

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

THE UNITED STATES OF  
AMERICA, ET AL.

versus

BLUEWAVE HEALTHCARE  
CONSULTANTS, INC., ET AL.

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Case No. 9:14-cv-230

January 18, 2018

REPORTER'S OFFICIAL TRANSCRIPT OF THE JURY TRIAL - DAY THREE  
HELD BEFORE THE HONORABLE RICHARD M. GERGEL  
UNITED STATES DISTRICT JUDGE  
January 18, 2018

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of America

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8 : 3 8 A M 1 (Call to order of the Court.)

9 : 3 3 A M 2 THE COURT: Good morning, everyone. Please be  
9 : 3 3 A M 3 seated.

9 : 3 3 A M 4 All right. Well, our experience today with  
9 : 3 3 A M 5 technology proves the rule that if something can break in a  
9 : 3 4 A M 6 courtroom during a trial, it will. All right? And I always  
9 : 3 4 A M 7 warn folks that you need to be ready for that. How much of  
9 : 3 4 A M 8 a -- they tell me that the -- that you won't -- we won't be  
9 : 3 4 A M 9 able to draw on the screen, which I don't think is any big  
9 : 3 4 A M 10 thing, and that -- Anthony, is it still frozen on the picture  
9 : 3 4 A M 11 right now?

9 : 3 4 A M 12 THE COURTROOM TECHNOLOGIST 1: No. We should be able  
9 : 3 4 A M 13 to switch between the sources, but just, again, no drawing on  
9 : 3 4 A M 14 the screen yet.

9 : 3 4 A M 15 THE COURT: No drawing -- everything but drawing on  
9 : 3 4 A M 16 the screen.

9 : 3 4 A M 17 Robert, good morning.

9 : 3 4 A M 18 THE COURTROOM TECHNOLOGIST 2: Good morning, sir.

9 : 3 4 A M 19 THE COURT: Are we ready to go other than drawing on  
9 : 3 4 A M 20 the screen?

9 : 3 4 A M 21 THE COURTROOM TECHNOLOGIST 2: Yes, sir.

9 : 3 4 A M 22 THE COURT: Okay.

9 : 3 4 A M 23 Any matters we need to address before we bring  
9 : 3 4 A M 24 in the jury?

9 : 3 4 A M 25 MR. LEVENTIS: Yes, Your Honor, if we could.

9 : 3 4 A M 1 THE COURT: Yes.

9 : 3 4 A M 2 MR. LEVENTIS: One is about the patient records. You  
9 : 3 4 A M 3 know, we -- apart from this, we have the patient records and  
9 : 3 4 A M 4 the deposition of Dr. Hollins that's going on in the  
9 : 3 4 A M 5 background. I'll let Mr. Kass talk about this.

9 : 3 5 A M 6 THE COURT: I'm kind of missing the context. Give it  
9 : 3 5 A M 7 to me again, or Mr. Kass can.

9 : 3 5 A M 8 MR. KASS: Thank you for your time.

9 : 3 5 A M 9 Very, very briefly, at the pretrial Your Honor  
9 : 3 5 A M 10 gave defendants five days from the pretrial to produce any  
9 : 3 5 A M 11 patient records that the treating physicians --

9 : 3 5 A M 12 THE COURT: Do we need to do this right now, or is  
9 : 3 5 A M 13 this something that's going to come up right now?

9 : 3 5 A M 14 MR. KASS: It's not going to come up this morning,  
9 : 3 5 A M 15 Your Honor, if you'd prefer to delay.

9 : 3 5 A M 16 THE COURT: I don't want to keep my jury waiting.  
9 : 3 5 A M 17 Anything else?

9 : 3 5 A M 18 MR. SHAHEEN: Yes, Your Honor. Michael Shaheen on  
9 : 3 5 A M 19 behalf of the government.

9 : 3 5 A M 20 After Mr. Mincey testifies, we intend to call  
9 : 3 5 A M 21 Ms. Mallory. And I just wanted to get the Court's opinion on  
9 : 3 5 A M 22 how the logistics of that would happen. Obviously, I'm going  
9 : 3 5 A M 23 to do my direct. Mr. Ashmore has indicated that he would also  
9 : 3 5 A M 24 like to do his direct, and I was just wondering what the  
9 : 3 5 A M 25 Court's position is on that.

9 : 3 5 A M 1           **THE COURT:** Okay. Mr. Ashmore, normally you don't  
9 : 3 5 A M 2 get to do a direct in somebody else's case.

9 : 3 5 A M 3           **MR. ASHMORE:** Normally they don't call my client in  
9 : 3 5 A M 4 their case in chief, Your Honor. He's trying to limit me to  
9 : 3 6 A M 5 what he raises on direct. I have no idea what he's going to  
9 : 3 6 A M 6 raise on direct, but that's going to cause me to parse through  
9 : 3 6 A M 7 63 exhibits, all my questions, and cause chaos and confusion in  
9 : 3 6 A M 8 the presentation of my case.

9 : 3 6 A M 9                   Under Rule 611, which is designed to give you  
9 : 3 6 A M 10 control over the mode and examination of witnesses and  
9 : 3 6 A M 11 introduction of evidence, it is in part to avoid wasting time.  
9 : 3 6 A M 12 And it will be a colossal waste of time if I have to fumble  
9 : 3 6 A M 13 through what is, I must say, a very orderly presentation of  
9 : 3 6 A M 14 questions and documents I have prepared for my client.

9 : 3 6 A M 15           **THE COURT:** Government's response?

9 : 3 6 A M 16           **MR. SHAHEEN:** Your Honor, I understand Mr. Ashmore's  
9 : 3 6 A M 17 plight. I guess if the resolution is to have Mr. Ashmore do  
9 : 3 6 A M 18 his direct, we would ask that that be the bite of the apple  
9 : 3 6 A M 19 here, that he --

9 : 3 6 A M 20           **THE COURT:** I'm not going to allow it because you get  
9 : 3 6 A M 21 to put up your case and he gets to put up his case. That's the  
9 : 3 6 A M 22 way the world works.

9 : 3 6 A M 23                   Mr. Ashmore, you suggest it's not done. I see  
9 : 3 6 A M 24 it all the time. All the time. It's just a strategy. You get  
9 : 3 7 A M 25 to ask, and then you get to put the clients up. And, you know,

9 : 3 7 A M 1 some defense lawyers like it because they get two times in  
9 : 3 7 A M 2 front of the -- you know, the client two times in front of the  
9 : 3 7 A M 3 jury.

9 : 3 7 A M 4 So I disagree. The government gets to put up  
9 : 3 7 A M 5 its case, and then you get to put up your case.

9 : 3 7 A M 6 MR. ASHMORE: I understand that, Your Honor, but, to  
9 : 3 7 A M 7 be clear, I'm limited to what he raises on direct?

9 : 3 7 A M 8 THE COURT: What's the government's response to that?

9 : 3 7 A M 9 MR. SHAHEEN: I imagine that's sort of the normal  
9 : 3 7 A M 10 course when someone is doing a cross, Your Honor.

9 : 3 7 A M 11 THE COURT: Well, I'm going to say this: That is the  
9 : 3 7 A M 12 normal practice. I will be liberally construing that.

9 : 3 7 A M 13 MR. ASHMORE: Thank you so much, Your Honor.

9 : 3 7 A M 14 THE COURT: Yes.

9 : 3 7 A M 15 MR. COOKE: What the rule says is, on  
9 : 3 7 A M 16 cross-examination, you're limited to the subject matter, and I  
9 : 3 7 A M 17 think --

9 : 3 7 A M 18 THE COURT: Exactly.

9 : 3 7 A M 19 MR. COOKE: -- the Court has plenty of leeway to say  
9 : 3 7 A M 20 the subject matter is pretty broad.

9 : 3 7 A M 21 THE COURT: Thus, you're reading my mind here. It's  
9 : 3 7 A M 22 going to be pretty broad. Okay?

9 : 3 7 A M 23 Let's bring in the jury.

9 : 3 8 A M 24 Do the jurors know we had this technology  
9 : 3 8 A M 25 problem?

9 : 3 8 A M 1 THE DEPUTY CLERK: Yes, they do.

9 : 3 8 A M 2 MR. SHAHEEN: Can we switch to the other, the screen  
9 : 3 8 A M 3 that we've been using? Okay. Thank you.

9 : 3 9 A M 4 (Whereupon the jury entered the courtroom.)

9 : 3 9 A M 5 THE COURT: Please be seated. Good morning.

9 : 4 0 A M 6 JURY: Good morning.

9 : 4 0 A M 7 THE COURT: You know that I have a -- I tell lawyers  
9 : 4 0 A M 8 all the time that there's a rule in trials that if something  
9 : 4 0 A M 9 can break with technology, it will. And you need to all be  
9 : 4 0 A M 10 aware. And my technology people, they've been working very  
9 : 4 0 A M 11 diligently, but I was very conscious of y'all sitting back  
9 : 4 0 A M 12 there, and I appreciate you showing up on time. We pushed  
9 : 4 0 A M 13 them hard to get the trial started.

9 : 4 0 A M 14 Okay. Government, call your next witness.

9 : 4 0 A M 15 MR. LEVENTIS: Thank you, Your Honor. The government  
9 : 4 0 A M 16 calls Paul Mincey.

9 : 4 0 A M 17 THE DEPUTY CLERK: Please come forward to be sworn.  
9 : 4 0 A M 18 Place your left hand on the Bible, raise your right. State  
9 : 4 0 A M 19 your full name for the record, please.

9 : 4 0 A M 20 THE WITNESS: Larry Paul Mincey, Jr.

9 : 4 0 A M 21 THE DEPUTY CLERK: Can you spell your last name for  
9 : 4 0 A M 22 the record.

9 : 4 0 A M 23 THE WITNESS: M-i-n-c-e-y.

9 : 4 0 A M 24 (Witness sworn.)

9 : 4 0 A M 25 THE DEPUTY CLERK: Thank you. You may be seated.



9 : 4 0 A M 1 LARRY PAUL MINCEY, JR.,  
9 : 4 0 A M 2 called on behalf of the plaintiff, being first duly  
1 1 : 0 3 A M 3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LEVENTIS:

9 : 4 1 A M 6 Q. Good morning. If you would, state your name for the court  
9 : 4 1 A M 7 reporter.

9 : 4 1 A M 8 A. Larry Paul Mincey, Jr.

9 : 4 1 A M 9 Q. Mr. Mincey, are you familiar with Health Diagnostic  
10 Laboratory?

9 : 4 1 A M 11 A. I am.

9 : 4 1 A M 12 Q. And did you used to work there?

9 : 4 1 A M 13 A. I did.

9 : 4 1 A M 14 Q. What was your title?

9 : 4 1 A M 15 A. Sales representative, key account manager.

9 : 4 1 A M 16 Q. Okay. Sales representative. What was the second part?

9 : 4 1 A M 17 A. It was -- key account manager was the title.

9 : 4 1 A M 18 Q. Okay.

9 : 4 1 A M 19 A. The position was sales representative.

9 : 4 1 A M 20 Q. Gotcha. And as a sales representative, were you an HDL  
21 employee?

9 : 4 1 A M 22 A. Yes.

9 : 4 1 A M 23 Q. How long did you work at HDL?

9 : 4 1 A M 24 A. Six years.

9 : 4 1 A M 25 Q. When did you start?

9 : 4 1 A M 1 A. August of 2009.

9 : 4 1 A M 2 Q. And how did you get your job at HDL?

9 : 4 1 A M 3 A. Two people referred me to Tonya Mallory: Casey Boyd and

9 : 4 2 A M 4 Don Marsh. Casey was a neighbor and had mutual friends with

9 : 4 2 A M 5 Tonya. And Don Marsh was a consultant, a Ph.D. in

9 : 4 2 A M 6 pharmacology, that was doing some consulting for Tonya.

9 : 4 2 A M 7 Q. And who is Casey?

9 : 4 2 A M 8 A. Casey Boyd was another sales representative that was hired

9 : 4 2 A M 9 at the same time as me.

9 : 4 2 A M 10 Q. All right. And did you interview with Ms. Mallory?

9 : 4 2 A M 11 A. I did.

9 : 4 2 A M 12 Q. How many times did you interview with her?

9 : 4 2 A M 13 A. One.

9 : 4 2 A M 14 Q. Did you get the job after one interview?

9 : 4 2 A M 15 A. I did.

9 : 4 2 A M 16 Q. When you met Ms. Mallory and had your interview, how much  
9 : 4 2 A M 17 experience had you had in sales?

9 : 4 2 A M 18 A. 20-plus years.

9 : 4 2 A M 19 Q. Okay. Had you ever sold blood lab testing before?

9 : 4 2 A M 20 A. No.

9 : 4 2 A M 21 Q. What was your sales just generally before this?

9 : 4 2 A M 22 A. The previous nine years had been in pharmaceutical sales.

9 : 4 3 A M 23 Q. And are you familiar with Bluewave Healthcare Consultants?

9 : 4 3 A M 24 A. I am.

9 : 4 3 A M 25 Q. What do you know about Bluewave?

9 : 4 3 A M 1 A. They were founded by Cal Dent and Brad Johnson, former  
9 : 4 3 A M 2 Berkeley HeartLab representatives.

9 : 4 3 A M 3 Q. Okay. Would you recognize Cal Dent and Brad Johnson?

9 : 4 3 A M 4 A. I recognize Cal. Brad, I think I recognize. We only met  
9 : 4 3 A M 5 once.

9 : 4 3 A M 6 Q. Okay. And how about Tonya Mallory?

9 : 4 3 A M 7 A. Yes.

9 : 4 3 A M 8 Q. So all three are in the room?

9 : 4 3 A M 9 A. Yes.

9 : 4 3 A M 10 Q. Tell us about how you heard about Bluewave.

9 : 4 3 A M 11 A. First -- well, the first time I heard about Cal Dent was  
9 : 4 3 A M 12 from Casey Boyd before there was a BlueWave. Casey knew Cal  
9 : 4 3 A M 13 from previous work experience, knew he was very successful at  
9 : 4 3 A M 14 Berkeley HeartLabs. They had mutual friends from Coast  
9 : 4 3 A M 15 Pharmaceutical days. And I guess somehow Casey had heard that  
9 : 4 4 A M 16 they were unhappy at Berkeley and looking to maybe do something  
9 : 4 4 A M 17 on their own and recommended to Tonya that we should reach out  
9 : 4 4 A M 18 to them and talk to them about representing Health Diagnostic  
9 : 4 4 A M 19 Laboratory.

9 : 4 4 A M 20 Q. Were you ever involved in any sales meetings with Bluewave  
9 : 4 4 A M 21 sales reps?

9 : 4 4 A M 22 A. No.

9 : 4 4 A M 23 Q. Did you ever participate in any training with any Bluewave  
9 : 4 4 A M 24 sales reps?

9 : 4 4 A M 25 A. No.

9 : 4 4 A M 1 Q. This is during your time at HDL?

9 : 4 4 A M 2 A. Yes.

9 : 4 4 A M 3 Q. Do you know if HDL provided BlueWave salespeople with any  
9 : 4 4 A M 4 training?

9 : 4 4 A M 5 A. I don't know.

9 : 4 4 A M 6 Q. Are you aware that -- or did BlueWave start selling HDL  
9 : 4 4 A M 7 tests?

9 : 4 4 A M 8 A. Yes.

9 : 4 4 A M 9 Q. And how are you aware of that?

9 : 4 4 A M 10 A. We were told they were coming on board and that they were  
9 : 4 4 A M 11 going to be representing every state except for Virginia.

9 : 4 4 A M 12 Q. Okay. So you were selling for HDL before BlueWave started  
9 : 4 5 A M 13 selling for HDL?

9 : 4 5 A M 14 A. Correct.

9 : 4 5 A M 15 Q. And how long was that time in between?

9 : 4 5 A M 16 A. I started in August, and they started -- August of 2009.  
9 : 4 5 A M 17 They came on board January of 2010.

9 : 4 5 A M 18 Q. And did you notice any change after BlueWave started  
9 : 4 5 A M 19 selling HDL tests?

9 : 4 5 A M 20 A. In what way?

9 : 4 5 A M 21 Q. Any change at all in the --

9 : 4 5 A M 22 A. We started selling a lot more tests, yes, to the point  
9 : 4 5 A M 23 where myself and the other sales representatives, Casey Boyd  
9 : 4 5 A M 24 and Blair Funk, were pulled out of the field in Virginia  
9 : 4 5 A M 25 temporarily to help prepare supplies and do some quality

1 assurance analysis on results and things like that to get  
2 things prepared because of the increased volume coming in from  
3 Bluewave.

4 Q. So you were actually pulled out of the field to come in  
5 and work -- you were no longer selling for a period of time?

6 A. Correct, for a few months.

7 Q. What was your compensation at HDL? How was that set up?

8 A. I was salaried plus commission.

9 Q. And, roughly, what was your salary?

10 A. I started at \$80,000 salary.

11 Q. And what was the highest it went up to?

12 A. As a sales representative, I got some incremental  
13 increases, 110, around 110.

14 Q. Okay. And what was your commission?

15 A. In the first year, very little because we needed more  
16 runway to grow organically. None of those types of labs had  
17 ever been successful in Virginia for one reason or another. So  
18 my commissions were around 5,000 the first year. And they were  
19 around 160,000 at the peak in 2013.

20 Q. And you received a commission as an HDL employee?

21 A. Correct.

22 Q. What's the most money you made in one year at HDL?

23 A. 270,000.

24 Q. How much would you estimate you made over the career --  
25 was it roughly six years, I guess, that you worked at HDL?

9 : 4 6 A M 1 A. Yes.

9 : 4 6 A M 2 Q. How much would you say you made over your six-year career?

9 : 4 7 A M 3 A. Close to a million dollars, 800,000.

9 : 4 7 A M 4 Q. Do you have any knowledge of how your salary compared to  
9 : 4 7 A M 5 what the Bluewave sales reps were making?

9 : 4 7 A M 6 A. Just rumors that they were making significantly more.

9 : 4 7 A M 7 Q. And I believe you said that you had met -- or let me ask  
9 : 4 7 A M 8 you, have you ever met Cal Dent or Brad Johnson?

9 : 4 7 A M 9 A. I have met them. Are you saying -- before what? Before  
9 : 4 7 A M 10 they came to HDL?

9 : 4 7 A M 11 Q. Let's -- well, did you meet them before you came to HDL?

9 : 4 7 A M 12 A. No.

9 : 4 7 A M 13 Q. All right. Let's talk about after you came to HDL. We'll  
9 : 4 7 A M 14 start with Brad Johnson.

9 : 4 7 A M 15 Did you ever meet Brad after you started at HDL?

9 : 4 7 A M 16 A. Yes. One time.

9 : 4 7 A M 17 Q. Okay. When was that?

9 : 4 7 A M 18 A. Springtime, I think, of 2010.

9 : 4 7 A M 19 Q. And tell us about that meeting.

9 : 4 7 A M 20 A. It was -- it was only a brief encounter. "Hi. Nice to  
9 : 4 7 A M 21 meet you. Heard nice things about you."

9 : 4 8 A M 22 Q. Okay. If you need some water, there's some right there.

9 : 4 8 A M 23 A. Thank you.

9 : 4 8 A M 24 Q. Are you okay?

9 : 4 8 A M 25 All right. And let's -- did you talk about anything

9 : 4 8 A M 1 about sales with Mr. Johnson?

9 : 4 8 A M 2 A. No.

9 : 4 8 A M 3 Q. All right. Let's talk about Cal Dent. When did you first  
9 : 4 8 A M 4 meet him? After you started at HDL, it sounds like.

9 : 4 8 A M 5 A. Same thing. Spring of 2010.

9 : 4 8 A M 6 Q. All right. And tell us about that meeting.

9 : 4 8 A M 7 A. Cal was in town for some other meetings, and we asked if  
9 : 4 8 A M 8 we could get some -- when I say "we," Casey Boyd and I asked if  
9 : 4 8 A M 9 we could get some time with him because he had a great  
9 : 4 8 A M 10 reputation, very clinical and very successful. We wanted some  
9 : 4 8 A M 11 time with him since I was new to lab sales. Casey had a little  
9 : 4 8 A M 12 bit of experience in lab sales. So we wanted to get some of  
9 : 4 8 A M 13 his time to pick his brain on how he'd been so successful.

9 : 4 8 A M 14 So we met with him at the Marriott for a couple of  
9 : 4 8 A M 15 hours and went over some -- how he did his clinical  
9 : 4 8 A M 16 presentation.

9 : 4 8 A M 17 Q. And where was this meeting? Was it in --

9 : 4 9 A M 18 A. At the Marriott a couple of blocks from Health Diagnostic  
9 : 4 9 A M 19 Laboratory.

9 : 4 9 A M 20 Q. Okay. Was that in Richmond?

9 : 4 9 A M 21 A. Yes.

9 : 4 9 A M 22 Q. Did you -- what did you do subsequent to that? Did you  
9 : 4 9 A M 23 meet him again? Did you have that training or -- how did you  
9 : 4 9 A M 24 describe it?

9 : 4 9 A M 25 A. So I did what's called one ride-along, where I went and

9 : 4 9 A M 1 worked in the field one day with Cal.

9 : 4 9 A M 2 Q. And can you tell us what a ride-along is?

9 : 4 9 A M 3 A. It's a common practice in medical sales, where someone  
9 : 4 9 A M 4 who's doing training will go shadow someone in the field and  
9 : 4 9 A M 5 just watch and observe how they do business.

9 : 4 9 A M 6 Q. Okay. And where did you get on this ride-along with  
9 : 4 9 A M 7 Mr. Dent?

9 : 4 9 A M 8 A. I believe, if I remember correctly, we were somewhere in  
9 : 4 9 A M 9 rural South Carolina.

9 : 4 9 A M 10 Q. Do you recall any of the names of the physicians that you  
9 : 4 9 A M 11 went and called on?

9 : 4 9 A M 12 A. I do not.

9 : 4 9 A M 13 Q. Was anyone else with you and Mr. Dent?

9 : 4 9 A M 14 A. We did a lunch meeting. And Tony Carnaggio was there, and  
9 : 4 9 A M 15 then a pharmaceutical sales rep -- I don't remember his name --  
9 : 5 0 A M 16 that set up the meeting.

9 : 5 0 A M 17 Q. Do you recall the size of the practices that you visited?

9 : 5 0 A M 18 A. There was only one physician in the lunch.

9 : 5 0 A M 19 Q. And did you -- did this physician -- or excuse me.

9 : 5 0 A M 20 Did you observe Mr. Dent giving a sales pitch to this  
9 : 5 0 A M 21 physician?

9 : 5 0 A M 22 A. I did.

