unjust enrichment was preserved strictly as an alternative remedy in the event the contract failed for lack of severability. Because the jury found that the contract

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[73] *See* July 17 P.M. Tr. at 52:14-18, 73:5-19.
[74] Mot. at 19.

survived, it never reached the unjust enrichment claim. Any omissions regarding unjust enrichment instructions or damages calculations were entirely harmless.

V. JUDGMENT AS A MATTER OF LAW

A. Legally Sufficient Evidence Supports the Jury's Verdict

ANI moves for judgment as a matter of law under Superior Court Civil Rule 50(b), arguing that the legal effect of invalidating § 3.3 necessarily established material adversity as a matter of law.[75] This analysis must be conducted with extreme deference to the findings of a jury.[76]

The Court will grant judgment as a matter of law only if, viewing the evidence in a light most favorable to CG and drawing all reasonable inferences in its favor, there is no legally sufficient evidentiary basis for a reasonable jury to find for CG.[77]

B. The Trial Record Contains Competent Evidence Contradicting ANI's Claim of Material Adversity.

The jury found that ANI failed to prove that the unenforceability of § 3.3 affected the economic or legal substance of the contemplated transactions in a manner materially adverse to ANI.[78] ANI contends that the only competent evidence of the parties' expectations was the testimony of its former CEO, Stephen M. Simes.[79] The trial record flatly refutes this assertion. The jury was presented with

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[75] Mot. at 20–26.
[76] *Amalfitano v. Baker*, 794 A.2d 575, 577 (Del. 2001).
[77] *LCT Cap., LLC v. NGL Energy P'rs LP*, 249 A.3d 77, 89 (Del. 2021).
[78] D.I. 292, Special Verdict Form.
[79] Mot. 21–24.

extensive documentary and testimonial evidence, including: (1) the "Perry Email," which detailed multiple alternative proposals for the structure of the transaction;[80] (2) the extensive non-patent consideration actually provided to ANI under the contract, including the upfront cash payment, a corporate board seat, a 19.9% equity position, patent maintenance cost shifting, and a 30% sublicensing fee agreement;[81] (3) Comprehensive testimony regarding the extreme risk and uncertainty of obtaining FDA approval for an oncolytic virus;[82] and (4) testimony regarding the central role that valid patent protection played in the economics of the original bargain.[83]

While the jury was free to credit Mr. Simes' subjective testimony, the remaining evidence amply permitted a reasonable jury to find that the excision of a patent-dependent perpetual royalty did not destroy the core legal or economic substance of the 2010 transaction. Because a reasonably jury could—and did—conclude that the remaining consideration preserved the heart of the deal, judgment as a matter of law is inappropriate.

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[80] DX-29; DX-136. *See also* DX-137 (proposing various deal structures for the sale of CG0070 to a nonparty company).
[81] Agreement at §§ 3.1–3.2, 3.5–3.6.
[82] PTX-080 at 10; D.I. No. 323("July 24 Instant Trial Tr.") at 41:15–19.
[83] D.I. No. 291, Court Ex. 4 at 194:12–195:11; D.I. 291, Court Ex. 5 at 44:19–46:16; July 24 Instant Trial Tr. at 16:14–17:15.

C. The Survival of the Agreement Bars ANI's Alternative Claim for Unjust Enrichment.

The jury's verdict establishes that the Agreement remains intact and governs the parties' relationship. This finding disposes of ANI's motion for judgment as a matter of law on its unjust enrichment claim. ANI argues that a party may recover restitution in certain instances even where a contract exists. However, ANI cites no controlling authority holding that a party is entitled to restitution based on the value of an immaterial term that has been validly severed from an otherwise enforceable contract.[84]

ANI relies heavily on the Court's prior denial of summary judgment on this issue.[85] The Court denied summary judgment because the material or immaterial nature of the § 3.3 ruling presented an issue of material fact. Once the jury resolved that factual dispute by finding the severed clause immaterial, the contract stood, and unjust enrichment was precluded as a matter of law. Indeed, ANI's own proposed special verdict form recognized that an affirmative finding of severability took unjust enrichment off the table.[86]

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[84] *See* Mot. at 25–26 (citing *Gen. Paint Corp. v. Kramer*, 68 F.2d 40, 42 (10th Cir. 1933)).
[85] *See, e.g.*, Reply at 18–19.
[86] D.I. No. 289.

D. CG Did Not Breach the Contract by Resisting an Unenforceable Royalty Provision.

Finally, ANI moves for judgment as a matter of law on CG's complete performance,[87] arguing that the Court's first summary judgment ruling resolved this issue in ANI's favor.[88] ANI's reading of that decision is only possible if one ignores the entire procedural history of this litigation. At the time of the first summary judgment ruling, the Court had not yet determined whether § 3.3 was enforceable,[89] nor had a jury determined that its invalidity was immaterial to the survival of the contract. In light of those subsequent developments, the Court cannot hold that CG's failure to pay an illegal, unenforceable, and validly severed royalty constitutes a failure to complete its contractual performance. The Court refuses to disturb the verdict on this ground.

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[87] Mot. at 24–25.

[88] Mot. at 24–25 ("In its order denying [CG]'s original motion for summary judgment, the Court ruled 'the plain language of the Agreement requires CG to pay royalties on all of its sales of CG0070, regardless of the time or manner in which the product or sale is made.") (quoting D.I. 130 at 9).

[89] Mot. at 24–25 (arguing the Court's statement that "the plain language of the Agreement requires CG to pay royalties on all of its sales of CG0070[,]" established that CG had not fully performed.).

VI. CONCLUSION

For the foregoing reasons, Plaintiff ANI Pharmaceuticals, Inc.'s Motion for a New Trial and for Judgment as a Matter of Law is **DENIED**.

IT IS SO ORDERED.

Sheldon K. Rennie, Judge