9 : 5 0 A M 23 Q. All right. Let's talk about that sales pitch. What do  
9 : 5 0 A M 24 you remember Mr. Dent telling to the physician?

9 : 5 0 A M 25 A. It was very clinical. He went over some studies that were



9 : 5 0 A M 1 relevant in advanced cardiovascular testing. Then he went  
9 : 5 0 A M 2 through some real case studies, which is a common way to show  
9 : 5 0 A M 3 the benefits of that type of testing.

9 : 5 0 A M 4 Q. Okay. Anything else?

9 : 5 0 A M 5 A. Then, at the end of that, it was a brief "and we can throw  
9 : 5 0 A M 6 another 20 onto the processing and handling fee if you add the  
9 : 5 0 A M 7 HDL testing onto the testing you're doing."

9 : 5 0 A M 8 Q. And so what was the physician already doing? Do you know?

9 : 5 1 A M 9 A. I believe he was doing Singulex testing.

9 : 5 1 A M 10 Q. All right. Anything else you remember from that meeting?

9 : 5 1 A M 11 A. That's -- that's pretty much it.

9 : 5 1 A M 12 Q. Okay. Do you recall if Mr. Dent said anything about how  
9 : 5 1 A M 13 much a patient would have to pay?

9 : 5 1 A M 14 A. He did go over the billing policy. They had a tear-off  
9 : 5 1 A M 15 pad sheet that went through the scenarios of -- it was a  
9 : 5 1 A M 16 no-balance bill policy, and there were three bullet points of  
9 : 5 1 A M 17 when a patient would have to pay -- or cash pay. If they  
9 : 5 1 A M 18 hadn't met -- I don't remember the rest of that sheet. You  
9 : 5 1 A M 19 probably have copies of that.

9 : 5 1 A M 20 Q. Did you say it was a no-balance bill policy?

9 : 5 1 A M 21 A. They circled on there "no-balance bill."

9 : 5 1 A M 22 Q. And what is your understanding of no-balance bill?

9 : 5 1 A M 23 A. Any portion that is not covered by the insurance company,  
9 : 5 1 A M 24 the lab will not bill the patient for that amount.

9 : 5 2 A M 25 Q. And for what purpose would you tell a doctor about the

9 : 5 2 A M 1 no-balance bill policy?

9 : 5 2 A M 2 A. To set their mind at ease that there would not be a  
9 : 5 2 A M 3 financial burden on the patient if they went with this testing.

9 : 5 2 A M 4 Q. All right. So I believe you said there was -- at this  
9 : 5 2 A M 5 meeting you recall clinical process and handling fee,  
9 : 5 2 A M 6 no-balance bill; is that correct?

9 : 5 2 A M 7 A. Correct.

9 : 5 2 A M 8 Q. Anything else?

9 : 5 2 A M 9 A. No.

9 : 5 2 A M 10 Q. Okay. Well, let's talk about your personal sales pitch.  
9 : 5 2 A M 11 You were a salesman for HDL?

9 : 5 2 A M 12 A. Yes.

9 : 5 2 A M 13 Q. Did you talk about the clinical part of HDL testing?

9 : 5 2 A M 14 A. Yes.

9 : 5 2 A M 15 Q. Did you talk about process and handling fees?

9 : 5 2 A M 16 A. Yes.

9 : 5 2 A M 17 Q. Did you offer to physicians the \$20 in process and  
9 : 5 2 A M 18 handling fees?

9 : 5 2 A M 19 A. Not in the beginning.

9 : 5 2 A M 20 Q. Okay. Why not?

9 : 5 2 A M 21 A. In Virginia we had a processing fee of \$12.50. So that  
9 : 5 2 A M 22 was one of the options we presented. Some of the offices we  
9 : 5 2 A M 23 were in, we actually had a business associates agreement with  
9 : 5 3 A M 24 LabCorp -- or with Quest -- I'm sorry, not LabCorp -- or the  
9 : 5 3 A M 25 LabCorp phlebotomist was willing to draw for us, or it was a

9 : 5 3 A M 1 hospital or multispecialty group practice with their own lab  
9 : 5 3 A M 2 that would do the draw, or we could put in an in-office  
9 : 5 3 A M 3 phlebotomist to do the draw.

9 : 5 3 A M 4 Q. Okay. But you said yours -- what you were offering was  
9 : 5 3 A M 5 \$12.50?

9 : 5 3 A M 6 A. Correct.

9 : 5 3 A M 7 Q. Are you aware what -- I guess you saw Mr. Dent and he  
9 : 5 3 A M 8 discussed the \$20?

9 : 5 3 A M 9 A. Yes.

9 : 5 3 A M 10 Q. Did that surprise you?

9 : 5 3 A M 11 A. No. I already knew about it before then. I'd seen their  
9 : 5 3 A M 12 marketing materials that we were printing out that were going  
9 : 5 3 A M 13 out.

9 : 5 3 A M 14 Q. Okay. So do you know why there was a different amount in  
9 : 5 3 A M 15 Virginia versus what the Bluewave reps were doing?

9 : 5 3 A M 16 A. No. To this day, I still don't completely understand why  
9 : 5 3 A M 17 that was different.

9 : 5 3 A M 18 Q. How many of your customers accepted the money?

9 : 5 3 A M 19 A. A majority of them did processing and handling fee.

9 : 5 4 A M 20 Q. Okay. And what kind of customers were you calling on?

9 : 5 4 A M 21 A. When you say "customers," there's a difference between  
9 : 5 4 A M 22 physician and the customer. So about 30 percent of our  
9 : 5 4 A M 23 practices were hospital-owned. So, for example, Riverside  
9 : 5 4 A M 24 Hospital in Tidewater, they had a processing and handling fee,  
9 : 5 4 A M 25 a reference lab agreement. So we did pay a processing and

9 : 5 4 A M 1 handling fee, but it went to the hospital tax ID number. About  
9 : 5 4 A M 2 50 percent or so of our business was large multispecialty  
9 : 5 4 A M 3 groups that had their own reference lab, so the agreement was  
9 : 5 4 A M 4 with their lab. And the remainder, the smaller portion, was  
9 : 5 4 A M 5 medium- to small-sized family practice and cardiology offices.

9 : 5 4 A M 6 Q. And are you aware of how your -- so I called them a  
9 : 5 4 A M 7 customer. I'm sorry. What was the word you used instead of  
9 : 5 4 A M 8 customer?

9 : 5 4 A M 9 A. As opposed to going to a physician, the contract, the  
9 : 5 4 A M 10 processing and handling fee agreement going to a physician  
9 : 5 5 A M 11 versus a hospital or a multispecialty group lab.

9 : 5 5 A M 12 Q. Okay. So do you have any knowledge of how your -- the  
9 : 5 5 A M 13 people you were calling on differed from those that BlueWave  
9 : 5 5 A M 14 was calling on?

9 : 5 5 A M 15 A. My understanding was they were going for smaller practices  
9 : 5 5 A M 16 because they don't have to make decisions by committee and can  
9 : 5 5 A M 17 make a decision on what labs they want to order much quicker  
9 : 5 5 A M 18 than -- going with a hospital or large group like that takes  
9 : 5 5 A M 19 time.

9 : 5 5 A M 20 Q. Any other reasons they were going after smaller providers?

9 : 5 5 A M 21 A. I only have rumor and hearsay on that.

9 : 5 5 A M 22 MR. GRIFFITH: Objection, Your Honor.

9 : 5 5 A M 23 THE COURT: Sustained.

9 : 5 5 A M 24 MR. LEVENTIS: Okay. Yeah, I wasn't going to ask  
9 : 5 5 A M 25 him.

9 : 5 5 A M 1 BY MR. LEVENTIS:

9 : 5 5 A M 2 Q. And so, at some point, did HDL switch what they were  
9 : 5 5 A M 3 paying in Virginia?

9 : 5 6 A M 4 A. They did. In November of 2011, Virginia switched to a \$20  
9 : 5 6 A M 5 processing and handling fee as well.

9 : 5 6 A M 6 Q. Okay. And do you know why?

9 : 5 6 A M 7 A. Tonya asked myself and Casey -- Blair Funk was no longer  
9 : 5 6 A M 8 there -- to come in for a meeting with her and Satya  
9 : 5 6 A M 9 Rangarajan, who was our chief operating officer, commercial  
9 : 5 6 A M 10 officer. And the point of the meeting was to talk about she  
9 : 5 6 A M 11 wanted to hire someone to come in as an internal voice for  
9 : 5 6 A M 12 sales. That person, she also wanted to be a liaison for  
9 : 5 6 A M 13 Bluewave and also to help spearhead international sales. We  
9 : 5 6 A M 14 made a recommendation for Eden Moura, who is a past colleague  
9 : 5 6 A M 15 that was very articulate, very smart, trilingual, very  
9 : 5 6 A M 16 knowledgeable in advanced cardiovascular disease.

9 : 5 6 A M 17 And at that meeting, we asked again, if \$20 is the  
9 : 5 7 A M 18 fair market value for processing and handling fees, why is  
9 : 5 7 A M 19 Virginia not under the same scenario? And the reason we  
9 : 5 7 A M 20 brought it up again was that there was an uncomfortable  
9 : 5 7 A M 21 situation where a sales lead came into Virginia for  
9 : 5 7 A M 22 Fredericksburg for a physician, and Casey went to call on that  
9 : 5 7 A M 23 physician and went through everything about working with Health  
9 : 5 7 A M 24 Diagnostic Laboratory and said, you know, the processing and  
9 : 5 7 A M 25 handling fee, if you decide to draw or we can put in a

9 : 5 7 A M 1 phlebotomist, but your processing and handling fee is \$12.50.

9 : 5 7 A M 2 The physician got upset and said, "what do you mean?  
9 : 5 7 A M 3 It's \$20." I can't remember what kind of relative. It was a  
9 : 5 7 A M 4 brother-in-law or a cousin in Maryland is the one that  
9 : 5 7 A M 5 recommended Health Diagnostic Laboratory to him, and he was  
9 : 5 7 A M 6 getting 20. So the physician actually thought --

9 : 5 7 A M 7 MR. GRIFFITH: Objection, Your Honor, to anything the  
9 : 5 7 A M 8 physician said.

9 : 5 7 A M 9 THE COURT: well, is it offered for the truth of the  
9 : 5 7 A M 10 matter?

9 : 5 7 A M 11 MR. GRIFFITH: I think it is.

9 : 5 8 A M 12 THE COURT: It's not being offered for the truth of  
9 : 5 8 A M 13 the matter, which is how much was actually being paid.  
9 : 5 8 A M 14 Overruled.

9 : 5 8 A M 15 BY MR. LEVENTIS:

9 : 5 8 A M 16 Q. Go ahead, Mr. Mincey.

9 : 5 8 A M 17 A. Okay.

9 : 5 8 A M 18 So -- anyway, so this physician in Fredericksburg  
9 : 5 8 A M 19 thought that Casey was pulling a fast one on him, trying to  
9 : 5 8 A M 20 cheat him a little bit. And so it was really awkward. And  
9 : 5 8 A M 21 Casey couldn't adequately explain why 12.50 was different in  
9 : 5 8 A M 22 Virginia and it was \$20 for everyone else.

9 : 5 8 A M 23 So, at that meeting, we said if it's fair market  
9 : 5 8 A M 24 value, why are we not paying our physicians fair market value  
9 : 5 8 A M 25 in Virginia? And Tonya said, "Fine. If you want 20, you can

9 : 5 8 A M 1 have 20."

9 : 5 8 A M 2 So from then on, we had a \$20 processing and handling  
9 : 5 8 A M 3 fee.

9 : 5 8 A M 4 Q. Okay. So it was just like that?

9 : 5 8 A M 5 A. Yes.

9 : 5 8 A M 6 Q. Do you recall working with a Shahrzad Grami?

9 : 5 8 A M 7 A. Yeah.

9 : 5 8 A M 8 Q. Am I pronouncing that correctly?

9 : 5 8 A M 9 A. Yes.

9 : 5 8 A M 10 Q. Okay. Who is Shahrzad Grami?

9 : 5 9 A M 11 A. She worked in statistics for Health Diagnostic Laboratory.

9 : 5 9 A M 12 Q. Do you recall her asking for you to help her with a time  
9 : 5 9 A M 13 and motion study?

9 : 5 9 A M 14 A. Yes.

9 : 5 9 A M 15 Q. I'm going to show you Exhibit 1208.

9 : 5 9 A M 16 THE COURT: What's that number again?

9 : 5 9 A M 17 MR. LEVENTIS: 1208, Your Honor.

9 : 5 9 A M 18 THE COURT: Is it already in?

9 : 5 9 A M 19 MR. LEVENTIS: It is not.

9 : 5 9 A M 20 THE COURT: Okay. Very good.

9 : 5 9 A M 21 MR. LEVENTIS: unless -- is there an objection to  
9 : 5 9 A M 22 going in?

9 : 5 9 A M 23 MR. GRIFFITH: There are --

9 : 5 9 A M 24 MR. LEVENTIS: Okay.

9 : 5 9 A M 25 MR. GRIFFITH: There is from Bluewave, Your Honor.

9 : 5 9 A M 1 BY MR. LEVENTIS:

9 : 5 9 A M 2 Q. So, Mr. Mincey --

9 : 5 9 A M 3 MR. GRIFFITH: I'll go ahead, Your Honor.

9 : 5 9 A M 4 THE COURT: Okay. Just lay a foundation.

9 : 5 9 A M 5 MR. LEVENTIS: I'll lay a foundation.

9 : 5 9 A M 6 BY MR. LEVENTIS:

9 : 5 9 A M 7 Q. Mr. Mincey, do you recognize this email?

9 : 5 9 A M 8 A. Yes.

9 : 5 9 A M 9 Q. Is that your -- is this an email you received from  
9 : 5 9 A M 10 Ms. Grami? It looks like the top part of the email is April of  
1 0 : 0 0 A M 11 2012.

1 0 : 0 0 A M 12 A. Yes.

1 0 : 0 0 A M 13 Q. You want to take a look? Do you recognize this?

1 0 : 0 0 A M 14 A. I do.

1 0 : 0 0 A M 15 MR. LEVENTIS: Your Honor, we move to admit  
1 0 : 0 0 A M 16 Exhibit 1208.

1 0 : 0 0 A M 17 THE COURT: Objection?

1 0 : 0 0 A M 18 MR. GRIFFITH: Your Honor, we object because there's  
1 0 : 0 0 A M 19 no BlueWave defendant on this particular email. And, to my  
1 0 : 0 0 A M 20 knowledge, they can't establish a foundation that they ever  
1 0 : 0 0 A M 21 received this email.

1 0 : 0 0 A M 22 THE COURT: well, is Ms. Grami an employee of HDL?

1 0 : 0 0 A M 23 MR. GRIFFITH: Excuse me?

1 0 : 0 0 A M 24 THE COURT: Is Ms. Grami an employee of HDL?

1 0 : 0 0 A M 25 MR. LEVENTIS: That's what the testimony just was,



1 10:00 AM Your Honor.

2 10:00 AM THE COURT: Overruled.

3 10:00 AM MR. GRIFFITH: Your Honor, because BlueWave is not on  
4 10:00 AM this particular email, we would request a limiting instruction  
5 10:00 AM under 105 --

6 10:00 AM THE COURT: May I speak to counsel for a minute?  
7 10:00 AM (Whereupon the following proceedings were held at the  
8 10:00 AM bench out of the hearing of the jury:)

9 10:01 AM THE COURT: One exception to the statements by others  
10 10:01 AM is if it's a conspiracy, if they're co-conspirators. I believe  
11 10:01 AM there's sufficient evidence to show that, and I would allow it.  
12 10:01 AM I don't want to rule on that in front of the jury unless you  
13 10:01 AM want me to.

14 10:01 AM MR. GRIFFITH: No, I don't want you to do that.

15 10:01 AM THE COURT: Okay. Very good.

16 10:01 AM MR. LEVENTIS: Your Honor, the other one I'm going to  
17 10:01 AM bring up is an email that is an email from bluewave.com.

18 10:01 AM THE COURT REPORTER: Your Honor, I can't hear.

19 10:01 AM THE COURT: I'm sorry, say that again.

20 10:01 AM MR. LEVENTIS: An email that is between BlueWave  
21 10:01 AM employees. It has a bluewave.com address. It was produced by  
22 10:01 AM BlueWave, and you previously ruled last week that those were  
23 10:01 AM coming in as business records.

24 10:01 AM THE COURT: And what's the nature of the record?

25 10:01 AM MR. LEVENTIS: It is an email with an attachment.

1 The attachment is the one we showed to Mr. Mincey.

2 THE COURT: Okay. And what would be the objection to  
3 it?

4 MR. GRIFFITH: He's never seen it.

5 MR. LEVENTIS: He's going to say it looks just like  
6 something he's going to describe.

7 THE COURT: What does that mean?

8 MR. LEVENTIS: Well, I can go through the testimony.  
9 what he's going to say, he's going to describe a meeting he had  
10 with Ms. Mallory where she wrote on a board the number of tests  
11 times this equals this amount of money.

12 THE COURT: Well, why is that document -- why would  
13 you have a guy who's never seen the document -- why would he be  
14 shown it?

15 MR. LEVENTIS: When he saw it, he said, "This looks  
16 just like what she wrote on the board."

17 THE COURT: No, just get from him what he saw. Don't  
18 need to do it through the document.

19 MR. LEVENTIS: Okay.

20 THE COURT: Okay?

21 MR. GRIFFITH: So, Your Honor, are you ruling --

22 THE COURT: I'm going to rule, but just --

23 (Whereupon the following proceedings were held in  
24 open court in the presence and hearing of the jury:)

25 THE COURT: Overrule the objection of Bluewave.

1 Please continue.

2 BY MR. LEVENTIS:

3 Q. All right. If you would, Mr. Mincey, the email, the way  
4 it's printed out -- you know, if you go down to the bottom of  
5 the page here is actually where the email starts, March 28th,  
6 2012.

7 Do you see that section?

8 A. Yes.

9 Q. From Ms. Grami to Casey Boyd, Paul Mincey, and Shane  
10 Marquess.

11 who is Shane Marquess?

12 A. Shane started out as a direct HDL employee sales  
13 representative for Maryland and D.C. and then later on became a  
14 Bluewave representative.

15 Q. And then it's cc'd to Eden Moura and to Tonya Mallory;  
16 correct?

17 A. Correct.

18 Q. And what is the subject?

19 A. "Titles for Time and Motion Study."

20 Q. All right. Looks like the email says, "Hi, gentlemen.  
21 would you please send me the titles, degrees, extra  
22 certifications of the people drawing blood at the sites you  
23 visited with Anand and Anil?"

24 Do you know who they are?

25 A. They were the third-party consultants that were doing the

10:04 AM 1 time and motion study.

10:04 AM 2 Q. "It was probably a mix of phlebotomists and nurses."

10:04 AM 3 And then Number 2, "I'm trying to pull together a  
10:04 AM 4 distribution for the final analysis that takes into account  
10:04 AM 5 practices with PAs and NPs drawing blood."

10:04 AM 6 Do you know what a PA or an NP is?

10:04 AM 7 A. PA is a physician assistant. An NP is nurse practitioner.

10:04 AM 8 Q. Okay. And we're going to come back. It looks like there  
10:04 AM 9 are some numbers underneath. There's a title, proportion,  
10:04 AM 10 Casey's estimate, Paul's estimate, and Shane's estimate.

10:04 AM 11 Do you see that?

10:04 AM 12 A. Yes.

10:04 AM 13 Q. All right. When the email came to you, was that "Paul's  
10:04 AM 14 estimate" column filled in?

10:04 AM 15 A. No.

10:04 AM 16 Q. All right. So let's go back up to the email.

10:04 AM 17 So now you received that first email in March;  
10:04 AM 18 correct?

10:04 AM 19 A. Correct.

10:04 AM 20 Q. And then it looks like there was a second email from  
10:04 AM 21 Ms. Grami, April 9th, 2012, the following email?

10:04 AM 22 A. Yes.

10:04 AM 23 Q. It says, "Did you guys want to give me an estimate or  
10:05 AM 24 should I send over 10 examples?"

10:05 AM 25 Do you see that part?

10:05 AM 1 A. I do.

10:05 AM 2 Q. And then we go up to the very top.

10:05 AM 3 It looks like this is your response; correct?

10:05 AM 4 A. Correct.

10:05 AM 5 Q. Okay. And can you read your response to the jury.

10:05 AM 6 A. "So sorry I did not do this for you sooner. I filled in  
10:05 AM 7 my estimates below. I am off Monday through Wednesday of this  
10:05 AM 8 week. If you sent me 10 examples, there would be no MDs, PAs,  
10:05 AM 9 or NPs. It is rare. Their time is too important to spend  
10:05 AM 10 drawing blood. They have to be seeing patients."

10:05 AM 11 Q. So what is your understanding of the purpose of the time  
10:05 AM 12 and motion study in her email to you?

10:05 AM 13 A. The purpose was to determine fair market value for the  
10:05 AM 14 amount of work involved in storage of supplies for drawing the  
10:05 AM 15 samples.

10:05 AM 16 Q. Okay. And why did you tell her there -- I guess why did  
10:05 AM 17 you say what you did in your response?

10:05 AM 18 A. Because I did not know of any practices where the  
10:05 AM 19 physician or a nurse practitioner or the PA actually drew the  
10:06 AM 20 blood.

10:06 AM 21 Q. In your experience, who drew the blood?

10:06 AM 22 A. Either the med techs or phlebotomists.

10:06 AM 23 Q. And so if we go back down to that chart, is this what you  
10:06 AM 24 filled in?

10:06 AM 25 A. Yes.

10:06 AM 1 Q. So can you tell us what your estimates were?

10:06 AM 2 A. I put down 90 percent med techs and phlebotomists and  
10:06 AM 3 10 percent nurses. It might be LPNs that would do it.

10:06 AM 4 Q. Okay. Did you ever see the final time and motion study?

10:06 AM 5 A. No.

10:06 AM 6 Q. Did you ever ask to see it?

10:06 AM 7 A. Yes.

10:06 AM 8 Q. Who did you ask?

10:06 AM 9 A. Shahrzad.

10:06 AM 10 Q. But you never got it?

10:06 AM 11 A. It was not completed, and I never got it. Or if it was  
10:06 AM 12 completed, I just -- I never got it.

10:06 AM 13 Q. Did Tonya Mallory ever give you feedback on your sales  
10:06 AM 14 performance?

10:07 AM 15 A. Some, yes.

10:07 AM 16 Q. Okay. Do you recall any of that feedback?

10:07 AM 17 A. Just that we needed to do better, yes.

10:07 AM 18 Q. All right. Did she ever call a meeting with you to  
10:07 AM 19 describe your sales performance?

10:07 AM 20 A. Yes.

10:07 AM 21 Q. When was that meeting?

10:07 AM 22 A. It was early in 2010, right after Bluewave came on board,  
10:07 AM 23 a few months after.

10:07 AM 24 Q. Okay. Who called the meeting?

10:07 AM 25 A. Tonya.

10:07AM 1 Q. where was it held?

10:07AM 2 A. In one of the conference rooms at HDL.

10:07AM 3 Q. And who else was present?

10:07AM 4 A. Casey Boyd, Blair Funk. Their third sales rep was still  
10:07AM 5 on board then. Satya Rangarajan and, if I remember correctly,  
10:07AM 6 Joe Anastasia and Steve Norris.

10:07AM 7 Q. Okay. Who is Satya Rangarajan?

10:07AM 8 A. Satya was the chief operating officer.

10:07AM 9 Q. And who is Joe Anastasia?

10:07AM 10 A. At the time, he was the manager for customer service.

10:07AM 11 Q. And did you say Steve Norris? Who's that?

10:07AM 12 A. He also worked as a manager in customer service.

10:08AM 13 Q. Okay. So tell us about that meeting.

10:08AM 14 A. Bluewave was expanding very -- growing very quickly, and  
10:08AM 15 so Tonya called us in and wanted to know, "Hey, you guys aren't  
10:08AM 16 growing as fast as them. What are you doing?"

10:08AM 17 And to be honest, we were all a little bit perplexed.  
10:08AM 18 Because like I mentioned before, no one had ever done very well  
10:08AM 19 in Virginia with this type of testing, so we were growing  
10:08AM 20 something organically as opposed to Cal and Brad who had been  
10:08AM 21 doing this for 10-plus years with Berkeley and had a lot of  
10:08AM 22 accounts. And they were just flipping those accounts they'd  
10:08AM 23 had for years over to -- instead of using Berkeley now, they  
10:08AM 24 were going to use Health Diagnostic Laboratories. So it makes  
10:08AM 25 sense they would have rapid growth.

10:08AM 1 So Tonya said, "well, what are you doing?"

10:08AM 2 And at the time, Casey was under a non-compete, so he  
10:08AM 3 hadn't been out selling much. And Blair didn't have  
10:09AM 4 cardiovascular experience; he had lab experience.

10:09AM 5 So I spoke up and said, well, I'll show you my  
10:09AM 6 presentation. So I went through my clinical presentation.

10:09AM 7 And once I got through that, she said, No, no, no.  
10:09AM 8 That's not the way you do it. You got to do it like BlueWave.  
10:09AM 9 You got to sell the business side first.

10:09AM 10 So she got up on the whiteboard and started drawing  
10:09AM 11 numbers. You got to show them that, if you do this many tests  
10:09AM 12 a day, you're going to get \$20 for each one of those.

10:09AM 13 Extrapolate that out -- it's going to be this amount -- and  
10:09AM 14 started going down sort of ledger style a business opportunity.

10:09AM 15 And, again, we're kind of looking at each other a  
10:09AM 16 little bit perplexed. And we said, "well, first of all, we're  
10:09AM 17 only 12.50. It's not \$20. And we can't do some of the other  
10:09AM 18 things you're talking about because we have a -- we can't sell  
10:09AM 19 some of these other services you're talking about. We have a  
10:09AM 20 contract that says we only work for HDL."

10:10AM 21 Q. Okay. And did you tell her anything else?

10:10AM 22 A. No. That's pretty much it.

10:10AM 23 Q. And what was -- when you left that meeting, did you change  
10:10AM 24 your sales pitch?

10:10AM 25 A. No.



10:10 AM 1 Q. why not?

10:10 AM 2 A. Because we didn't have a business revenue model. We had a  
10:10 AM 3 clinical product. And we didn't have what they had, and we  
10:10 AM 4 weren't going after the same type of accounts. We were, like I  
10:10 AM 5 said, dealing with a lot of hospital systems and large  
10:10 AM 6 multispecialty groups to sell this on the clinical platform.

10:10 AM 7 Q. And when you say "we didn't have a business revenue  
10:10 AM 8 model," what do you mean?

10:10 AM 9 A. We weren't pitching this as a way for them to make money.

10:10 AM 10 MR. LEVENTIS: Thank you, Your Honor.

10:10 AM 11 If you would answer any questions defense has.

10:10 AM 12 THE COURT: Cross-Examination?

10:11 AM 13 CROSS-EXAMINATION

10:11 AM 14 BY MR. GRIFFITH:

10:11 AM 15 Q. Good morning, Mr. Mincey. My name is Joe Griffith. I  
10:11 AM 16 represent Mr. Dent and Mr. Johnson.

10:11 AM 17 So when -- when you got to HDL, you had 20 years of  
10:11 AM 18 experience in health -- in sales; is that right?

10:11 AM 19 A. Yes, sir.

10:11 AM 20 Q. And because of your experience is why Tonya Mallory hired  
10:11 AM 21 you; is that correct?

10:11 AM 22 A. Correct.

10:11 AM 23 Q. Okay. Because it sounds like you just did one interview,  
10:11 AM 24 and she immediately hired you?

10:11 AM 25 A. That's right.

10:12 AM 1 Q. And you -- I think you said you worked with Kos  
2 Pharmaceuticals?

10:12 AM 3 A. Yes.

10:12 AM 4 Q. And what was the second one, the second drug company?

10:12 AM 5 A. Do you want the progression there, or do you want --

10:12 AM 6 Q. No, just --

10:12 AM 7 A. They got bought by Abbott, and then I worked with Abbott.

10:12 AM 8 Q. So it was two pharmaceutical companies that you worked  
9 for?

10:12 AM 10 A. No, I worked for more than that.

10:12 AM 11 Q. Okay. More? Okay.

10:12 AM 12 And during this -- during your career at these drug  
13 companies, you received some finance training, is that right?

10:12 AM 14 A. Yes.

10:12 AM 15 Q. And so you're very familiar with the Anti-Kickback  
16 Statute?

10:12 AM 17 A. Yes.

10:12 AM 18 Q. And very sensitive to the Anti-Kickback Statute?

10:12 AM 19 A. Correct.

10:12 AM 20 Q. Saying you wanted to be compliant with all that you do,  
21 with all your business dealings in the industry in terms of  
22 Anti-Kickback Statute; correct?

10:12 AM 23 A. Correct.

10:13 AM 24 Q. And did you take Anti-Kickback Statute tests while you  
25 were at these pharmaceutical companies?

10:13 AM 1 A. Yes.

10:13 AM 2 Q. And did you pass all these tests?

10:13 AM 3 A. I did.

10:13 AM 4 Q. So -- I mean, it's fair to say that, within the health  
10:13 AM 5 care industry, that it's pretty well known that you have to be  
10:13 AM 6 compliant with the Anti-Kickback Statute; correct?

10:13 AM 7 A. Yes.

10:13 AM 8 Q. Now, you -- you said that you had -- had what you called a  
10:13 AM 9 sales pitch; right? Do you remember talking about that --  
10:13 AM 10 explaining that on direct?

10:13 AM 11 A. Yes.

10:13 AM 12 Q. So let's go over that -- your sales pitch.

10:13 AM 13 when you say "sales pitch," is this a sales  
10:14 AM 14 presentation to a doctor?

10:14 AM 15 A. It is.

10:14 AM 16 Q. Okay. And so let's go through that step by step.

10:14 AM 17 You would -- would you gather informational materials  
10:14 AM 18 before you actually went to go see the doctor?

10:14 AM 19 A. Yes.

10:14 AM 20 Q. And what type of materials were these?

10:14 AM 21 A. Some clinical studies and some case studies.

10:14 AM 22 Q. And what exactly are clinical studies?

10:14 AM 23 A. They're publishings in medical journals.

10:14 AM 24 Q. And just for everybody's edification, what is a medical  
10:14 AM 25 journal?

10:14 AM 1 A. It's a -- Archives of Internal Medicine, JAMA, New England  
10:14 AM 2 Journal of Medicine.

10:14 AM 3 Are you asking me for names or --

10:14 AM 4 Q. Yeah.

10:14 AM 5 A. -- or a more -- better description?

10:14 AM 6 Q. And so it was your understanding that physicians and  
10:15 AM 7 researchers in the medical field were producing significant  
10:15 AM 8 research and publishing them in well-known documents that you  
10:15 AM 9 were using as a basis of your presentation?

10:15 AM 10 MR. LEVENTIS: Object, Your Honor.

10:15 AM 11 THE WITNESS: Yes.

10:15 AM 12 MR. LEVENTIS: Is Mr. Griffith testifying or is  
10:15 AM 13 Mr. Mincey testifying?

10:15 AM 14 THE COURT: Well, he's cross-examining.

10:15 AM 15 Overruled.

10:15 AM 16 MR. GRIFFITH: Thank you.

10:15 AM 17 BY MR. GRIFFITH:

10:15 AM 18 Q. And so -- and so you had clinical studies.

10:15 AM 19 what about the -- what is a case study?

10:15 AM 20 A. A case study is a -- an example of those labs being used,  
10:15 AM 21 in this case, of a certain patient. So by using the labs and  
10:15 AM 22 then changing outcomes, hopefully improving outcomes.

10:15 AM 23 Q. And so it's basically -- is a case study basically a  
10:15 AM 24 patient -- you don't disclose the patient's information --

10:15 AM 25 A. Correct.

10:15 AM 1 Q. -- correct? Okay.

10:15 AM 2 A. It's anonymous.

10:16 AM 3 Q. But it's just to show the doctor how you -- what -- the  
10:16 AM 4 success you can achieve on a particular patient; correct?

10:16 AM 5 A. Yes.

10:16 AM 6 Q. And do you know who put together those case studies upon  
10:16 AM 7 which you were relying?

10:16 AM 8 A. One -- one of them came from Tonya, and I believe some of  
10:16 AM 9 those also came from Cal.

10:16 AM 10 Q. So what was -- so when you -- when you met with the  
10:16 AM 11 doctor, you had done this research. You had the -- the  
10:16 AM 12 resource material, and you had the case studies. So you met  
10:16 AM 13 with the doctor.

10:16 AM 14 And did you lead off -- you led off with the clinical  
10:16 AM 15 side of it, I think you testified?

10:16 AM 16 A. Yes.

10:16 AM 17 Q. Okay. And so when you say you led off with the clinical  
10:17 AM 18 side, that meant you discussed the clinical research; correct?

10:17 AM 19 A. Correct.

10:17 AM 20 Q. And you discussed the case studies; correct?

10:17 AM 21 A. Yes.

10:17 AM 22 Q. And this was a process of trying to educate the doctor as  
10:17 AM 23 to the efficacy of the HDL lab testing; correct?

10:17 AM 24 A. Correct.

10:17 AM 25 Q. And so when you educate -- when you're trying to educate

1 the doctor on the efficacy of the HDL lab studies, you're not  
2 mentioning anything about money at that point; correct?

3 A. Correct.

4 Q. When you -- after you finish the presentation and the  
5 clinical discussion, I thought -- and if I'm wrong, you correct  
6 me, please -- you would then ask if the doctor had any  
7 questions; correct?

8 A. Yes. I don't think I said that, but sure.

9 Q. Okay. I think that was -- I'm just assuming, but --

10 A. Okay.

11 Q. And -- because at some point you would ask, at least  
12 according to your deposition, that -- you would ask if he was  
13 interested; correct?

14 A. Yes.

15 Q. And if the doctor showed interest, then you would discuss  
16 options on how to get the lab specimens to HDL; correct?

17 A. Correct.

18 Q. And there was more than one option that was on the table;  
19 correct?

20 A. Yes.

21 Q. You discussed the opportunity for a phlebotomist; correct?

22 A. Yes.

23 Q. And a phlebotomist is just a medical person who generally  
24 draws blood; correct?

25 A. Correct.

10:19 AM 1 Q. And it's a specialization; correct?

10:19 AM 2 A. Yes.

10:19 AM 3 Q. And HDL actually put phlebotomists in doctors offices;  
10:19 AM 4 correct?

10:19 AM 5 A. Yes.

10:19 AM 6 Q. And is it your understanding that a phlebotomist could  
10:19 AM 7 cost up to \$52,000 per year?

10:19 AM 8 A. No.

10:19 AM 9 Q. Okay.

10:19 AM 10 A. Did not know it was that much.

10:19 AM 11 Q. Okay. Well, if I were to tell you that HDL paid a  
10:19 AM 12 phlebotomist for physician practices and paid \$52,000 a year --

10:19 AM 13 THE COURT: There's an objection. Sustained.

10:19 AM 14 MR. LEVENTIS: Thank you, Your Honor.

10:19 AM 15 THE COURT: Now you're testifying.

10:19 AM 16 BY MR. GRIFFITH:

10:19 AM 17 Q. So you don't know -- I'll withdraw that.

10:19 AM 18 The second option besides the phlebotomist would be a  
10:20 AM 19 potential lab-to-lab agreement; correct?

10:20 AM 20 A. Yes.

10:20 AM 21 Q. Where they would pay -- when I say "they," HDL would pay a  
10:20 AM 22 lab to actually draw the blood, process it and spin it, and  
10:20 AM 23 send it to HDL; correct?

10:20 AM 24 A. Correct.

10:20 AM 25 Q. And isn't it generally the industry standard that a

1 lab-to-lab agreement would cost about \$25 per specimen?

2 A. That's my understanding, yes.

3 Q. So the -- so -- and I think there was -- at least some  
4 times you would discuss the potential for a -- like a traveling  
5 phlebotomist; correct?

6 A. Yes.

7 Q. Was that an option?

8 A. It was later on in the process, yes. That was coming of  
9 age near the end of HDL.

10 Q. But all these different options you put on the table along  
11 with if they -- if the doctor wanted to do it in office, he  
12 could do it.

13 And you offered him -- you said that HDL would pay a  
14 reimbursement for his expenses of \$20; correct?

15 A. After 11 of -- November of 2011, yes.

16 Q. Yeah, understood. Now -- and we'll get back to that.

17 So -- so that was the -- and -- and if he was  
18 amenable -- if the doctor was amenable at that point, then you  
19 would give him all the new account forms and get him signed up,  
20 and he would start on his way depending on which option he  
21 chose; correct?

22 A. Correct.

23 Q. Okay. So when you went on the -- you said you went on a  
24 sales call -- a sales pitch with Mr. Cal Dent; correct?

25 A. Yes.



10:22 AM 1 Q. And I understood you to say that the sales call was  
10:22 AM 2 basically the same oral presentation that we just went over  
10:22 AM 3 that you give to your doctors?

10:22 AM 4 A. That's correct.

10:22 AM 5 Q. So going back to that meeting when we were -- when you  
10:22 AM 6 were talking about Miss Tonya -- and that meeting was in  
10:22 AM 7 2010 -- in 2009, wasn't it, where she wrote the --

10:22 AM 8 A. 2010.

10:22 AM 9 Q. 2010 where she wrote the \$20?

10:22 AM 10 A. Yes.

10:22 AM 11 Q. And she said lead with the \$20?

10:22 AM 12 A. Lead with the business side first.

10:23 AM 13 Q. Well, but that wasn't, in fact, your experience with what  
10:23 AM 14 Bluewave or at least what Cal was doing; correct?

10:23 AM 15 A. Correct.

10:23 AM 16 Q. And you never went on any sales ride-along with any other  
10:23 AM 17 Bluewave sales rep; correct?

10:23 AM 18 A. Correct.

10:23 AM 19 Q. So I understand from your deposition that you were just  
10:23 AM 20 extremely excited to go to HDL when you first joined up?

10:23 AM 21 A. Yes.

10:23 AM 22 Q. Because you got in on the ground floor; correct?

10:23 AM 23 A. That's correct.

10:23 AM 24 Q. Yeah. And you were like the Number 6 employee that was  
10:23 AM 25 hired at HDL; correct?

10:23 AM 1 A. That's right.

10:23 AM 2 Q. And it was an exciting time, wasn't it?

10:24 AM 3 A. It was sometimes yes and sometimes not.

10:24 AM 4 Q. But you were excited about the -- the individuals that  
10:24 AM 5 were involved in forming HDL; correct?

10:24 AM 6 A. Yes.

10:24 AM 7 Q. Mr. McConnell? You were excited about him?

10:24 AM 8 A. Yes.

10:24 AM 9 Q. Okay. And why?

10:24 AM 10 A. His credentials brought credibility.

10:24 AM 11 Q. And what were his credentials?

10:24 AM 12 A. He was the former director of cardiovascular labs at Mayo  
10:24 AM 13 Clinic.

10:24 AM 14 Q. And what is Mayo Clinic?

10:24 AM 15 A. A prestigious teaching and cardiovascular institution in  
10:24 AM 16 Rochester, Minnesota.

10:24 AM 17 Q. And you were also excited about Mr. Russ Warnick; right?

10:24 AM 18 A. Yes.

10:24 AM 19 Q. And why were you excited about that?

10:24 AM 20 A. Just his reputation and experience in -- I didn't know  
10:25 AM 21 Russ's reputation as well, but he'd written some textbooks on  
10:25 AM 22 advanced lipoprotein testing.

10:25 AM 23 Q. And Ms. Mallory? You were excited about her as well;  
10:25 AM 24 correct?

10:25 AM 25 A. Yes.

10:25 AM 1 Q. Because of -- and why was that?

10:25 AM 2 A. She's extremely smart, energetic, focused, passionate.

10:25 AM 3 Q. Okay. So -- when we went -- when we went over your  
10:25 AM 4 presentation -- I just want to follow up on this and just make  
10:25 AM 5 sure I didn't miss this -- at some point, did you tell the  
10:26 AM 6 doctors about no-balance billing?

10:26 AM 7 A. It depends on when you're talking about. So we had  
10:26 AM 8 different billing policies in Virginia.

10:26 AM 9 Q. Okay. You said you had different billing policies in  
10:26 AM 10 Virginia?

10:26 AM 11 A. Correct.

10:26 AM 12 Q. Okay. Different from all other states?

10:26 AM 13 A. Yes.

10:26 AM 14 Q. Did you -- did you have no-balance billing in Virginia?

10:26 AM 15 A. Eventually, yes.

10:26 AM 16 Q. And did you -- did you know -- do you have any knowledge  
10:26 AM 17 of the requirements of Medicare with respect to balance  
10:26 AM 18 billing?

10:26 AM 19 A. My understanding is you cannot balance-bill Medicare.

10:26 AM 20 Q. Okay. And what about TRICARE?

10:26 AM 21 A. Same.

10:26 AM 22 Q. So you think TRICARE and Medicare are the same?

10:27 AM 23 A. TRICARE has some deductibles. They're usually really  
10:27 AM 24 small, depending on the rank of the officer.

10:27 AM 25 Q. Okay.

10:27AM 1 A. But you cannot balance-bill them charges that are not  
2 covered or labs that are not covered.

10:27AM 3 Q. Were you aware that you were doing anything unlawful with  
4 respect to no-balance billing?

10:27AM 5 A. I was not.

10:27AM 6 Q. Okay. Now, did you love the product that HDL provided?

10:27AM 7 A. Yes.

10:27AM 8 Q. Why did you love the product?

10:27AM 9 A. I believed in the science behind it and thought it was in  
10 the best interests of patients and, in the long run, best  
11 interest of the health care system.

10:27AM 12 Q. And you believed in it so much you actually had it done  
13 yourself; correct?

10:28AM 14 A. Many times.

10:28AM 15 Q. And the great news for you -- well, you had great news;  
16 correct?

10:28AM 17 A. Yes.

10:28AM 18 And no.

10:28AM 19 Q. Excuse me?

10:28AM 20 A. And no.

10:28AM 21 Q. And oh? I'm sorry.

10:28AM 22 A. Yes and no. I'm thinking back to some of my labs you were  
23 asking me about. So --

10:28AM 24 Q. Okay. Did you have an understanding from any of our  
25 clients that -- any of your physicians that the HDL lab tests

10:28 AM 1 were beneficial?

10:28 AM 2 A. Yes.

10:28 AM 3 Q. Okay. And they saved lives?

10:28 AM 4 A. Didn't have proof of that, but, yes, we believed it was  
10:28 AM 5 going to, yes.

10:28 AM 6 Q. Okay. Well, how many lawyers -- I mean -- excuse me.

10:29 AM 7 How many physicians told you that they thought that  
10:29 AM 8 the product saved lives?

10:29 AM 9 A. All of them that were doing it. They didn't use those  
10:29 AM 10 words, but that was implied.

10:29 AM 11 Q. They didn't use the words, but that was implied? Is that  
10:29 AM 12 what you're saying?

10:29 AM 13 MR. LEVENTIS: Your Honor, note our objection.

10:29 AM 14 THE COURT: Are you offering it for the truth of the  
10:29 AM 15 matter here? I mean --

10:29 AM 16 MR. GRIFFITH: I'm just asking him what they -- what  
10:29 AM 17 the response --

10:29 AM 18 THE COURT: I'll sustain that objection.

10:29 AM 19 MR. GRIFFITH: Okay.

10:29 AM 20 BY MR. GRIFFITH:

10:29 AM 21 Q. Now, at one point, I understood that you had a doctor who  
10:30 AM 22 asked specifically was the P&H fee legal or not; correct?

10:30 AM 23 A. Yes.

10:30 AM 24 Q. And you gave him the position statement of HDL; correct?

10:30 AM 25 A. Correct.

10:30 AM 1 Q. And he had his lawyer review it; correct?

10:30 AM 2 A. That's what he told me.

10:30 AM 3 Q. Okay. And -- and he became a customer?

10:30 AM 4 A. Correct.

10:30 AM 5 Q. Okay. Now, in your deposition, you said that HDL hired a  
10:31 AM 6 lawyer named Dennis Ryan. Do you recall that?

10:31 AM 7 A. Yes.

10:31 AM 8 Q. And you said that made big news in Virginia?

10:31 AM 9 A. It did.

10:31 AM 10 Q. Okay. And that was because he was a well-known health  
10:31 AM 11 care lawyer; correct?

10:31 AM 12 A. I didn't know if he was a health care lawyer or not, but  
10:31 AM 13 his name -- that name, LeClairRyan, was on one of the big  
10:31 AM 14 buildings downtown, and they had hundreds of lawyers, and it  
10:31 AM 15 was a well-established firm.

10:31 AM 16 Q. And did you ever have any interaction with Mr. Ryan?

10:31 AM 17 A. Only social, just meet-and-greet.

10:31 AM 18 Q. Now, at some point, you became aware of the investigation  
10:32 AM 19 of HDL; correct?

10:32 AM 20 A. Yes.

10:32 AM 21 Q. And it's my understanding that -- that HDL hired another  
10:32 AM 22 big law firm called Ropes & Gray. Do you recall that?

10:32 AM 23 A. Yes.

10:32 AM 24 Q. Okay. And so Ropes & Gray -- Ropes & Gray came in and did  
10:32 AM 25 an interview of you; correct?

10:32 AM 1 A. Yes.

10:32 AM 2 Q. And you spent hours with those lawyers?

10:32 AM 3 A. Yes.

10:32 AM 4 Q. At any time -- and this occurred approximately in 2013?

10:32 AM 5 A. I'm -- yes, that sounds about right.

10:32 AM 6 Q. Okay. At any time did the Ropes & Gray lawyer tell you  
10:33 AM 7 that y'all -- that HDL -- you and HDL had to stop paying P&H  
10:33 AM 8 fees?

10:33 AM 9 MR. LEVENTIS: Objection, Your Honor.

10:33 AM 10 THE COURT: Basis?

10:33 AM 11 MR. LEVENTIS: Lacks foundation. He hasn't set a  
10:33 AM 12 foundation for what he's asking.

10:33 AM 13 THE COURT: well, he said he was interviewed. And in  
10:33 AM 14 the interview, you're asking him did the lawyer offer an  
10:33 AM 15 opinion during the interview?

10:33 AM 16 MR. GRIFFITH: Right.

10:33 AM 17 THE COURT: I'll overrule the objection.

10:33 AM 18 BY MR. GRIFFITH:

10:33 AM 19 Q. So --

10:33 AM 20 A. No, they did not.

10:33 AM 21 Q. Did any lawyer from Ropes & Gray during that time period  
10:33 AM 22 ever tell you that you couldn't offer no-balance billing?

10:33 AM 23 A. No.

10:33 AM 24 Q. And it's my understanding that you also were interviewed  
10:33 AM 25 by another law firm, LeClairRyan; is that right?

10:33 AM 1 A. Yes. I -- that's fuzzy on me whether the LeClairRyan was  
10:34 AM 2 working with Ropes & Gray or -- that might have been just  
10:34 AM 3 Ropes & Gray.

10:34 AM 4 Q. Okay.

10:34 AM 5 A. It was done down at LeClairRyan's office, I believe.

10:34 AM 6 Q. Okay. Well --

10:34 AM 7 A. The lawyers all look the same to me.

10:34 AM 8 THE COURT: We tend to see that.

10:34 AM 9 MR. GRIFFITH: Understood.

10:34 AM 10 BY MR. GRIFFITH:

10:34 AM 11 Q. But -- so the point is you had at least three interviews  
10:34 AM 12 with these law firms; correct?

10:34 AM 13 A. It was at least two. I'm fuzzy on if there was a third.

10:34 AM 14 Q. Okay. Well, if you don't remember the third one, that's  
10:34 AM 15 fine, but do you recall, on the second one, did anybody from  
10:34 AM 16 Ropes & Gray or LeClairRyan tell you that you and HDL had to  
10:34 AM 17 stop paying P&H fees?

10:34 AM 18 A. No.

10:34 AM 19 Q. And at that second meeting, did they ever say that you and  
10:35 AM 20 HDL had to stop offering no-balance billing?

10:35 AM 21 A. No.

10:35 AM 22 Q. So -- so from your perspective at the time, there appeared  
10:35 AM 23 to be some confusion about what was going on with P&H fees?

10:35 AM 24 A. I guess that's fair to say there was some confusion about  
10:35 AM 25 it.



10:35 AM 1 Q. Okay. And, ultimately, there was a special fraud alert  
10:35 AM 2 that came out in June of 2014. Do you recall that?

10:35 AM 3 A. I do.

10:36 AM 4 Q. And in response to that June 25th, 2014, special fraud  
10:36 AM 5 alert, HDL stopped paying P&H fees; correct?

10:36 AM 6 A. Correct.

10:36 AM 7 Q. Now, it's my understanding that you continued to sell, and  
10:36 AM 8 your doctors continued to use, HDL lab services after the fraud  
10:36 AM 9 alert?

10:36 AM 10 A. That's right.

10:36 AM 11 Q. Okay. And it's my understanding that you had a drop-off  
10:36 AM 12 of maybe 10 percent of the doctors who were using your -- HDL;  
10:36 AM 13 is that right?

10:36 AM 14 A. That's right.

10:37 AM 15 Q. Now, going back to that ride-along with Cal Dent, do you  
10:37 AM 16 recall that?

10:37 AM 17 A. Yes.

10:37 AM 18 Q. He never said anything about looking for a money-hungry  
10:37 AM 19 doctor, did he?

10:37 AM 20 A. He did not.

10:37 AM 21 Q. Okay. And it was actually quite generous of him to even  
10:37 AM 22 allow you to go on a ride-along?

10:37 AM 23 A. Agreed.

10:37 AM 24 Q. Don't you agree? Because he had great experience.

10:37 AM 25 Agreed?

10:37 AM 1 A. Agreed.

10:37 AM 2 Q. In the cardiovascular lab industry; correct?

10:37 AM 3 A. Yes.

10:37 AM 4 Q. He was a great salesman at Berkeley HeartLab; correct?

10:37 AM 5 A. Yes.

10:37 AM 6 Q. Now, his reputation preceded him?

10:37 AM 7 A. True.

10:37 AM 8 Q. And he was trying to impart his knowledge on to you;  
10:37 AM 9 correct?

10:37 AM 10 A. Correct.

10:37 AM 11 Q. And you were looking to receive his knowledge regarding  
10:38 AM 12 the sales of cardiovascular lab tests; correct?

10:38 AM 13 A. Correct.

10:38 AM 14 Q. Now, in the meeting that you were talking about with  
10:38 AM 15 Ms. Mallory on the \$20 that you wrote on the board, nobody from  
10:38 AM 16 BlueWave was there; correct?

10:38 AM 17 A. Correct.

10:39 AM 18 Q. And you were aware that other labs in the industry were  
10:39 AM 19 paying P&H fees during this time period; correct?

10:39 AM 20 A. Correct.

10:40 AM 21 MR. GRIFFITH: Just bear with me one second, please.

10:40 AM 22 (Pause.)

10:40 AM 23 BY MR. GRIFFITH:

10:40 AM 24 Q. So is it fair to say, Mr. Mincey, that during your time at  
10:40 AM 25 HDL as a salesman, you never intended to wrongfully induce a

10:40 AM 1 doctor to order a lab test; correct?

10:40 AM 2 A. Correct.

10:40 AM 3 Q. You never intended to violate any law with any business  
10:40 AM 4 practice that you were doing; correct?

10:40 AM 5 A. Correct.

10:40 AM 6 Q. You didn't know that anything that you would -- you were  
10:40 AM 7 doing was wrongful in any way?

10:40 AM 8 A. Correct.

10:41 AM 9 MR. GRIFFITH: Thank you, Your Honor. That's all.

10:41 AM 10 THE COURT: Very good.

10:41 AM 11 Mr. Ashmore?

10:41 AM 12 MR. ASHMORE: Thank you, Your Honor.

10:41 AM 13 CROSS-EXAMINATION

10:41 AM 14 BY MR. ASHMORE:

10:41 AM 15 Q. Mr. Mincey, I'm Beattie Ashmore. Good morning.

10:41 AM 16 A. Good morning.

10:41 AM 17 Q. You told Mr. Griffith you were aware that other labs were  
10:41 AM 18 paying P&H fees --

10:41 AM 19 MR. LEVENTIS: Your Honor, can we approach?

10:41 AM 20 THE COURT: Yes.

10:41 AM 21 (Whereupon the following proceedings were held at the  
10:41 AM 22 bench out of the hearing of the jury:)

10:41 AM 23 THE COURT: Yes, sir?

10:41 AM 24 MR. LEVENTIS: I tried to not object yesterday, but  
10:41 AM 25 my understanding is --

10:41AM 1 THE COURT: I'm sorry. I can't hear you.

10:41AM 2 MR. LEVENTIS: My understanding is about this other  
10:41AM 3 lab thing, is only if the defendants -- we have this testimony  
10:41AM 4 about what these other salespeople out in the field do isn't  
10:42AM 5 part of this case. It's what the defendants knew and what  
10:42AM 6 their knowledge was. They keep asking about --

10:42AM 7 THE COURT: well, of course as to Bluewave, the  
10:42AM 8 corporation is a party, so these people, the ones who are sales  
10:42AM 9 reps --

10:42AM 10 MR. LEVENTIS: It's -- well --

10:42AM 11 THE COURT: -- they're a party. I mean -- and I  
10:42AM 12 asked you earlier were you trying to hold liability.

10:42AM 13 MR. LEVENTIS: Yes.

10:42AM 14 THE COURT: And these are all co-conspirators, you  
10:42AM 15 allege.

10:42AM 16 MR. LEVENTIS: Mincey is an HDL guy. That's why I'm  
10:42AM 17 bringing it up now.

10:42AM 18 THE COURT: Yeah. What's y'all's thought about it?

10:42AM 19 MR. ASHMORE: That's how my client -- it's her state  
10:42AM 20 of mind. These reps would come back and saying, "The doctors  
10:42AM 21 are telling us Berkeley is charging 20." That's how she knew  
10:42AM 22 that the P&H were being paid by --

10:42AM 23 THE COURT: well, she can testify to that, but  
10:42AM 24 they -- that would be -- she can testify what she knew. The  
10:42AM 25 question is are you trying to get in -- I mean, what's the

1 point of the government? I mean, clearly the jury knows that  
2 some labs are paying P&H.

3 **MR. ASHMORE:** That's already been established.

4 **MR. LEVENTIS:** But this shouldn't keep coming in from  
5 people that weren't in the case. The relevance is what she  
6 knew, what Dent and Johnson knew, and what BlueWave knew, not  
7 what Mincey knew.

8 **THE COURT:** I think you're probably right about that,  
9 but -- generally speaking, but for him -- on everybody else, it  
10 would come in.

11 **MR. LEVENTIS:** If he testified that he told her,  
12 that's different. If he never told her what he knew, I don't  
13 understand how --

14 **THE COURT:** If he told her what he knew, it may be  
15 relevant for her state of mind, but -- good. Good.

16 **MR. GRIFFITH:** Counsel (inaudible) reasonableness  
17 overall. You know, if the industry -- the commercial  
18 reasonableness standard is you have to measure a similar  
19 parameter, a similar size. You have to measure that --

20 **THE COURT:** well, it's not to make an unlawful act  
21 lawful. It may be relevant to her state of mind, but you have  
22 to establish she knows about it. Okay? But I agree with your  
23 point that -- it's the state of mind of the defendants, not  
24 just generally. If they don't know what the general practice  
25 is, that's another thing.

1 (whereupon the following proceedings were held in  
2 open court in the presence and hearing of the jury:)

3 **THE COURT:** Mr. Ashmore, restate your question.

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

5 **BY MR. ASHMORE:**

6 **Q.** Mr. Mincey, did you have conversations with Tonya Mallory  
7 about other labs charging -- or I'm sorry -- paying P&H fees?

8 **A.** I don't recall specifically having those with Tonya.

9 **Q.** I'm sorry?

10 **A.** I don't recall having conversations with Tonya about other  
11 labs' P&H fees.

12 **Q.** Okay. Anybody at HDL did you discuss that with?

13 **A.** I did with Casey Boyd.

14 **Q.** Okay. Is it your understanding that it was generally  
15 known in the industry what other labs were paying --

16 **THE COURT:** Sustained.

17 **MR. ASHMORE:** I'll move on, Your Honor. Thank you.

18 **BY MR. ASHMORE:**

19 **Q.** You sold, on behalf of HDL, a number of blood tests to  
20 sole practitioners in rural parts of South Carolina?

21 **A.** No.

22 **Q.** Okay.

23 **A.** I did not.

24 **Q.** Where did you sell?

25 **A.** In Virginia.

1 10:45 AM Q. Okay. And so, again, you had small operations in terms of  
2 physicians' offices; correct?

3 A. Some.

4 Q. Some. And did you sell to hospitals?

5 A. We sold not specifically to a hospital but to  
6 hospital-owned practices, yes.

7 Q. Hospital-owned practices?

8 A. Yes.

9 Q. Okay. Did you yourself sell to entire hospitals?

10 A. No.

11 Q. Did anyone at HDL do that?

12 A. No.

13 Q. To the best of your knowledge?

14 A. Correct.

15 Q. Who was Joe McConnell?

16 A. He was the chief scientific officer of HDL.

17 Q. How much interaction did you have with him?

18 A. A lot.

19 Q. A lot?

20 A. Yes.

21 Q. Can you elaborate for me? Can you tell me what you did  
22 with Joe McConnell?

23 A. Any time I had a clinical question, I could ask Joe for  
24 help. Joe also did some clinical presentations to physicians.

25 Q. He was one of the founders of HDL?

1 0 : 4 6 A M 1 A. Correct.

1 0 : 4 6 A M 2 Q. Okay. And Russ Warnick?

1 0 : 4 6 A M 3 A. Yes.

1 0 : 4 6 A M 4 Q. Who was he?

1 0 : 4 6 A M 5 A. One of the other founders.

1 0 : 4 6 A M 6 Q. Okay. So -- and did you interact with Mr. Warnick?

1 0 : 4 6 A M 7 A. I did.

1 0 : 4 6 A M 8 Q. Okay. Can you tell us about that?

1 0 : 4 6 A M 9 A. Same. I would ask Russ clinical questions.

1 0 : 4 6 A M 10 Q. Okay. All right. So who ran HDL?

1 0 : 4 6 A M 11 A. Tonya.

1 0 : 4 6 A M 12 Q. Okay. How about what was Mr. McConnell's role?

1 0 : 4 6 A M 13 A. He was the chief scientific officer in charge of the lab.

1 0 : 4 6 A M 14 Q. Okay. All right.

1 0 : 4 6 A M 15 what's your understanding of the Anti-Kickback

1 0 : 4 6 A M 16 Statute?

1 0 : 4 7 A M 17 A. That you're not supposed to provide any type of inducement

1 0 : 4 7 A M 18 to physicians in order to get their business.

1 0 : 4 7 A M 19 Q. And you've known that all of your professional career?

1 0 : 4 7 A M 20 A. Yes.

1 0 : 4 7 A M 21 Q. Before you joined HDL?

1 0 : 4 7 A M 22 A. Correct.

1 0 : 4 7 A M 23 Q. Okay. And you knew the HDL business model at the time you

1 0 : 4 7 A M 24 joined HDL?

1 0 : 4 7 A M 25 A. Yes.



10:47AM 1 Q. Have you ever violated the Anti-Kickback Statute?

10:47AM 2 A. Not to my knowledge.

10:47AM 3 MR. ASHMORE: That's all I have, Your Honor.

10:47AM 4 THE COURT: Thank you.

10:47AM 5 Redirect by the government?

10:47AM 6 MR. LEVENTIS: Thank you, Your Honor.

10:47AM 7 REDIRECT EXAMINATION

10:47AM 8 BY MR. LEVENTIS:

10:47AM 9 Q. Mr. Mincey, you were asked about a Ropes & Gray law firm.  
10 Do you recall those questions?

10:47AM 11 A. Yes.

10:47AM 12 Q. Do you know what Ropes & Gray told Tonya Mallory about  
13 processing and handling fees?

10:47AM 14 A. I do not.

10:47AM 15 Q. Did you ever talk to a lawyer about whether processing and  
16 handling was legal?

10:47AM 17 A. I did not.

10:47AM 18 Q. Who did you rely on for your belief that it was legal?

10:48AM 19 A. All the officers at HDL.

10:48AM 20 Q. Would that include Tonya Mallory?

10:48AM 21 A. Yes.

10:48AM 22 MR. LEVENTIS: Thank you, Your Honor.

10:48AM 23 THE COURT: You may step down.

10:48AM 24 THE WITNESS: Okay.

10:48AM 25 (Witness excused.)

10:48 AM 1 THE COURT: Folks, I think this is a good time to  
10:48 AM 2 take our morning break, about 10 minutes.

10:48 AM 3 (Whereupon the jury was excused from the courtroom.)

10:49 AM 4 THE COURT: Okay. Any matters to be addressed at  
10:49 AM 5 this point from the government?

10:49 AM 6 MR. LEVENTIS: No, Your Honor. Thank you.

10:49 AM 7 THE COURT: From the defense?

10:49 AM 8 MR. COOKE: Nothing.

10:49 AM 9 THE COURT: Very good. We'll take about a 10-minute  
10:49 AM 10 break.

10:49 AM 11 (Recess.)

11:03 AM 12 THE COURT: Please be seated. Any matters before we  
11:03 AM 13 go to the next witness?

11:03 AM 14 MR. SHAHEEN: Yes, Your Honor. There is one matter.

11:03 AM 15 I would like to -- before Ms. Mallory takes the  
11:03 AM 16 stand, I would like to introduce several exhibits into  
11:03 AM 17 evidence. It's my understanding that all but one of these I'm  
11:03 AM 18 about to list, there are no objections.

11:03 AM 19 THE COURT: Okay.

11:03 AM 20 MR. SHAHEEN: And Mr. Griffith would like to talk  
11:03 AM 21 about that one objection.

11:03 AM 22 THE COURT: Very good.

11:03 AM 23 MR. GRIFFITH: Well, we actually have two, Your  
11:03 AM 24 Honor.

11:03 AM 25 MR. SHAHEEN: I'm not going to raise the other one.

1 I'm going to list them off.

2 MR. GRIFFITH: Okay. Yeah.

3 THE COURT: What's your number?

4 MR. SHAHEEN: I'll come to the mic.

5 The first one is 1047.

6 THE COURT: Okay. Is that the one in contest?

7 MR. SHAHEEN: No.

8 THE COURT: Okay. Which are the ones not in contest?  
9 Give me those numbers.

10 MR. SHAHEEN: Not in contest begins with 1047, Your  
11 Honor.

12 THE COURT: Yes.

13 MR. SHAHEEN: 1144.

14 THE COURT: Okay.

15 MR. SHAHEEN: 1166, 1206.

16 THE COURT: Uh-huh.

17 MR. SHAHEEN: 1244, 1248, 1257, 1266, 1288.

18 THE COURT: Okay.

19 MR. SHAHEEN: 1292, 1293, and 1468.

20 THE COURT: That's not in contest?

21 MR. SHAHEEN: It is my understanding that that is the  
22 case, Your Honor.

23 THE COURT: Is that correct, Mr. Griffith?

24 MR. GRIFFITH: No objection, Your Honor.

25 MR. ASHMORE: No objection.

11:04 AM 1 MR. SHAHEEN: And then we do have one that is in  
11:04 AM 2 contest, and that's Exhibit 1527.

11:04 AM 3 THE COURT: Okay.

11:04 AM 4 MR. SHAHEEN: And --

11:04 AM 5 MR. GRIFFITH: Your Honor, this is based on the same  
11:04 AM 6 objection that we made on the previous email that did not go to  
11:04 AM 7 my clients. Just for the record --

11:04 AM 8 THE COURT: Let me have a look at the document if I  
11:04 AM 9 could, please.

11:04 AM 10 MR. SHAHEEN: I'm going to bring it up, Your Honor.

11:05 AM 11 THE COURT: And who is Tabitha Henley?

11:05 AM 12 MR. SHAHEEN: Tabitha Henley is an employee at HDL --  
11:05 AM 13 or was an employee at HDL -- involved in compliance, I believe,  
11:05 AM 14 Your Honor.

11:05 AM 15 THE COURT: And these are a string of emails relating  
11:05 AM 16 to compliance by Ms. Mallory and Ms. Henley; is that correct?

11:05 AM 17 MR. SHAHEEN: Those two are involved in addition to  
11:05 AM 18 other participants, I believe, Your Honor.

11:05 AM 19 THE COURT: There are other people involved as well?

11:05 AM 20 MR. SHAHEEN: Kathy Johnson and Derek Kung are  
11:05 AM 21 involved in earlier iterations of the email.

11:05 AM 22 THE COURT: And who -- and are they associated with  
11:05 AM 23 HDL?

11:05 AM 24 MR. SHAHEEN: Kathy Johnson is also in compliance, I  
11:05 AM 25 believe, and Derek Kung was their general counsel.

11:06AM 1 THE COURT: Okay.

11:06AM 2 Mr. Griffith, what's your objection?

11:06AM 3 MR. GRIFFITH: That my clients have not seen these.  
11:06AM 4 There's no foundation. And it's under 403 as well, Your Honor.

11:06AM 5 THE COURT: Let me read over it for a moment.

11:06AM 6 (Pause.)

11:07AM 7 THE COURT: The objection is hearsay? Is that the  
11:07AM 8 objection?

11:07AM 9 MR. GRIFFITH: well, that as well, Your Honor.  
11:07AM 10 Hearsay, it's not relevant to my client, and it's prejudicial  
11:07AM 11 to my clients.

11:07AM 12 THE COURT: Of course, I did not want to do it in  
11:07AM 13 front of the jury. The jury is not here.

11:07AM 14 I do think there's sufficient evidence of  
11:07AM 15 conspiracy here. And the hand of one is the hand of all.  
11:07AM 16 And -- and that of course is addressed specifically in  
11:08AM 17 801(d)(2)(E) regarding hearsay. And it's -- it's basically the  
11:08AM 18 conduct of co-conspirators.

11:08AM 19 So I overrule that objection. I will not make  
11:08AM 20 that -- I'm trying to avoid, and I don't want anybody to -- if  
11:08AM 21 we need to address the conspiracy ruling of the court, I want  
11:08AM 22 to do it outside of the presence of the jury. That's not fair  
11:08AM 23 to the defendants in terms of the jury has got to make its own  
11:08AM 24 determination. But for evidentiary purposes, I think there's  
11:08AM 25 sufficient evidence to offer it.

1 So I overrule that objection. That is 1527.

2 MR. SHAHEEN: Thank you, Your Honor.

3 THE COURT: Ms. Ravenel, can you hand that exhibit  
4 back to Mr. Shaheen.

5 Anything further?

6 MR. LEVENTIS: No, Your Honor, not from the  
7 government.

8 MR. GRIFFITH: No, Your Honor.

9 THE COURT: For the record, Plaintiff Exhibits 1047,  
10 1144, 1166, 1206, 1244, 1248, 1257, 1266, 1288, 1292, 1293, and  
11 1468 are admitted without objection. And Plaintiffs' Exhibit  
12 1527 is admitted over the objections of BlueWave.

13 Bring in the jury.

14 (Whereupon the jury entered the courtroom.)

15 THE COURT: Please be seated.

16 Government, call your next witness.

17 MR. SHAHEEN: Your Honor, the United States would  
18 like to call Miss Tonya Mallory as our next witness.

19 THE COURT: Very good.

20 THE DEPUTY CLERK: Please place your left hand on the  
21 Bible, raise your right. State your full name for the record,  
22 please.

23 THE WITNESS: Latonya S. Mallory.

24 (Witness sworn.)

25 THE DEPUTY CLERK: Thank you. You may be seated.

1 LATONYA S. MALLORY,  
2 called on behalf of the plaintiff, being first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SHAHEEN:

6 BY MR. SHAHEEN:

7 Q. Good morning, Ms. Mallory. How are you today?

8 A. Good. How are you?

9 Q. Very well. Thanks.

10 Can you state your full name for the record, please.

11 A. Latonya Shook Mallory.

12 Q. And, Ms. Mallory, do you see a binder in front of you?

13 A. I do.

14 Q. And in that binder are documents that we'll be referring  
15 to throughout the day, so please feel free to consult that if  
16 you need to.

17 Where did you work before you founded HDL?

18 A. Just before?

19 Q. Yes.

20 A. I worked at Berkeley HeartLab.

21 Q. And what were your job titles at Berkeley HeartLab?

22 A. Lab operations manager.

23 Q. And what were your responsibilities associated with that  
24 title?

25 A. I was in charge of consolidating all of the lab equipment,

1 staffing the lab, making contract decisions for reagent or  
2 vendors for the laboratory, training staff, putting a quality  
3 system in place, evaluating new products for the laboratory.

4 Q. And I didn't hear you mention interaction with the sales  
5 staff.

6 Did you have interaction with the sales team?

7 A. I had none.

8 Q. What kind of training did you have while you were at  
9 Berkeley?

10 A. Most of it was the typical lab training. So quality  
11 system training, of course, HIPAA. We had CLIA and CAP, which  
12 was College of American Pathology, another quality system. The  
13 typical HR training, sexual harassment, and that kind of thing.

14 Q. Did you have any training that was specific to the  
15 Anti-Kickback Statute?

16 A. No.

17 Q. Did you have any training that was specific to the False  
18 Claims Act?

19 A. No.

20 Q. When did you leave Berkeley?

21 A. In September of -- well, at the very end of September of  
22 2008.

23 Q. And what did you do after that?

24 A. When I left Berkeley, I told Berkeley that I was going to  
25 either start a company or get a job. So I worked with Dennis



1 Ryan at LeClairRyan to put a business plan together to file  
2 with the SS -- SCC, the State Corporation Commission, in order  
3 to raise capital to create HDL.

4 Q. And were there other steps involved in creating HDL?

5 A. Of course, writing the business plan, seeking capital,  
6 doing the dog-and-pony show for every investor to potentially  
7 raise capital for HDL. Of course, there were employment  
8 contracts. There was documents that needed to be filed with  
9 the SCC. And all of that was done with LeClairRyan.

10 Q. And roughly how long did all of that take?

11 A. I started in October, and we filed it on December 9th.

12 Q. Still in 2008?

13 A. Yes.

14 Q. And then after you filed, what's involved in building a  
15 lab?

16 A. We started in a -- almost a closet. So we had to --  
17 before you can actually start testing any samples, you have to  
18 get a lab license. You have to actually get accredited through  
19 one of the quality organizations like CLIA or College of  
20 American Pathology.

21 And then once you file that paperwork, there's a lot  
22 of quality system documentation that you have to put together  
23 to show that the tests are valid, you've validated them within  
24 the -- in the lab. You have to have an inspection by a quality  
25 organization.

1 11:15 AM 1 That took from January to October of 2009.

1 11:15 AM 2 Q. And when did you first start getting referrals into the  
1 11:15 AM 3 lab?

1 11:15 AM 4 A. It was September or October of 2009.

1 11:15 AM 5 Q. When did you first reach out to defendants Dent and  
1 11:15 AM 6 Johnson?

1 11:15 AM 7 A. I never reached out to them. Casey Boyd was a sales rep  
1 11:15 AM 8 that was working for HDL at the time, and he told me that Cal  
1 11:16 AM 9 and Brad were planning on leaving Berkeley and going to start  
1 11:16 AM 10 their own lab. And so I mentioned it to Russ Warnick, who knew  
1 11:16 AM 11 them. And I don't know if it was Casey or Russ that contacted  
1 11:16 AM 12 Cal and let them know that we were interested in talking to  
1 11:16 AM 13 them, and then Cal called me.

1 11:16 AM 14 Q. And did you ultimately meet with Mr. Dent and Mr. Johnson?

1 11:16 AM 15 A. Yes.

1 11:16 AM 16 Q. And when did you meet with them?

1 11:16 AM 17 A. I think the first meeting was in November of 2009.

1 11:16 AM 18 Q. If you'll turn to the first exhibit in your binder, this  
1 11:16 AM 19 is exhibit -- Plaintiffs' Exhibit 1248.

1 11:17 AM 20 Does this refresh your recollection at all as to when  
1 11:17 AM 21 you first met with Mr. Dent and Mr. Johnson?

1 11:17 AM 22 A. Yes. It says October 13th, so it would have been in  
1 11:17 AM 23 October.

1 11:17 AM 24 Q. Okay. And what was that meeting about?

1 11:17 AM 25 A. It was a -- I know Russ was there. I think Joe was there.

1 I'm not sure about Joe. Cal and Brad were there.

2 And we discussed our idea for where we wanted to go  
3 with HDL. They discussed the idea they had, why they were  
4 leaving Berkeley, where they want to go with their career.

5 We thought they were interested in building a lab.  
6 So a lot of it was just getting to know each other and trying  
7 to figure out if there was going -- could be a relationship  
8 there.

9 Q. And you mentioned Russ and Joe.

10 Can you tell me who those two individuals are.

11 A. So Russ and Joe were my two business partners who started  
12 HDL with me.

13 Russ had been my boss at Berkeley HeartLab. He had  
14 also come out of retirement to work at Berkeley HeartLab. He  
15 was one of the early guys to develop one of the very first  
16 cholesterol tests, written quite a few textbooks, and had an  
17 MBA. So knew business very well.

18 Joe McConnell was my other business partner. He was  
19 chief of cardiovascular medicine -- lab medicine at Mayo Clinic  
20 and developed a lot of the cardiovascular tests that Mayo was  
21 using.

22 Prior to Berkeley, I worked for a reagent -- a vendor  
23 who sold to both Mayo Clinic and Russ's labs in the past. So  
24 we had known each other 15 years or so before we decided to  
25 form HDL.

1 11:19 AM 1 Q. And you refer to Russ, and is that Russ Warnick?

1 11:19 AM 2 A. That is.

1 11:19 AM 3 Q. Where did the meeting take place?

1 11:19 AM 4 A. It was at the Marriott near Atlanta airport.

1 11:19 AM 5 Q. And at that first meeting, did you discuss whether Johnson  
1 11:19 AM 6 and Dent would serve as an independent sales force versus an  
1 11:19 AM 7 independent -- I'm sorry -- serve as an independent sales  
1 11:19 AM 8 force?

1 11:19 AM 9 A. No. I don't remember that.

1 11:19 AM 10 Q. At that first meeting, did you discuss how they -- how  
1 11:19 AM 11 much money HDL -- I'm sorry. Strike that.

1 11:19 AM 12 At that first meeting, did you discuss how the amount  
1 11:19 AM 13 of money that HDL paid BlueWave would be based on a percent of  
1 11:19 AM 14 the revenue that BlueWave generated?

1 11:19 AM 15 A. I don't think it was at that meeting. Russ had reached  
1 11:19 AM 16 out to Andy, who was the CFO at Berkeley. I don't remember his  
1 11:19 AM 17 last name. But Russ had called Andy, the former CFO of our  
1 11:20 AM 18 former company, and asked him what the cost of sales was before  
1 11:20 AM 19 the meeting with Brad and Cal.

1 11:20 AM 20 I don't think we got into particulars about the  
1 11:20 AM 21 commission structure. I don't remember getting, you know,  
1 11:20 AM 22 in -- in those detailed discussions. I think that first  
1 11:20 AM 23 meeting was more of an icebreaker.

1 11:20 AM 24 Q. At that first meeting, did you discuss how HDL would pay  
1 11:20 AM 25 physicians for every specimen they referred?

1 A. No, there was never a discussion about paying physicians  
2 for referrals. There was always a discussion about how we're  
3 going to get the blood samples. That's the number one question  
4 for any laboratory: How do you get blood from the doctors to  
5 the lab? So we did have some discussions about how we would  
6 get blood.

7 Q. And was part of that discussion a reference to how much  
8 HDL would pay doctors for that service?

9 A. The tests that we were going to plan on doing, I had done  
10 a back-of-the-napkin calculation, and I think there was a  
11 bracket of dollars that we put down that my estimations would  
12 cover that cost. But that had not been finalized at that  
13 point.

14 Q. And that payment was integral to getting the blood from  
15 the doctor to the lab?

16 A. No. That was the -- I don't know what you mean by  
17 "integral." But it's very important for a lab to get a sample  
18 in to test it, of course. That's common sense.

19 So there was several options. And for those docs  
20 that lived in remote areas where patients didn't have access to  
21 anything else but the doctor's office, then it's important to  
22 reimburse those docs to -- for those services.

23 Q. Looking at Plaintiffs' Exhibit Number 1248, do you  
24 recognize this particular document?

25 A. It looks like there was some notes from a meeting

1 follow-up.

2 Q. And, actually, I don't want to go to the notes just yet.

3 Can you tell us who this email is sent from?

4 A. It's from me.

5 Q. And who did you send it to?

6 A. Cal and Brad.

7 Q. Is Cal cmdent7@yahoo.com?

8 A. Yes, I think so.

9 Q. And would Brad be wrkforce52@mail.com?

10 A. Yes.

11 Q. And then was anyone cc'd on this email?

12 A. Russ Warnick.

13 Q. And can you read for me the first two sentences of this  
14 email?

15 A. "I know you spoke with Russ earlier today, and I would  
16 like to talk to you again when you have time. Attached is a  
17 summary of our discussion so far, I think."

18 Q. And is there, in fact, an attachment to this email?

19 A. Yes.

20 Q. And what is the title of that attachment as it appears --

21 A. "Meeting and Discussion Summary."

22 Q. And is that a reference back to the meeting at the airport  
23 Marriott?

24 A. Yeah, it appears to be a -- a summary of this meeting.

25 There must have been one more meeting before that, because I

1 don't remember this level of detail at the first meeting.

2 Q. Okay. But as of October 13th, 2009, this was the level of  
3 detail in regards to the discussions for the contractual  
4 relationship between HDL and Bluewave or what would become  
5 Bluewave?

6 A. I don't remember exactly the meeting date, but this would  
7 have been the discussion we had on that date.

8 Q. Did you draft the meeting and discussion summary that's  
9 attached to this email?

10 A. I did.

11 Q. And what does the first sentence of this agreement say?

12 A. "We will use this summary to start framing an agreement.  
13 we will expand all our infrastructure to handle a minimum of  
14 1,500 samples a day."

15 Q. And did this document get revised over the following days  
16 and weeks?

17 A. Yes, of course.

18 Q. And who participated in those revisions?

19 A. Cal, Brad, Joe McConnell, Russ Warnick, LeClairRyan, Gene  
20 Sellers, who was BlueWave's attorney. Our investor was Tipton  
21 Golias. He had two attorneys that were involved. So there was  
22 quite a few -- and our investor was -- quite a few people  
23 involved.

24 Q. At the time of this email, were defendants Dent and  
25 Johnson still employees at Berkeley?

11:25 AM 1 A. I think so, yes.

11:25 AM 2 Q. Can you please read Bullet Point Number 3 for the jury.

11:25 AM 3 A. "The structure of the relationship is flexible. Cal and  
11:25 AM 4 Brad are willing to be employees but desire autonomy, and a  
11:25 AM 5 separate company is also acceptable. Subsequent discussions  
11:25 AM 6 with HDL attorneys have advised us that a separate company may  
11:25 AM 7 be advantageous."

11:25 AM 8 Q. And did defendants Dent and Johnson explain to you why  
11:25 AM 9 they desired autonomy?

11:25 AM 10 A. No.

11:25 AM 11 Q. Can you please read Bullet Point Number 8 for the jury?

11:25 AM 12 A. "The new company will be paid a percent of revenue" -- I  
11:25 AM 13 don't know if that's -- it's question mark, "total or gross,"  
11:25 AM 14 question mark. "Initial request was 18 percent, and actual  
11:25 AM 15 amount will be ultimately decided when all plans and details  
11:26 AM 16 are considered and decided."

11:26 AM 17 Q. And did HDL and Bluewave ultimately enter into a  
11:26 AM 18 contractual relationship?

11:26 AM 19 A. Yes.

11:26 AM 20 Q. And did HDL, in fact, pay a percentage of revenue to  
11:26 AM 21 Bluewave?

11:26 AM 22 A. We paid a percent of collected revenue.

11:26 AM 23 Q. Can you please read Bullet Point Number 9 for the jury?

11:26 AM 24 A. "P&H fees will be paid to physicians. Target amount is 15  
11:26 AM 25 to \$21 per patient. The costs will be paid by HDL."



11:26AM 1 Q. So even at this early stage, P&H was a topic of  
2 discussion?

11:26AM 3 A. There is always a discussion. Number one discussion is  
11:26AM 4 always how am I going to get the blood? And for the clients  
11:26AM 5 that they had, they were more remote at that time, and so it  
11:26AM 6 was very important to them to have access to getting that blood  
11:27AM 7 in order to sell the testing.

11:27AM 8 My understanding at the time was that there were  
11:27AM 9 not -- most of their clients that they were thinking of  
11:27AM 10 converting were not in major areas so they could just send them  
11:27AM 11 down to the draw site.

11:27AM 12 Q. And so if I'm understanding you correctly, this payment  
11:27AM 13 was very important to getting the doctors to refer tests to  
11:27AM 14 HDL?

11:27AM 15 A. No. I think you're putting words in my mouth. I've said  
11:27AM 16 it's very important to get blood and -- to the lab in order to  
11:27AM 17 test. So how you get that blood to the lab, there's a bunch of  
11:27AM 18 different options. And it's very -- doctors won't do it for  
11:27AM 19 free if they're going to use their resources. So it was very  
11:27AM 20 important to reimburse the doctors that are going to do it for  
11:27AM 21 their services.

11:27AM 22 Q. And I certainly do not want to put words in your mouth, so  
11:27AM 23 please do feel free to correct me if I mistakenly do so.

11:28AM 24 Can we move on to Plaintiffs' Exhibit Number 1293,  
11:28AM 25 please.

1 And appearing on your screen and then also in your  
2 binder, if that's easier for you, is Plaintiffs' Exhibit 1293.

3 who is this email from?

4 A. This is from Brad to me, Russ, and Cal.

5 Q. And is there an attachment to this email?

6 A. Yes.

7 Q. And what is the attachment called?

8 A. "Meeting and Discussion Summary."

9 Q. And if we turn to the attachment, does this appear to be a  
10 new iteration of the document we were just looking at?

11 A. This looks like their changes to the previous document.

12 Q. And you sort of guessed where I was going next. There do  
13 appear to be bolded portions of this.

14 Do you know who inputted the bolded portions of this  
15 attachment?

16 A. I don't know specifically, but it came from Brad. So I  
17 would expect it to be either Brad or Cal.

18 Q. Can you read the unbolded portion of Bullet Point  
19 Number 9, please.

20 A. Unbolded: "P&H fees will be paid to physicians. Target  
21 amount is 15 to \$21 per patient. The cost will be paid by  
22 HDL."

23 Q. And now can you read the bolded portion.

24 A. "Agree. Prefer 18 to 21."

25 Q. Do you recall defendants Dent and Johnson preferring a

11:29 AM 1 higher per-specimen payment?

11:29 AM 2 A. I don't remember too much discussion about it, but there  
11:29 AM 3 was this note here.

11:30 AM 4 Q. Looking at Bullet Point Number 17, can you read what that  
11:30 AM 5 says?

11:30 AM 6 A. "We desire a term agreement for pricing (i.e., zero  
11:30 AM 7 balance billing will remain in effect for the term of our sales  
11:30 AM 8 agreements for the following types of insurance: Medicare,  
11:30 AM 9 PPOs, POSS, HMOs, Medicaid, HSAs, HRAs, et cetera.)"

11:30 AM 10 Q. And this language is part of the bulleted portion; am I  
11:30 AM 11 correct?

11:30 AM 12 A. Yes.

11:30 AM 13 Q. What does "zero balance billing" mean, Ms. Mallory?

11:30 AM 14 A. So there's -- it's very different than billing copays and  
11:30 AM 15 deductibles. So when you get a bill from a doctor's office or  
11:30 AM 16 hospital, you have an EOB or a summary statement that comes  
11:30 AM 17 from your insurance company. And that says that you have such  
11:31 AM 18 and such co-pay and deductible that is due to you.

11:31 AM 19 When we talk about zero balance billing, what we're  
11:31 AM 20 talking about is in that -- that's situations when your  
11:31 AM 21 physician orders an x-ray or orders a lab test and the  
11:31 AM 22 insurance company decides that they're not going to reimburse  
11:31 AM 23 you for that. So that means we take all the risk as a company  
11:31 AM 24 because we believe you need the test, and we will not pass  
11:31 AM 25 on -- just because your insurance company doesn't pay for it,

1 we will not pass on that charge to you. We will just write it  
2 off. And that's zero balance billing.

3 Q. And since this is bolded, is this a suggestion that came  
4 from Brad and Cal?

5 A. That's obvious.

6 Q. If we could move to Plaintiffs' Exhibit Number 1292,  
7 please. And it should appear on your screen. But, again, feel  
8 free to look at the hard copy as well.

9 I'd like to draw your attention to the email at the  
10 bottom of the first page. And if you could compare it with the  
11 email on the previous exhibit, does that appear to be sort of  
12 the last link in the chain of the previous exhibit and now  
13 we're moving on to additional links?

14 A. That's what it appears to be.

15 Q. And so this is just an extension of what we were just  
16 looking at?

17 A. I don't remember exactly, but that's what it appears to  
18 me.

19 Q. Okay. And I'm just trying to clean up my own mess,  
20 because I sort of made hash of the first question.

21 When is the second email here dated?

22 A. October 28th, 2009.

23 Q. And who sent this particular email, the one in the middle?

24 A. I did.

25 Q. And to whom did you send it?

11:33 AM 1 A. I sent it to Brad, Cal, and Russ.

11:33 AM 2 Q. And can you read that email for us.

11:33 AM 3 A. "Attached is a copy of the summary of our conversation  
11:33 AM 4 last night and everything else we discussed. Please read over  
11:33 AM 5 it to make sure we're on the same page. I made a few changes  
11:33 AM 6 and highlighted those in red for clarification if we've not  
11:33 AM 7 discussed them. Let me know if you have any changes. Looking  
11:33 AM 8 forward to seeing you guys again on the 3rd."

11:33 AM 9 Q. And now if we move up one more link in the chain, when is  
11:33 AM 10 that email sent?

11:33 AM 11 A. October 29th, 2009.

11:33 AM 12 Q. And who sent that email?

11:33 AM 13 A. From Brad Johnson.

11:33 AM 14 Q. And to whom did he send it?

11:33 AM 15 A. To me and Cal.

11:33 AM 16 Q. And what does Mr. Johnson say in the email?

11:33 AM 17 A. "We noticed a few discrepancies and highlighted those in  
11:34 AM 18 blue. Hope all is well. Looking forward to next Thursday.  
11:34 AM 19 Brad."

11:34 AM 20 Q. And is there an attachment to this email?

11:34 AM 21 A. There is -- there seems to be.

11:34 AM 22 Q. And if we could turn to the attachment now, can you read  
11:34 AM 23 the title of this attachment.

11:34 AM 24 A. "Meeting and Discussion Summary, updated 10-27-2009."

11:34 AM 25 Q. And do you see the bolded words and numbers on this

11:34 AM 1 document?

11:34 AM 2 A. Yes.

11:34 AM 3 Q. And can you tell from this whether the bolded portions are  
11:34 AM 4 suggestions from defendants Dent and Johnson?

11:34 AM 5 A. That's what it appears.

11:34 AM 6 Q. And can you please read the unbolded portion of Bullet  
11:34 AM 7 Point Number 7 for the jury.

11:34 AM 8 A. "P&H fees will be paid to physicians. Target amount is 15  
11:34 AM 9 to \$21 per patient. The cost will be paid by HDL."

11:34 AM 10 Q. And do you recall whether or not you had not agreed to the  
11:35 AM 11 higher range of the per-specimen payments when you made the  
11:35 AM 12 suggestion two weeks earlier?

11:35 AM 13 A. I don't know if this was left over from previous versions  
11:35 AM 14 or if this was new. I do remember we were still working out  
11:35 AM 15 what that price would be because I had made calculations and  
11:35 AM 16 the attorneys were reviewing them. So I don't know -- remember  
11:35 AM 17 the sequence here.

11:35 AM 18 Q. But it appears that defendants Dent and Johnson are sort  
11:35 AM 19 of reiterating their position that they prefer 18 to \$21?

11:35 AM 20 A. That's what I was saying. I don't know if they -- that  
11:35 AM 21 that was new to this version or if -- and I had taken it off  
11:35 AM 22 and they put it back on or if it was left over from previous  
11:35 AM 23 versions.

11:35 AM 24 Q. Can we move along to Plaintiffs' Exhibit Number 1047,  
11:35 AM 25 please.

1 Do you recognize this document, Ms. Mallory?

2 A. Yes. This is the sales agreement with Bluewave.

3 Q. And if we turn to page 8 of this document, is that your  
4 signature at the end of it?

5 A. Yes.

6 Q. And who are the other signatories to this document?

7 A. Brad Johnson at the top for BlueWave and then Brad Johnson  
8 and Cal below.

9 Q. And what are the dates of the three signatures here?

10 A. Brad signed on April 2nd. I signed on April 5th. And it  
11 looks like Cal's signature is on April 3rd.

12 Q. And if we turn back to the first page of this document,  
13 can you read the first sentence of that -- of the document,  
14 please.

15 A. "This sales agreement is effective on the 4th day of  
16 January 2010."

17 Q. And why was the agreement made effective in January of  
18 2010 when the signatories signed in April of that same year?

19 A. That was on advice of counsel. We had a lawyer that was  
20 helping us figure out the structure of the relationship with  
21 Bluewave back in October of 2009 when those attorneys were  
22 evaluating the risk to HDL by Bluewave leaving Berkeley.

23 So BlueWave -- Brad and Cal were very successful at  
24 Berkeley. And when they were leaving Berkeley, the attorneys  
25 thought that, by them leaving Berkeley, that we would have some

1 risk of being sued if they came to work for HDL. So the  
2 attorneys told us to have them be a separate entity, not an  
3 employee of HDL.

4 They took all of our discussion notes and formed an  
5 agreement. This agreement was sent to them in early January  
6 when they started selling. But 18 days later, we got sued by  
7 Berkeley for moving the business from Berkeley to HDL.

8 So as we were working out the -- the lawsuit with  
9 Berkeley, then the attorneys advised us not to sign this  
10 contract with Bluewave, and so it sat until the settlement with  
11 Bluewave was finalized. That was March 18th or so.

12 Q. And I don't mean to interrupt you.

13 But the settlement, was it with Bluewave or was it  
14 with Berkeley?

15 A. Was with Berkeley.

16 Q. Okay. Thank you. Sorry.

17 A. So we settled the lawsuit with Berkeley, and we -- that  
18 was mid March. And so by early -- then we had to pick up the  
19 discussion again with this contract, make sure everybody was  
20 still okay with it. And it was finally executed a couple of  
21 weeks later and -- but made effective to January -- back when  
22 they started selling in January.

23 Q. And so they were selling for HDL between January and April  
24 of that year; is that correct?

25 A. That's correct.



11:39 AM 1 Q. There just was no agreement or -- or no formal agreement  
11:39 AM 2 as to how the relationship would be?

11:39 AM 3 A. That's correct.

11:39 AM 4 Q. Okay. Can you read for the jury the first two sentences  
11:39 AM 5 of the first clause there under "Appointment"?

11:39 AM 6 A. Under "Appointment," "Company hereby appoints contractor  
11:39 AM 7 as its independent contractor to perform certain sales services  
11:39 AM 8 for company as requested by company, including the sale of  
11:40 AM 9 various lab tests and services of the company to physicians and  
11:40 AM 10 medical groups specializing in cardiology and other disease  
11:40 AM 11 management specialities (the 'Services')."

11:40 AM 12 Q. And the terms "company" and "contractor" there, can you  
11:40 AM 13 tell me who the company was being referenced there?

11:40 AM 14 A. HDL.

11:40 AM 15 Q. And who was the contractor there?

11:40 AM 16 A. Bluewave.

11:40 AM 17 Q. And there's also the phrase "certain sales services."

11:40 AM 18 Do you see that?

11:40 AM 19 A. Yes.

11:40 AM 20 Q. And what does that mean?

11:40 AM 21 A. It means everything -- so HDL was paying Bluewave  
11:40 AM 22 essentially the cost of sales. And what that meant was  
11:40 AM 23 identifying salespeople, training them, keeping their company  
11:41 AM 24 in good order, obviously identifying territories, feeding back  
11:41 AM 25 to us materials that would be needed for any type of sales

1 discussion, distributing the materials, paying their own laptop  
2 technology, phone, car, everything.

3 So those were collectively all the services that I  
4 can think of right now that involve sales.

5 Q. And was an additional service, I think, going out to the  
6 physicians themselves and getting them to order tests from HDL?

7 A. Of course.

8 Q. And did HDL pay Bluewave for those certain sales services?

9 A. Yes.

10 Q. Okay. Can you turn to -- actually, the next sentence  
11 lists several states, I believe, nine.

12 Do you know whether or not that list was expanded to  
13 include other states over time?

14 A. This list was never formally expanded. The Bluewave sales  
15 reps did have other states other than mentioned here, but there  
16 was never a formal arrangement for them.

17 Q. And in what states did Bluewave sell? And if it's easier,  
18 you can do the opposite and say what states they didn't sell.

19 A. If you take a -- a map of the United States and you mark a  
20 smiley face across the United States, that's predominantly  
21 where Bluewave sales reps -- that's predominantly where the  
22 hospitals are, that's predominantly where people are. And they  
23 were very heavy in the southeast.

24 Q. That sounds like an actually really good idea for a  
25 business card.

1 Can you turn to Clause 2 of this contract.

2 And, to your knowledge, did Bluewave perform on these  
3 duties up through the termination of the contract?

4 A. Yes.

5 Q. And can we move on to Clause 3.

6 Were these the duties that HDL owed to Bluewave?

7 A. Yes.

8 Q. And can you read for the jury Bullet Point B, please.

9 A. "Provide a processing and handling fee to physicians in  
10 the range of 18 to \$21."

11 Q. And so HDL owed a duty to Bluewave to pay physicians  
12 between 18 to \$21 for the processing and handling?

13 A. Yes, but obviously we didn't do that. There's \$17 process  
14 and handling fee.

15 Q. You caught me on my next question.

16 So HDL paid \$17 in processing and handling?

17 A. That's correct.

18 Q. And did they do that for the entirety of your time at HDL  
19 up through the special fraud alert?

20 A. For areas outside of Virginia, we did. In Virginia, we  
21 paid \$12.50.

22 Q. And did you pay \$12.50 in Virginia for the entirety of the  
23 time you were there other than after the special fraud alert?

24 A. No. As Mr. Mincey said, there was a period of time when  
25 we switched over. There was -- Virginia was different, that

1 everywhere in the state of Virginia, we sent couriers out to  
2 pick up the samples. Everybody else used FedEx.

3 So in the state of Virginia, we had a different rate  
4 because there was a piece of the handling that the offices  
5 didn't have to do. The couriers would go and pick up the  
6 samples and package them and bring them in, where the offices  
7 didn't have to deal with package them, ship them, deal with  
8 FedEx, making sure it got picked up, calling them if they  
9 didn't arrive. So that piece was different for Virginia.

10 Dennis Ryan was adamant that we needed to -- in order  
11 to comply with Stark and Anti-Kickback, that we needed to move  
12 to one P&H fee and not have a variable number. So on --  
13 because they insisted that we do that, we moved everyone over  
14 to 17 and discontinued all the courier services for Virginia.  
15 So we moved -- in that November time frame that Mr. Mincey was  
16 talking about, we moved everybody in the whole country to 17.

17 Q. Can you turn to Clause 4 of this agreement, Ms. Mallory?

18 A. Yes.

19 Q. And did HDL pay Bluewave according to the terms outlined  
20 in Clause 4?

21 A. Yes.

22 Q. Did Bluewave serve as HDL's independent contractor?

23 A. Yes.

24 Q. I'd like to turn and focus to the sales process for a  
25 moment. In BlueWave's territories, who actually made the

1 initial contact with the physicians to sell HDL's tests?

2 A. I can't really answer that. I never was with too many of  
3 the sales reps. They had lots of different ways of making  
4 contact, you know, either a network of partners in pharma  
5 themselves or other lab partners. And so I don't know exactly  
6 how to answer that.

7 Q. Yeah, I think I'm looking for sort of a higher-level view.  
8 was it the Bluewave sales reps in the Bluewave  
9 territories who reached out to potential customers?

10 A. Yes.

11 Q. And as part of it, was -- was it the Bluewave sales reps  
12 who would have made the sales pitch to the potential physicians  
13 and other customers?

14 A. That's what we believed, yes.

15 Q. And if the doctor liked the sales pitch and wanted to  
16 order tests from HDL, were their forms they needed to fill out  
17 in order to come on to HDL?

18 A. Yes.

19 Q. And what forms did they have to sign?

20 A. There was a few of them. They had to form -- to sign an  
21 acknowledgment form that we could release the samples to a  
22 portal that the patients would have access to. They had to  
23 sign an acknowledgment allowing us to have the health coaches  
24 work with the patients.

25 The health coaches were dieticians, diabetic

1 educators who would actually educate the patients on their  
2 disease and lab tests. They had to sign a new account form  
3 which provided their test -- preferred test menu for the  
4 patients.

5 I think that's it.

6 Q. And was it the Bluewave sales rep or was it your  
7 understanding that the Bluewave sales rep would be the person  
8 who helped the doctor through that process?

9 A. Yes.

10 Q. And I apologize, but did you say that one of the forms was  
11 the processing and handling form?

12 A. That was either done at the -- when a doctor started or  
13 soon after they started, depending on whether that doctor knew  
14 how he was going to get the blood to us. So they could have  
15 gone to the office manager to get that done. I'm not sure that  
16 the doctors would sign that at the first meeting. I don't know  
17 that.

18 Q. Was it your understanding that the Bluewave sales reps  
19 sort of handled that particular process?

20 A. Yes. Yes.

21 Q. If we could move on to Plaintiffs' Exhibit Number 1144.

22 Are you there?

23 A. Yes.

24 Q. What is the title of this document?

25 A. This is the processing and handling agreement template

11:49 AM 1 that we used.

11:49 AM 2 Q. And when is it dated?

11:49 AM 3 A. October 13th, 2011.

11:49 AM 4 Q. And who is it addressed to?

11:49 AM 5 A. Colonial Family Practice.

11:49 AM 6 Q. And whose signature is on the bottom of this document?

11:49 AM 7 A. I can't read the one from Colonial Family Practice. It's  
11:49 AM 8 a doctor's signature, so it looks like chicken scratch. But  
11:49 AM 9 mine is above that.

11:49 AM 10 Q. Fair enough. Did you sign other agreements like this one,  
11:49 AM 11 Ms. Mallory?

11:49 AM 12 A. This signature, you'll see -- this exact signature, you'll  
11:50 AM 13 see. They had a template with my signature in it. I didn't  
11:50 AM 14 physically sign the process and handling agreements many of the  
11:50 AM 15 times.

11:50 AM 16 Q. But would your signature appear, whether it was manually  
11:50 AM 17 entered or computer entered, on the processing and handling  
11:50 AM 18 agreements that HDL entered into with the physicians?

11:50 AM 19 A. That's what the -- there was only two or three of us that  
11:50 AM 20 could sign any contracts, so the client service department used  
11:50 AM 21 my signature for these.

11:50 AM 22 Q. Can you read Clause 3 of this processing and handling  
11:50 AM 23 agreement.

11:50 AM 24 A. "In summary, the total reimbursement for the collection  
11:50 AM 25 services and the processing and handling services will be \$20

1 per specimen."

2 Q. And what does "per specimen" mean to you?

3 A. Per patient.

4 Q. So if a physician met with a patient on January 1 and  
5 referred a sample and he also met with him on June 1 and  
6 referred a sample, how many specimen fees would that physician  
7 get?

8 A. So a specimen is any given patient for a unique day. So  
9 if the patient comes back multiple times over time, then of  
10 course it would be different specimens.

11 Q. And if you look at the last sentence of Bullet Number 1  
12 here, why was it that providers could only receive the \$20 if  
13 they ordered more than one sample type and test per referral?

14 A. So this -- this version would have been one of the  
15 versions -- I think there was an initial version, and then this  
16 version of the document. We actually had doctors that were  
17 drawing a serum tube, a plasma tube, a urine tube, and they  
18 were sending them in at different dates to get different  
19 amounts of processing and handling. And we policed that, and  
20 we found that they were doing this.

21 we explained what they were doing, told them it  
22 wasn't okay with us that they were doing it that way. And I  
23 talked to the attorneys about it, and they said we had to give  
24 the doctors notice, so -- of that. And so they recommended  
25 that we add that sentence there to make sure that we're



1 deterring doctors from sending in the same patient and draw  
2 date on multiple days.

3 Q. But there were doctors who were essentially gaming the  
4 system to get more P&H fees?

5 A. I'm certain there was doctors who tried, but they were  
6 never paid for it.

7 Q. Can you turn to Exhibit Number 1194 in your binder,  
8 Ms. Mallory.

9 Actually, don't pull this one up yet, Peter.

10 Are you there?

11 A. Yes.

12 Q. Is Exhibit 1194 an email chain?

13 A. Yes.

14 Q. And who is this email from?

15 A. It started with Lee Roberts to Steve Norris.

16 Q. And maybe that's the better way to do this. Can you tell  
17 me who were the participants in this particular email chain?

18 A. I'm sorry. Say that again.

19 Q. Who were the participants in this particular email chain?

20 A. So Lee Roberts was the local sales rep in the North  
21 Carolina area. Steve Norris was in charge of sales support  
22 or -- at one given time early in 2010. And then it's in  
23 June -- this email started in June 30th, 2010. And it's  
24 between Steve Norris, Cal Dent, Brad Johnson, and then they  
25 cc'd me on it.

1 And then it goes into later in June 30th where Steve,  
2 Cal, and Brad are talking, and then Steve loops me in and asks  
3 why -- that the samples are sending -- why there were doctors  
4 that were sending samples to LipoScience and HDL.

5 Q. And so there is a discussion about P&H in this email?

6 A. That's correct.

7 MR. SHAHEEN: And, Your Honor, I would like to move  
8 Plaintiffs' Exhibit Number 1194 into evidence.

9 THE COURT: 119?

10 MR. SHAHEEN: 1194.

11 THE COURT: 1194.

12 Is there an objection?

13 MR. GRIFFITH: No objection, Your Honor.

14 MR. ASHMORE: No, sir.

15 THE COURT: Plaintiffs' Exhibit 1194 admitted without  
16 objection.

17 BY MR. SHAHEEN:

18 Q. In the first email, Mr. Roberts references LipoScience.  
19 Can you tell the jury what LipoScience is?

20 A. LipoScience is another laboratory that did advanced  
21 cardiovascular testing. They also paid P&H. HDL worked with  
22 LipoScience. They have very unique technology that was  
23 measuring particle size of LDL cholesterol, and so we would  
24 work with them. HDL had a philosophy to work with our  
25 competitors instead of competing against them. So we brought

1 their technology into our test menu.

2 And there were sales reps that had formerly worked  
3 for LipoScience that were working for Bluewave. And so this is  
4 at a time where we were adding that to the test menu and  
5 rolling it out to the market.

6 Q. And can you read for the jury the first two paragraphs of  
7 Mr. Roberts' email to Mr. Norris.

8 A. "I have a customer who wants to continue ordering direct  
9 from LipoScience -- their full two-page report, including  
10 standard lipids -- while also ordering our panel minus the  
11 LipoScience info mentioned above. Can they do this and still  
12 get the full P&H as long as they don't bill for venipuncture?  
13 Also, do we have a price sheet that docs can use for  
14 cash-paying patients? Lastly, we run two to three  
15 complimentary tests if needed to win the business. Expect  
16 volumes are 120 to 130 per month."

17 Q. And then Mr. Roberts asked that question. What does  
18 Mr. Norris do with the question?

19 A. He sends it to Cal and Brad and says there's been a couple  
20 of questions like this from another rep named Emily.

21 Q. And what does he say in the second sentence of that email  
22 to Mr. Dent, Mr. Johnson, and to you?

23 A. Well, I was copied on this, but I don't remember receiving  
24 it. But it says in this email, "Brad, obviously you've heard  
25 earlier everyone wants to know what our cash prices are. Lee

11:57AM 1 is asking below as well."

11:57AM 2 Q. Okay. And I apologize. I actually meant the second  
11:57AM 3 sentence of the first paragraph.

11:57AM 4 A. Oh, sorry. "They want -- they want to tell their new  
11:57AM 5 clients it's okay to send blood to LipoScience, receive both  
11:57AM 6 reports and both P&H fees, as long as they don't bill for  
11:57AM 7 venipuncture. We need to decide as a rule if this is okay or  
11:57AM 8 not."

11:57AM 9 Q. Thank you.

11:57AM 10 And in the next email in the chain, can you read for  
11:58AM 11 the jury your response.

11:58AM 12 A. From me to Steve, Cal, and Brad, I said, "I'm not sure why  
11:58AM 13 the reps would want the doctor to send the samples to  
11:58AM 14 LipoScience when we carry the same test and can provide the  
11:58AM 15 full LipoScience report to any doctor that wants it as we do  
11:58AM 16 with Fillingane."

11:58AM 17 Q. And you say you're not sure, but what does Mr. Norris say  
11:58AM 18 in the next email in the chain?

11:58AM 19 A. He said, "I'm pretty sure it's to receive both P&H fees."

11:58AM 20 Q. And then how do you respond to Mr. Norris's email?

11:58AM 21 A. I said, "I understand, but I was politely asking Cal and  
11:58AM 22 Brad to fix it."

11:58AM 23 Q. Do you know if they fixed this?

11:58AM 24 A. It actually -- what I remember -- and it's been quite a  
11:58AM 25 while. What I remember was that we were misunderstood -- we

1 misunderstood the situation. There were -- LipoScience had  
2 been around for, I'm guessing, 10 years before HDL was ever in  
3 business. And they had some very loyal customers. And there  
4 were some customers that didn't believe that HDL's test was  
5 exactly the same as LipoScience's test. And, therefore, they  
6 wanted to get the testing directly from LipoScience.

7           So it was not about P&H, although we thought it was  
8 at the time. And that continued throughout the entire time I  
9 was there. There was customers that always stayed with  
10 LipoScience.

11 Q. Were there physicians who ordered tests from multiple labs  
12 and collected P&H fees from multiple labs that you were aware  
13 of?

14 A. There were physicians that ordered multiple tests from  
15 multiple labs, and I don't know what they did as far as P&H  
16 goes.

17 Q. Do you know whether or not BlueWave sales reps were also  
18 marketing Singulex tests to physicians in the field?

19 A. Yes.

20 Q. And if -- if a physician referred a sample to Singulex, do  
21 you know whether or not Singulex paid a P&H fee?

22 A. I believe they did.

23 Q. Who is Mr. Norris?

24 A. Steve Norris was a person in charge of sales support --

25 Q. And --

1 12:00 PM A. -- in 2010.

2 12:00 PM Q. And how long did Mr. Norris work for HDL?

3 12:00 PM A. I think he left at the end of that -- 2010 or before the  
4 end of 2010.

5 12:00 PM Q. And if you could turn to Exhibit Number 1110 in your  
6 binder, please.

7 12:00 PM And, actually, don't publish this one yet, Peter.  
8 Sorry.

9 12:00 PM Are you with me?

10 12:00 PM A. Not yet. Sorry.

11 12:00 PM Q. Okay.

12 12:00 PM A. You said 11 --

13 12:00 PM Q. 1110.

14 12:00 PM A. Okay. Gotcha.

15 12:00 PM Q. A little out of order here.

16 12:01 PM A. Okay.

17 12:01 PM Q. And if you turn to the -- can you tell me who -- I want to  
18 focus on the first email in this chain. Can you tell me who  
19 sent that email?

20 12:01 PM A. At the bottom of the page?

21 12:01 PM Q. Well, it really takes up two-thirds of the first page, and  
22 that's the one I'm thinking of.

23 12:01 PM A. This is from me.

24 12:01 PM Q. And to whom do you send it?

25 12:01 PM A. Cal, Brad, Satya, Joe McConnell, Russ Warnick.

1 12:01 PM Q. And what is the subject of this email?

2 12:01 PM A. Steve Norris.

3 12:01 PM Q. And is there a discussion about P&H or a reference to P&H  
4 in this email?

5 12:01 PM And I just wanted to draw your attention to the  
6 middle of paragraph 2 in order to save time.

7 12:01 PM A. "He did explain why, and I'm still scratching my head.  
8 And I certainly realize that, although someone is a great  
9 person who works hard, our business may not be right for them.  
10 I'm sure we will see this more in coming years unfortunately.  
11 Steve explained that, morally, he thinks a lot of what we do in  
12 our business, like P&H fees and reimbursing HRAs, is just wrong  
13 to him, and he had a lot of criticism of me and the way I run  
14 this company."

15 12:02 PM MR. SHAHEEN: Your Honor, the United States would  
16 like to move Plaintiffs' Exhibit Number 1110 into evidence.

17 12:02 PM THE COURT: Any objection?

18 12:02 PM MR. GRIFFITH: No objection, Your Honor.

19 12:02 PM MR. ASHMORE: No, sir.

20 12:02 PM THE COURT: Plaintiffs' Exhibit 1110 admitted without  
21 objection.

22 12:02 PM BY MR. SHAHEEN:

23 12:02 PM Q. Ms. Mallory, did it concern you that one of your employees  
24 was willing to leave a job at HDL because he was morally  
25 opposed to HDL's payment of P&H?

1 A. Yes.

2 Q. And I apologize for making you go out of order, but can  
3 you turn to Tab Number 1192 now in your exhibit binder.

4 Hold off on this.

5 Are you there?

6 A. Yes.

7 Q. Who sent this email?

8 A. Shane Marquess.

9 Q. And to whom did he send it?

10 A. To me and Satya Rangarajan.

11 Q. Who was Mr. Marquess?

12 A. He was a sales rep that worked for HDL. He was mostly  
13 selling in the area of Maryland.

14 Q. Did he always work for HDL?

15 A. He worked for HDL and then went to work for Bluewave.

16 Q. And do you know, at the time of this email, which entity  
17 he was working for?

18 A. I believe this was when he was at HDL.

19 Q. And if you could just skim through this. Are there  
20 references to processing and handling in this particular email,  
21 Ms. Mallory?

22 A. I don't know.

23 Q. And I'll try and help you out a little bit. Why don't you  
24 turn to the end of page 8 -- or to page 8 and the top paragraph  
25 there.



1 Does Mr. Marquess reference P&H there?

2 A. Yes, he does.

3 MR. SHAHEEN: And, Your Honor, I would like to move  
4 into evidence Plaintiffs' Exhibit number 1192, please.

5 THE COURT: Any objection?

6 MR. GRIFFITH: Your Honor, I'm making the same  
7 objection that we made previously.

8 THE COURT: And my ruling still stands. Any --

9 MR. ASHMORE: No objection, Your Honor.

10 THE COURT: Plaintiffs' Exhibit 1192 is admitted over  
11 BlueWave's objection.

12 MR. SHAHEEN: Thank you, Your Honor.

13 BY MR. SHAHEEN:

14 Q. If you could turn to the front of this email chain, can  
15 you read the first two sentences of what Mr. Marquess writes to  
16 you, Ms. Mallory?

17 A. "Below are the email communications between myself and Deb  
18 Wolcott of Medical Health Group prior to me stopping in there  
19 on March 25th. The emails begin at the bottom, you will see.  
20 I thanked them for calling me and wanting to move forward.  
21 Please find a detailed chronological order of the events for  
22 this account attached."

23 Q. Thank you. Was Medical Health Group a physician's  
24 practice that referred tests to HDL?

25 A. Yes. This is -- this email came about in April 4th. That

1 same day, I got a call from Ms. Wolcott that Medical Health  
2 Group had told me that she'd been sexually harassed by Shane  
3 Marquess. And I was shocked, obviously. But -- and asked  
4 her -- you know, apologized for whatever she perceived to be  
5 the problem, asked her if she wanted to continue to perform --  
6 to use HDL or if she wanted just a different sales rep. She  
7 wanted a different sales rep.

8 And so I called Shane immediately, told him he was  
9 never to go back to that account, and asked him what in the  
10 world had happened. He sent me this email as a result, trying  
11 to justify that he never did anything. And I told him it  
12 didn't really matter what his chronology was or what he  
13 perceived he did, that she felt that -- that she felt  
14 threatened by him, so he was never to go back to the account.

15 So we replaced him with Paul Mincey, and I never read  
16 this email.

17 Q. And just as we move forward, I don't really want to dive  
18 into the allegations that you just listed. I don't know if  
19 they're really relevant to what we're doing here. So just to  
20 the extent I ask more open-ended questions, if we could -- we  
21 don't need to get into that, I guess, is the short of it,  
22 unless you think it's necessary.

23 If you could turn to page 8 of this exhibit, please.  
24 And do you see the paragraph at the top of page 8?

25 A. Yes.

1 12:07 PM Q. And do you see where -- where -- and, actually, I'm sorry.

2 If you could turn to page 6 first. And at the bottom  
3 of page 6, do you see at the very bottom an email that begins  
4 from Shane Marquess?

5 A. Yes.

6 Q. And who does Mr. Marquess send this email to?

7 A. A person by the name of Deb.

8 Q. And I think you said before, but Ms. Wolcott worked for  
9 the -- a doctor's office called Medical Health Group?

10 A. That's correct.

11 Q. Okay. And at the end of his email -- the end of his email  
12 appears at the top of page 8. Can you flip over to page 8.

13 And about halfway through that paragraph, you see the  
14 sentence beginning "the practice will receive \$20"?

15 A. Yes.

16 Q. Can you read the rest of that paragraph starting from  
17 there, please.

18 A. "The practice will receive \$20 a patient per draw. This  
19 \$20 is called our process and handling agreement, and this is  
20 also attached."

21 Q. And if you could keep reading all the way through the end  
22 of that paragraph, please.

23 A. "This is significantly higher than the typical \$2.76  
24 reimbursement that is always guaranteed. If the offices -- the  
25 office uses us for routine blood work, they will still receive

1 the \$20 per patient as long as two or more tests are selected  
2 from the requisition form. This is explained in the process  
3 and handling agreement. With the two offices and ten  
4 providers, you can see how much revenue this could create for  
5 MHG. The practice receives its reimbursement check the 10th of  
6 the month -- following month every month."

7 Q. And then if we can move over to page 2 of this email  
8 chain. And do you see at the top of the page, the email chain  
9 begins from Deb Wolcott to Mr. Marquess?

10 A. Correct.

11 Q. And can you read what Ms. Wolcott writes to Mr. Marquess?

12 A. "You have promised that there could be -- would be  
13 no-balance billing to patients. If their insurance does not  
14 pay, you collect zero; correct? If that happens, do we still  
15 get paid the \$20 fee?"

16 Q. And going back to the first page here, do you see the  
17 second paragraph of Mr. Marquess's email, starting "please  
18 find"?

19 A. Yes.

20 Q. Can you read that one sentence for us, please.

21 A. "Please find a detailed chronological order of events for  
22 this account attached."

23 Q. And if we turn to the back of the document, is there, in  
24 fact, an attachment detailing a chronological order of the  
25 events?

1 12:10 PM A. Yes.

2 12:10 PM Q. Can you read for the jury the very first sentence of this  
3 document.

4 12:10 PM A. "Below are email communications between myself and Deb  
5 wolcott of Medical" --

6 12:10 PM Q. Oh, I'm sorry. I'm actually referring to the attachment  
7 at the end.

8 12:10 PM A. "Here is a recap of my interactions with Medical Health  
9 Group over the last seven months."

10 12:10 PM Q. And then if we look at the September 2010 section, can you  
11 read for the jury the first bullet point under "September  
12 2010."

13 12:10 PM A. "Before coming to work for HDL, I asked Deb wolcott,  
14 executive director of MHG, if the practice would be receptive  
15 to drawing blood. She responded if there is revenue involved,  
16 then the practice would consider it."

17 12:11 PM Q. And if we move to October, November 2010, can you read the  
18 fourth bullet point there referring to Dr. Attanasio.

19 12:11 PM A. You said the fourth?

20 12:11 PM Q. Yes.

21 12:11 PM A. "Dr. Attanasio was attracted to all aspects of what HDL  
22 offers the doctor, patient, and revenue."

23 12:11 PM Q. Did it concern you that these doctors were enticed by the  
24 revenue they could generate from referring tests to HDL?

25 12:11 PM A. It would have if I had known about it. I had no knowledge

1 of this at the time.

2 Q. This email is sent to you, though; correct?

3 A. I never read it. I just finished saying that, once I  
4 replaced him and put Casey and Paul in the office, I dismissed  
5 that. He reported to Satya Rangarajan at the time. HR could  
6 deal with it. Satya could deal with the situation. I didn't  
7 deal with any attachments, nor did I read them.

8 Q. Okay.

9 Can we pull up Plaintiffs' Exhibit Number 1166,  
10 please.

11 And do you -- if you could flip to 1166 in your  
12 binder. Are you there?

13 A. Uh-huh.

14 Q. Can you look at the email in the middle of that page,  
15 please. And who is that from?

16 A. This is from me to sales reps for Bluewave.

17 Q. Which sales reps?

18 A. Lee Roberts; Jerry Carroll; Cal Dent; Tony Carnaggio; our  
19 sales support staff, all of them; and Tabitha Henley.

20 Q. And can you read the first sentence of this email,  
21 Ms. Mallory.

22 A. "There is a doctor in Chapel Hill that's very eager to use  
23 HDL. I'm not sure if this is Cal and Tony or Lee and Jerry's,  
24 so I'm sending this to all of you."

25 Q. And do you see the sentence that begins "he sends about

1 650 panels per year" in the second paragraph?

2 A. Yes.

3 Q. Can you read that out for the -- for the jury, please.

4 A. "He sends about 650 panels per year through Cleveland. He  
5 wanted to know if we would consider putting a phlebotomist in  
6 his office, and would be open to taking other patients from  
7 other practices that needed an HDL blood draw."

8 Q. And could you finish that sentence, please -- or finish  
9 that paragraph, please.

10 A. "You could show him a pro forma of why it's better that he  
11 do it himself."

12 Q. Where it says "pro forma," what is that?

13 A. I don't know exactly from this period of time, but, most  
14 of the time, what I would do would be to show him -- if he  
15 wanted to take samples and do phlebotomy for other offices,  
16 then I would have recommended that what he could charge them as  
17 a laboratory, but I don't recall this exact situation.

18 Q. And, just generally, what is a pro forma?

19 A. Well, it could mean anything, but usually it's an example.

20 Q. And did HDL and Bluewave use pro formas with physicians?

21 A. HDL never did.

22 Q. This appears to be an email from you to Bluewave reps, and  
23 it sounds like you're asking them to show a pro forma of why  
24 it's better that the doctor do it himself.

25 A. That's correct. So this doctor was interested in opening

1 up -- he just finished saying he's interested in opening up his  
2 office to take patients from other offices. So what he wants  
3 is to open up a draw site that can service many doctors in his  
4 area. That is what we call a lab-to-lab agreement.

5 So we would pay \$20 P&H if he were just to do his  
6 patients. But if he's going to open it up for every doctor, he  
7 can charge those doctors \$25. So it wasn't about HDL. This  
8 was about what this doctor wanted to do for his office.

9 Q. But you were telling the Bluewave reps to send a  
10 pro forma.

11 Am I reading that correctly?

12 A. No, I didn't say send it. I said show -- basically explain  
13 to him that he's got options and what are his options.

14 Q. And one of those options involves a pro forma, which would  
15 explain to him why it's better that he do it himself; right?

16 A. That's what I just explained. If he wanted to do it for  
17 other physicians, then -- for his practice that didn't have  
18 anything to do with HDL, then he has the potential to charge  
19 those other doctors \$25 a draw.

20 Q. And was it better for the doctor because he made more  
21 money that way?

22 A. I have no idea. I'd never talked to him. The sales reps  
23 would have visited him.

24 Q. And I'm just asking you because that's your language, why  
25 it would be better that he do it himself.



12:16 PM 1 what was better about that?

12:16 PM 2 A. So this doctor -- I just explained. This doctor wanted to  
12:16 PM 3 draw for many doctors in his region. So if he were to open up  
12:16 PM 4 his staff, his office and draw for one doctor and then draw for  
12:16 PM 5 another doctor, then he becomes a lab or a draw site and he  
12:16 PM 6 could charge each one of those doctors a fee.

12:16 PM 7 Q. And in charging that fee, he would make more money;  
12:16 PM 8 correct?

12:16 PM 9 A. I assume, but I don't know the situation. That was why  
12:16 PM 10 the sales rep had to go have a conversation.

12:16 PM 11 Q. Can we move on to Plaintiffs' Exhibit Number 1288, please.

12:17 PM 12 when did you send this email, Ms. Mallory?

12:17 PM 13 A. March 16th, 2010.

12:17 PM 14 Q. At this point, was Bluewave selling on behalf of HDL?

12:17 PM 15 A. Yes.

12:17 PM 16 Q. Had the contract between HDL and BlueWave been signed at  
12:17 PM 17 this point?

12:17 PM 18 A. No.

12:17 PM 19 Q. And what was the subject of this email?

12:17 PM 20 A. "Term sheet, BlueWave HDL Contract with Changes."

12:17 PM 21 Q. And I believe that's the attachment section.

12:17 PM 22 what was the subject of this email?

12:17 PM 23 A. "We need to talk."

12:17 PM 24 Q. And is there, in fact, an attachment to this email,  
12:17 PM 25 Ms. Mallory?

12:17 PM 1 A. Yes.

12:17 PM 2 Q. Yes, there is?

12:17 PM 3 A. Yes.

12:17 PM 4 Q. Okay. And is the attachment a draft of the sales  
12:17 PM 5 agreement that was ultimately entered into?

12:17 PM 6 A. This was one of the versions. It looks like there's some  
12:17 PM 7 track changes in it.

12:17 PM 8 Q. And in this draft sales agreement, can you turn to  
12:17 PM 9 Section 3, subparagraph b. And at the end it says -- there's a  
12:18 PM 10 highlighted portion. Can you read the highlighted portion for  
12:18 PM 11 us.

12:18 PM 12 A. "Any fee change shall be mutually agreed upon by both  
12:18 PM 13 parties unless required by a change in regulation or laws."

12:18 PM 14 Q. Thank you. Now, if we can turn to the front of this  
12:18 PM 15 document, you seem to divvy the document -- the email up into  
12:18 PM 16 two sections, bigger issues and smaller issues.

12:18 PM 17 Do you see that?

12:18 PM 18 A. Yes.

12:18 PM 19 Q. And if we turn to the "Smaller Issues" section, can you  
12:18 PM 20 read for the jury what Smaller Issue Number 2 was.

12:18 PM 21 A. "We are not going to agree that we cannot change any of  
12:19 PM 22 the fees or any other operational thing like P&H without your  
12:19 PM 23 approval. I realize the P&H is a critical door opener. But if  
12:19 PM 24 there are regulatory or legal reasons that we have to change  
12:19 PM 25 that, we will. We can agree to give you advanced notice."

12:19 PM 1 Q. Was P&H a critical door opener for the sales team?

12:19 PM 2 A. I've said before that it's absolutely necessary to have a  
12:19 PM 3 means of getting the blood to the lab. So if the physicians  
12:19 PM 4 did not have staff to draw and they're 10 miles from the  
12:19 PM 5 largest city, then it was absolutely necessary to pay P&H in  
12:19 PM 6 order to get that blood to the lab.

12:19 PM 7 Q. Ms. Mallory, did you receive warnings about the legality  
12:19 PM 8 of paying P&H?

12:19 PM 9 A. Define "warnings."

12:19 PM 10 Q. Did people reach out to you and say that paying P&H was  
12:20 PM 11 illegal?

12:20 PM 12 A. Yes. And each time, I communicated that to my attorneys  
12:20 PM 13 and asked them to address it.

12:20 PM 14 Q. And we'll come to this.

12:20 PM 15 But, in fact, some of your attorneys issued those  
12:20 PM 16 warnings; correct?

12:20 PM 17 A. No.

12:20 PM 18 Q. Okay. Can you turn to Tab Number 1117, please.

12:20 PM 19 Are you there?

12:20 PM 20 A. Yes.

12:20 PM 21 Q. Could you turn to the end of this document? I guess it's  
12:20 PM 22 sort of midway through, but it's the fifth page. At the bottom  
12:20 PM 23 it says 1117.5.

12:20 PM 24 Are you with me?

12:21 PM 25 A. Okay.

1 12:21 PM Q. Can you tell from this document who the email is from and  
2 to whom it is sent?

3 Actually, maybe check on 1117.4 at the bottom.

4 12:21 PM A. 1117.4?

5 12:21 PM Q. Uh-huh.

6 12:21 PM A. Looks like it's from Kyle Martel to somebody -- I don't  
7 know, ckaibigan@asap-america.com.

8 12:21 PM Q. And if you turn to the front of this email, it does  
9 ultimately appear in your desk -- or on your inbox; correct?  
10 It gets sent to you?

11 12:21 PM A. Yes.

12 12:21 PM Q. And is there a discussion about P&H in this email?

13 12:22 PM A. Yes.

14 12:22 PM MR. SHAHEEN: Your Honor, the United States would  
15 like to move Plaintiffs' Exhibit Number 1117 into evidence.

16 12:22 PM THE COURT: What's the number?

17 12:22 PM MR. SHAHEEN: 1117.

18 12:22 PM THE COURT: Any objection?

19 12:22 PM MR. GRIFFITH: No objection.

20 12:22 PM MR. ASHMORE: No objection.

21 12:22 PM THE COURT: Plaintiffs' 1117 admitted without  
22 objection.

23 12:22 PM BY MR. SHAHEEN:

24 12:22 PM Q. Who is Mr. Martel, Ms. Mallory?

25 12:22 PM A. He is the BlueWave contractor for Florida.

1 12:22 PM 1 Q. If you look at the top of the fifth page here, so 1117.5,  
2 what does Mr. Martel write to Ms. Kaibigan?

3 12:22 PM 3 A. It says, "Hi, Cristy. The attached document should put  
4 all your concerns to rest. Please feel free to contact me with  
5 any questions you may have. Thanks, Kyle."

6 12:23 PM 6 Q. And Mr. Martel appears to be responding to the concerns  
7 that Ms. Kaibigan laid out below; right?

8 12:23 PM 8 A. I'm sorry. Repeat that.

9 12:23 PM 9 Q. Yeah. Mr. Martel says he's putting all of your concerns  
10 to rest.

11 12:23 PM 11 He appears to be responding to the concerns that  
12 Ms. Kaibigan laid out below; correct?

13 12:23 PM 13 A. Yes, it seems to be.

14 12:23 PM 14 Q. And how does Ms. Kaibigan start out her email, just the  
15 first two lines?

16 12:23 PM 16 A. "Below is the opinion from our lawyer, which is  
17 self-explanatory."

18 12:23 PM 18 Q. That's fine. I was referring to "Hi, Kyle."

19 12:23 PM 19 A. Oh, sorry.

20 12:23 PM 20 Q. That's all right. Can you read the lawyer's opinion which  
21 appears below that sentence you just read.

22 12:23 PM 22 A. "These tests are being ordered for patients of Villa  
23 Medical Group and Life Family Practice LLC. Then I suspect  
24 when the tests are ordered, you're billing for an office visit.  
25 If that is the case, then there is potential problem with this

1 arrangement. If the government were to review this, the  
2 government would take the position processing and handling  
3 functions are already paid for in the office visit.

4 "In other words, apportioning the specimen into  
5 vials, labeling the vials, running the centrifuge, and  
6 obtaining insurance information are all a part of the visit and  
7 included in the payment to the medical practice by the  
8 patient" -- something, something -- "payer."

9 Q. And then if you could read the next paragraph on the next  
10 page.

11 A. "He said the laboratory is not allowed to pay the medical  
12 practice for functions that are already paid for. If the  
13 laboratory pays for the processing and handling but those  
14 functions are already paid for the office visit, then -- then  
15 the additional \$17 that the laboratory is paying would be  
16 considered to be a kickback paid to the medical practice to get  
17 the practice to use HDL rather than another lab. With respect  
18 to the \$3 payment" --

19 Q. That's fine, Ms. Mallory, unless you feel the need to read  
20 the next.

21 A. No.

22 Q. If you turn to the bottom of that email, starting "if  
23 there is a different way of looking at this," do you see that?  
24 It's eight lines down from where you just stopped previously.

25 A. I'm sorry. I'm lost. You said --

1 1 2 : 2 5 P M Q. So it's about two thirds of the way down the page. If you  
2 1 2 : 2 5 P M look to the right of the paragraph, it says "if there is a  
3 1 2 : 2 5 P M different way of looking at this."

4 1 2 : 2 5 P M A. Yes.

5 1 2 : 2 5 P M Q. What is Ms. Kaibigan asking for there?

6 1 2 : 2 6 P M A. I'm sorry. What is your question?

7 1 2 : 2 6 P M Q. Does she appear to be asking for an opinion letter from a  
8 1 2 : 2 6 P M reputable health care lawyer?

9 1 2 : 2 6 P M A. I thought this was the attorney's communication to Ms. Kai  
10 1 2 : 2 6 P M [verbatim].

11 1 2 : 2 6 P M Q. And I think you're right.

12 1 2 : 2 6 P M what is the attorney requesting?

13 1 2 : 2 6 P M A. A --

14 1 2 : 2 6 P M Q. Is he requesting an opinion letter from a reputable health  
15 1 2 : 2 6 P M care lawyer laying out the argument for why it is not a  
16 1 2 : 2 6 P M kickback?

17 1 2 : 2 6 P M A. He said, "Perhaps I'm missing something in the  
18 1 2 : 2 6 P M arrangement. If there is a different way of looking at this  
19 1 2 : 2 6 P M which presents a good argument that the payment is not a  
20 1 2 : 2 6 P M kickback, my guess is that HDL would have an opinion letter  
21 1 2 : 2 6 P M from a reputable health care lawyer laying out the argument for  
22 1 2 : 2 6 P M why it's not a kickback. We would appreciate if you could send  
23 1 2 : 2 6 P M that letter."

24 1 2 : 2 6 P M Q. And when is this email dated?

25 1 2 : 2 6 P M A. Looks like April 28th, 2011.

1 12:27 PM Q. And as of April 2011, did HDL have a formal opinion letter  
2 from a reputable health care attorney?

3 12:27 PM A. No, we had a P&H position statement that had been reviewed  
4 by the attorneys.

5 12:27 PM Q. And, again, looking at Mr. Martel's email, he sent the  
6 attached document. And we do not have that document here. It  
7 was not produced to us, but he attaches a document.

8 12:27 PM Do you have any sense as to what document he  
9 attached?

10 12:27 PM A. I have none.

11 12:27 PM Q. Okay. If we turn to the next email in the chain, can you  
12 summarize for the jury what Ms. Kaibigan's lawyer's response  
13 was to the document that Mr. Martel attached. And you can just  
14 read the first sentence of that email.

15 12:27 PM A. I'm lost on where you are.

16 12:27 PM Q. Sorry. It's 1117.4 at the top.

17 12:28 PM A. "Here's another concern from our lawyer." There?

18 12:28 PM Q. Yep. And then the next sentence as well.

19 12:28 PM A. "The attached document does not adequately address the  
20 kickback concern. The letter does not really explain how the  
21 HDL payment is different from the payment described in the OIG  
22 advisory opinion."

23 12:28 PM Q. And then if you go down to Bullet Point 2, what does the  
24 lawyer say there?

25 12:28 PM A. I don't know where you're at.



1 "The HDL letter cites no Medicare authority for the  
2 letter" -- something, something -- "conclusion that the  
3 processing and handling and is separate from the specimen  
4 collection fee, nor does the letter cite any Medicare authority  
5 to support HDL conclusion."

6 Is that what you wanted?

7 Q. Yes.

8 A. Okay.

9 Q. And what does it ask at Bullet Point 3 there?

10 A. "Does HDL have an opinion letter from a health care  
11 attorney?"

12 Q. And, again, did HDL have a formal opinion letter from a  
13 reputable health care attorney in 2011?

14 A. No. In this case, we would have had the attorneys call  
15 the attorneys and talk to them.

16 THE COURT: Mr. Shaheen, is this a good time to  
17 break?

18 MR. SHAHEEN: This is as good a time as any, Your  
19 Honor.

20 THE COURT: Very good. Ladies and gentlemen, let's  
21 take our lunch break. If we can do it within an hour, that  
22 would be absolutely great. Please do not discuss the case.

23 (Whereupon the jury was excused from the courtroom.)

24 THE COURT: Okay. Please be seated.

25 I'd be glad now to take up this issue that we

1 raised initially this morning about some medical records and  
2 such.

3 MS. SHORT: Your Honor, I'm going to try to pinch hit  
4 for Mr. Kass on this issue.

5 THE COURT: Okay.

6 MS. SHORT: The issue is this: At the pretrial  
7 conference that we held last week, Your Honor had given the  
8 Bluewave defendants five days from the date of the pretrial  
9 conference to provide us with the Rule 26 disclosures as well  
10 as any patient files that they intend to have their physician  
11 witnesses testify about.

12 I believe we received the 26 -- Rule 26  
13 disclosures on Tuesday evening, but it wasn't until last night  
14 that we received a single patient file. And it is a patient of  
15 Dr. Fillingane's. It is a 700-page patient file.

16 The real issue is this: We are, at this  
17 juncture, prejudiced by the late disclosure of those patient  
18 files. Our intention --

19 THE COURT: Well, if they can't discuss it, they  
20 haven't disclosed by now any of those.

21 So we set the deadline for Tuesday?

22 MS. SHORT: That was your understanding, yes, sir.

23 THE COURT: Okay. That's what I thought we did.

24 Are there other -- is the defendant -- are the  
25 defendants intending to offer other patient records or that's

1 it?

2 MR. COOKE: That's it, Your Honor.

3 THE COURT: Then we're down to a universe of one;  
4 right?

5 MR. COOKE: Dr. Fillingane was the only one who had  
6 permission to share patient files, and he sent us one.

7 THE COURT: Okay. So what's the complaint about the  
8 one?

9 MS. SHORT: Well, the one that we have, Your Honor,  
10 we did receive just last night. It is a 700-page patient file.  
11 Our expert witness is trying to review it today so that he can  
12 offer any advice or response or input on this. But he  
13 basically has today, the day before he is going to testify, to  
14 do that.

15 THE COURT: You know, I would have preferred them to  
16 have it on Tuesday. They got it to you a day later. This is  
17 not something that the Court is unfamiliar with. I do social  
18 security files which are longer than 700 pages every week. I  
19 review and read those.

20 And a skilled expert, that is not as onerous as  
21 an untrained person to do that. And I think in the  
22 cardiovascular area, they'll quickly eliminate the areas that  
23 aren't relevant. And I'm not troubled by that. I would have  
24 preferred them to do it.

25 But I take it, Mr. Cooke, you made an effort to

1 get it earlier, and that's when you gave it, as soon as you  
2 received it?

3 MR. COOKE: That's correct. There were a couple of  
4 problems. Dr. Fillingane does not live in the same state where  
5 he kept his records. So we sent him our FedEx number, and then  
6 there was a weather delay and he couldn't get it out Monday.

7 THE COURT: I just think there's not -- I'm  
8 confident, if you've got a good expert, that he or she can get  
9 through that quickly. So I'm not worried about that.

10 MS. SHORT: If this is the only one, Your Honor --

11 THE COURT: I think that's your greater concern, that  
12 you were going to get ambushed. They're not going to be able  
13 to mention anyone 7 else specifically.

14 Anything else?

15 MR. LEVENTIS: Not from the government.

16 THE COURT: From the defense?

17 MR. COOKE: No, Your Honor.

18 MR. ASHMORE: No, sir.

19 THE COURT: Very good. See you back at 1:30.

20 (Recess.)

21 THE COURT: Please be seated. Okay. Any matters we  
22 need to address before we proceed?

23 MR. LEVENTIS: No, Your Honor, none from the  
24 government.

25 THE COURT: From the defense?

1           **MR. GRIFFITH:** No, Your Honor.

2           **MR. ASHMORE:** No, sir.

3           **THE COURT:** Very good.

4                     Jury ready? Bring them in.

5                     (Whereupon the jury entered the courtroom.)

6           **THE COURT:** Please be seated.

7                     Please proceed.

8           **MR. SHAHEEN:** Thank you, Your Honor.

9                               **DIRECT EXAMINATION (CONTINUED)**

10                           **BY MR. SHAHEEN:**

11       **BY MR. SHAHEEN:**

12       **Q.** Ms. Mallory, do you recall that we -- right before we  
13       broke for lunch, we were talking about a letter from  
14       Ms. Kaibigan's attorney in which the attorney refers to HDL's  
15       practice. It says it could be considered to be a kickback. Do  
16       you recall that?

17       **A.** Yes.

18       **Q.** Did you receive other emails like this one from other  
19       parties and other lawyers regarding HDL's practice of paying  
20       P&H fees?

21       **A.** Yes.

22       **Q.** Do you recall an interaction with a lawyer by the name of  
23       Lester Perling?

24       **A.** Yes, I do.

25       **Q.** And what was that interaction?

1 A. There was an attorney that was working for a doctor in  
2 Florida -- I think his name was Dr. Reddy -- who had -- Lester  
3 Perling was his attorney. Dr. Reddy had had, I think, his  
4 office manager communicate with Kyle Martel, the local rep -- I  
5 think it was Kyle Martel -- concerning the legality of the P&H.

6 We referred him to our attorneys. Our attorneys had  
7 a conference call with Mr. Perling. And it turned out that  
8 Mr. Perling was a lobbyist for Quest and was making --  
9 according to my attorneys, the bottom line was that he agreed  
10 P&H was okay now, but the laws might be changing in the future.

11 Q. Do you recall that, when he initially reached out, he  
12 described the proposed relationship as blatantly illegal -- "as  
13 blatantly illegal as anything that I've seen in a long time.  
14 It would be a criminal violation of the federal and state  
15 kickback laws, a Stark Law problem, if Dr. Reddy were to refer  
16 Medicare patients and could form the basis for liability under  
17 the False Claims Act. It is absurd"?

18 A. That's exactly why we referred him to our attorneys.

19 Q. And do you recall whether or not it was resolved?

20 A. Yes. Dr. Reddy became a customer.

21 Q. And if we could pull up document number -- or Plaintiffs'  
22 Exhibit Number 1257, please.

23 Actually, I'm sorry, Peter. Can we call up  
24 Plaintiffs' Exhibit Number 1266.

25 And if you turn to the second page of this email,

1 about halfway down is the phrase I just read -- or the  
2 paragraph I just read.

3 Do you see that?

4 A. Yes.

5 Q. And can you tell me the date of this email?

6 A. December 11th, 2010.

7 Q. Okay. And Dr. Reddy did ultimately become a referring  
8 physician for HDL?

9 A. Yes.

10 Q. And I believe I heard your testimony correctly, but do  
11 correct me if I'm wrong, that you believe that this issue was  
12 resolved with Mr. Perling?

13 A. Yes, I do.

14 Q. If we could turn now to Plaintiffs' Exhibit Number 1257,  
15 please. And if you'll just let me know when you get there in  
16 the binder.

17 A. Okay.

18 Q. And if you turn to page 2 of this document, do you see the  
19 email at the top there from Mr. Martel to Tabitha Henley and  
20 Tonya Mallory?

21 A. Yes.

22 Q. And what is the date of this email?

23 A. The original email from Tabitha, is that what you're  
24 asking me about?

25 Q. No, the email at the top from Mr. Martel to Ms. Henley and

1 : 4 1 P M 1 to you on page 2.

1 : 4 1 P M 2 A. The date is July 15th, 2011.

1 : 4 1 P M 3 Q. So it's about seven months, give or take a few days, after  
1 : 4 1 P M 4 the previous email where Mr. Perling called it blatantly  
1 : 4 1 P M 5 illegal; correct?

1 : 4 1 P M 6 A. Yes.

1 : 4 1 P M 7 Q. Okay. And can you read the first paragraph of what  
1 : 4 1 P M 8 Mr. Martel writes to Ms. Henley and to yourself.

1 : 4 1 P M 9 A. "Tonya" -- are you talking about "Thanks, Tabitha, Tonya"?

1 : 4 1 P M 10 Q. Yes.

1 : 4 1 P M 11 A. "This is the practice that had Lester Perling advising  
1 : 4 2 P M 12 them so strongly against the acceptance of P&H. I've done my  
1 : 4 2 P M 13 best to convince them, but I found out from Tabitha that he  
1 : 4 2 P M 14 composed a letter of his own and mailed it to sales support  
1 : 4 2 P M 15 stating he was advising and exercising the 30-day notice and I  
1 : 4 2 P M 16 should pick up supplies."

1 : 4 2 P M 17 Q. Thank you, Ms. Mallory.

1 : 4 2 P M 18 So does this appear as though Mr. Perling's concerns  
1 : 4 2 P M 19 were addressed, or does he still seem to have them?

1 : 4 2 P M 20 A. I don't know. It seems to me that the physician decided  
1 : 4 2 P M 21 to stop using us.

1 : 4 2 P M 22 Q. It seems that he stopped -- he decided to stop using you  
1 : 4 2 P M 23 because Mr. Perling told him to stop; is that correct?

1 : 4 2 P M 24 A. That's what Kyle is saying here, yes.

1 : 4 2 P M 25 Q. And, again, so it would appear from this email that



1 : 4 2 P M 1 Mr. Perling's concerns were not addressed?

1 : 4 2 P M 2 A. No, I don't agree. If he started using us, then --

1 : 4 2 P M 3 Dr. Reddy was his client, so Dr. Reddy was following the advice  
1 : 4 2 P M 4 of Mr. Perling. HDL's attorneys spoke with Mr. Perling and  
1 : 4 3 P M 5 Dr. Reddy at some point in time. They reported to me that it  
1 : 4 3 P M 6 was resolved.

1 : 4 3 P M 7 So I don't know what transpired after that.

1 : 4 3 P M 8 Q. So you think that after December 2011 -- or 2010 -- I'm  
1 : 4 3 P M 9 sorry -- when he first wrote the email calling it blatantly  
1 : 4 3 P M 10 illegal, he then became okay with it, but somewhere in the next  
1 : 4 3 P M 11 seven months, he decided that it was, in fact, improper?

1 : 4 3 P M 12 A. I don't know what he decided and didn't decide. I mean,  
1 : 4 3 P M 13 we didn't force physicians to use us. If they chose not to,  
1 : 4 3 P M 14 they had that prerogative.

1 : 4 3 P M 15 Q. Can you read the first sentence of the next paragraph in  
1 : 4 3 P M 16 this email from Mr. Martel to Ms. Henley and to yourself.

1 : 4 3 P M 17 A. From Kyle to me, "I spoke with him"? That one?

1 : 4 3 P M 18 Q. Uh-huh.

1 : 4 3 P M 19 A. "Explained our position again, told him he should look for  
1 : 4 3 P M 20 other non-biased counsel. He said all he needs is something to  
1 : 4 3 P M 21 tuck away in the drawer and he will continue on. Additionally,  
1 : 4 3 P M 22 he shared with me that other providers in his practice are  
1 : 4 4 P M 23 pressuring him for a letter to make sure all is okay. He said  
1 : 4 4 P M 24 the numbers were down due to the fact that other providers were  
1 : 4 4 P M 25 gun-shy after Perling's comments. Could be even better

1 : 4 4 P M 1 opportunity as well."

1 : 4 4 P M 2 Q. Is it your understanding that, if one lawyer tells you  
1 : 4 4 P M 3 something is blatantly illegal, finding another lawyer who  
1 : 4 4 P M 4 tells you you're in the clear means everything's okay?

1 : 4 4 P M 5 A. No.

1 : 4 4 P M 6 Q. Can we turn to Plaintiffs' Exhibit Number 1253. Did there  
1 : 4 4 P M 7 come a time where HDL had its own lawyer look into the problems  
1 : 4 4 P M 8 associated with paying physicians \$20 for every sample they  
1 : 4 4 P M 9 referred?

1 : 4 4 P M 10 A. We had so many lawyers internally and externally looking  
1 : 4 4 P M 11 at this since the beginning of HDL, then, yes, we had internal  
1 : 4 4 P M 12 lawyers looking at it as well as external.

1 : 4 4 P M 13 Q. When did HDL first receive a formal opinion letter from a  
1 : 4 4 P M 14 lawyer about P&H?

1 : 4 5 P M 15 A. A formal opinion letter would not have been until 2011,  
1 : 4 5 P M 16 and that was pending an external time and motion study. We had  
1 : 4 5 P M 17 verbal opinions and review of documents as early as 2009 that  
1 : 4 5 P M 18 approved the P&H as well as all of our billing policies.

1 : 4 5 P M 19 Q. And were all of those lawyers from the law firm of  
1 : 4 5 P M 20 LeClairRyan?

1 : 4 5 P M 21 A. Yes.

1 : 4 5 P M 22 Q. And Dennis Ryan is the Ryan of LeClairRyan?

1 : 4 5 P M 23 A. That's correct.

1 : 4 5 P M 24 Q. Did Dennis Ryan ultimately come work for HDL?

1 : 4 5 P M 25 A. He did come work for HDL --

1 : 4 5 P M 1 Q. And what was his position at HDL?

1 : 4 5 P M 2 A. It was not in-house counsel. He was -- I think he was  
1 : 4 5 P M 3 considered senior VP of strategy. I forget his exact title.

1 : 4 5 P M 4 Q. Did he receive an ownership stake in the company when he  
1 : 4 5 P M 5 came over?

1 : 4 5 P M 6 A. No.

1 : 4 5 P M 7 Q. Can you look at the email that's being presented here,  
1 : 4 5 P M 8 Document Number 1253, and tell me the date of that email.

1 : 4 6 P M 9 A. This --

1 : 4 6 P M 10 Q. Or I'm sorry -- the date of the letter.

1 : 4 6 P M 11 A. The letter was dated April 27th, 2012.

1 : 4 6 P M 12 Q. And does that refresh your recollection as to when HDL  
1 : 4 6 P M 13 first received its formal opinion letter from LeClairRyan?

1 : 4 6 P M 14 A. That's the formal opinion letter, but the formal opinion  
1 : 4 6 P M 15 came earlier, while they were doing -- Mike Ruggio said that,  
1 : 4 6 P M 16 as long as we get this external study done, that there was no  
1 : 4 6 P M 17 issues with it, and he conducted the external time and motion  
1 : 4 6 P M 18 study.

1 : 4 6 P M 19 Q. And then, after that, on April 27, 2012 --

1 : 4 6 P M 20 A. He issued the letter.

1 : 4 6 P M 21 Q. Okay. And, again, this was from LeClairRyan, the firm  
1 : 4 6 P M 22 that Dennis Ryan had come from to HDL?

1 : 4 6 P M 23 A. That's correct. I had worked with Dennis Ryan for 25  
1 : 4 6 P M 24 years before this and knew him very well. I worked with him  
1 : 4 7 P M 25 since 1990, so there was no doubt in my mind he was truthful.

1 : 4 7 P M 1 Q. When Mr. Ruggio wrote this letter, did he have a full  
1 : 4 7 P M 2 picture of what HDL and Bluewave were doing?

1 : 4 7 P M 3 A. I'm certain he did.

1 : 4 7 P M 4 Q. Did you personally tell Mr. Ruggio that HDL had entered  
1 : 4 7 P M 5 into a contract with its outside sales force that obligated HDL  
1 : 4 7 P M 6 to pay 18 to \$21 per specimen?

1 : 4 7 P M 7 A. LeClairRyan actually wrote the contract, so Dennis Ryan  
1 : 4 7 P M 8 was the one that actually communicated -- he was still at  
1 : 4 7 P M 9 LeClairRyan at the time, and he actually communicated almost  
1 : 4 7 P M 10 everything to Mike Ruggio. I met him on a few occasions,  
1 : 4 7 P M 11 explaining the time and motion study, what we needed to  
1 : 4 7 P M 12 accomplish there. And then he took it from there.

1 : 4 7 P M 13 Q. At his deposition, Mr. Ruggio was told that he never knew  
1 : 4 7 P M 14 that HDL had entered into a contract with its outside sales  
1 : 4 7 P M 15 force that obligated HDL to pay physicians --

1 : 4 8 P M 16 MR. GRIFFITH: Objection, Your Honor.

1 : 4 8 P M 17 THE COURT: You're testifying.

1 : 4 8 P M 18 MR. GRIFFITH: He's testifying.

1 : 4 8 P M 19 THE COURT: Sustained.

1 : 4 8 P M 20 MR. SHAHEEN: I'll withdraw it.

1 : 4 8 P M 21 BY MR. SHAHEEN:

1 : 4 8 P M 22 Q. Did you personally tell Mr. Ruggio that HDL's outside  
1 : 4 8 P M 23 sales force, Bluewave, had pushed for P&H to be as high as 18  
1 : 4 8 P M 24 to \$21?

1 : 4 8 P M 25 A. I had no reason to. LeClairRyan had all the

1 : 4 8 P M 1 documentation. They wrote the document.

1 : 4 8 P M 2 Q. Did you personally tell Mr. Ruggio that you knew of  
1 : 4 8 P M 3 physicians who were abusing the P&H program?

1 : 4 8 P M 4 A. No.

1 : 4 8 P M 5 Q. Did you personally tell Mr. Ruggio that you were aware of  
1 : 4 8 P M 6 instances when HDL's internal sales force touted the revenue  
1 : 4 8 P M 7 physicians could generate through these fees?

1 : 4 8 P M 8 A. No.

1 : 4 8 P M 9 Q. Did you personally tell Mr. Ruggio about the opinions you  
1 : 4 8 P M 10 received from third-party attorneys calling these payments  
1 : 4 8 P M 11 kickbacks?

1 : 4 8 P M 12 A. Yes.

1 : 4 8 P M 13 Q. You personally told him?

1 : 4 8 P M 14 A. Yes.

1 : 4 8 P M 15 Q. Now, HDL had other attorneys who weighed in on this topic,  
1 : 4 8 P M 16 didn't they?

1 : 4 8 P M 17 A. We -- I told you, we had -- we spent anywhere from \$50,000  
1 : 4 8 P M 18 a month to a million dollars a month in legal fees. So we had  
1 : 4 8 P M 19 a lot of lawyers weighing in on a lot of things.

1 : 4 9 P M 20 Q. And I want to go through that.

1 : 4 9 P M 21 Do you recall receiving an opinion from Mr. Freedman,  
1 : 4 9 P M 22 Mr. Larry Freedman about P&H?

1 : 4 9 P M 23 A. No.

1 : 4 9 P M 24 Q. Do you know who Larry Freedman is?

1 : 4 9 P M 25 A. He was an individual that Dennis hired to do a corporate

1 compliance audit or help with corporate compliance.

2 Q. And Dennis Ryan hired him while Dennis Ryan was at HDL;  
3 correct?

4 A. That's correct.

5 Q. And what law firm was Mr. Freedman associated with?

6 A. I don't recall. That -- most of his work was with Dennis.

7 Q. Can you turn to Plaintiffs' Exhibit -- I'm sorry. Yeah,  
8 can you turn in your binder to Plaintiffs' Exhibit Number 1217.

9 Are you there?

10 A. Yes.

11 Q. Is Exhibit 1217 an email exchange?

12 A. Yes.

13 Q. And when does this email exchange occur?

14 A. In July 25th, 2012.

15 Q. And can you tell me who sent the top email there.

16 A. Derek Kung.

17 Q. And who is Derek Kung?

18 A. He was our in-house counsel.

19 Q. What was his formal title at HDL?

20 A. General counsel.

21 Q. And to whom does Mr. Kung send this email?

22 A. To me and Dennis Ryan.

23 Q. And what is being discussed in this email exchange?

24 A. I'm pretty sure this came about as a result of the  
25 discussions with Lester Perling. What it -- after they had the

1 discussions in Florida, we realized that there may be --  
2 instead of looking only at the federal legislature or the  
3 federal laws, that they'd want to -- they would need to look at  
4 the state laws.

5 So this conversation was from Derek to me. We had  
6 talked about having Larry Freedman go back and look at every  
7 state law there was to confirm their understanding and their  
8 opinions, you know, that were consistent. And so this was  
9 generally discussing some state laws.

10 Q. Is there a discussion here -- in here about processing and  
11 handling fees?

12 A. Yes.

13 Q. And just so I'm clear, the email exchanges we saw with  
14 Lester Perling occurred in December 2010 and July 2011. So was  
15 it a year afterwards that you first began to address these  
16 issues?

17 A. No. They were being addressed. As soon as Derek came to  
18 work for Dennis and then Derek and then Doug Sbertoli -- and we  
19 had about three or four other attorneys -- so as soon as the  
20 legal team got built up, they started looking at multitude of  
21 issues. And so this was at some point a continuation of a  
22 conversation they had already had.

23 Q. And if we turn to page 2 of this document, who is that  
24 email from and to?

25 A. It's from Larry Freedman to Derek Kung.

1 : 5 2 P M 1 Q. What does Mr. Freedman provide in this email?

1 : 5 2 P M 2 And I'm referring to the three bullet points there.

1 : 5 2 P M 3 A. A DOJ press release, the whistle-blower press release, and  
1 : 5 2 P M 4 a federal settlement agreement.

1 : 5 2 P M 5 Q. And then can you read the paragraph that begins "none of  
1 : 5 2 P M 6 these public materials."

1 : 5 2 P M 7 A. "None of these public materials shed much light on the  
1 : 5 2 P M 8 conduct, but essentially it was a lab paying a collection fee  
1 : 5 2 P M 9 around \$10 to physicians to compensate for administrative costs  
1 : 5 3 P M 10 of using the laboratory and its requisition form and collection  
1 : 5 3 P M 11 requirements."

1 : 5 3 P M 12 Q. And if you could keep going, please.

1 : 5 3 P M 13 A. "Ameritox discontinued this practice in 2005. The  
1 : 5 3 P M 14 government took a strong view that cash payments were blatant  
1 : 5 3 P M 15 kickbacks and resulting penalty would have been enormous --  
1 : 5 3 P M 16 enormously larger but for advice of counsel the company  
1 : 5 3 P M 17 received when it instituted the practice."

1 : 5 3 P M 18 Q. And then Mr. Kung then forwards this on to you and  
1 : 5 3 P M 19 Mr. Ryan; correct?

1 : 5 3 P M 20 A. Yes.

1 : 5 3 P M 21 Q. And then he also comments, "It provides good insight on  
1 : 5 3 P M 22 how the government views P&H generally"; correct?

1 : 5 3 P M 23 A. No. Actually, what you're seeing there is a statement.  
1 : 5 3 P M 24 And what was redacted out of here was that he was saying it's  
1 : 5 3 P M 25 not apples and apples; it's apples and oranges. But this is



1 how the -- one point of view of P&H from the government.

2 Q. And just so I'm clear, Mr. Freedman writes, "The  
3 government took a strong view that cash payments were blatant  
4 kickbacks."

5 And then Mr. Kung, in a subsequent email, writes, "It  
6 provides good insight on how the government views P&H  
7 generally."

8 And it's your position that Mr. Kung was not actually  
9 agreeing with Mr. Freedman?

10 A. No. There was a conversation about this Ameritox paper --  
11 Ameritox press release. And I don't remember all the details  
12 of it, but I think what it was was that the lab was providing  
13 urine cups for the collection of samples. And somehow that was  
14 a problem with this case. I don't remember all the details.

15 So it wasn't about the process and handling, so to  
16 speak, and all the lawyers were having conversations. We  
17 were -- all along, all we wanted to do was understand the  
18 government's position on it. And we did everything we could to  
19 figure out what it was. So if anybody had any press release or  
20 if anybody had any point of view that the government might  
21 have, they would always share it so we could figure out what to  
22 do.

23 Q. And isn't that precisely what Mr. Freedman does here? He  
24 tells you the government's position on this practice?

25 A. He's telling Derek. I'm not -- I'm not understanding what

1 he's exactly saying because I don't have any privy to the  
2 background conversation. I do remember when it was brought up  
3 to me and when I joined that conversation, it was that the  
4 conversation was -- that case was a little bit different. We  
5 can't follow that exactly, but here's a little bit about what  
6 the government is thinking.

7 Q. I'm just reading here from what Mr. Freedman writes. And  
8 he says, "It was the lab paying a collection fee, around \$10,  
9 to physicians to compensate for the administrative costs of  
10 using that laboratory and its requisition form and collection  
11 requirements."

12 And then in the next sentence, he writes, "The  
13 government took a strong view that cash payments were blatant  
14 kickbacks."

15 And then Mr. Kung, in an email to you, writes,  
16 "However -- or -- "It does, however, provide good insight on  
17 how the government views P&H generally."

18 And it's your position that this is something  
19 completely separate from what HDL was doing?

20 A. You're only reading a communication between Derek and  
21 Larry. I remember conversations, lots of discussion about  
22 whether or not this was applicable to HDL or not. Ultimately,  
23 what was communicated to me was here's something that shows  
24 what the government might be thinking, which is what we all  
25 wanted to know, and -- but it doesn't really apply completely

1 to HDL.

2 Q. Mr. Kung seems to think differently.

3 A. You have only read what was not redacted. I remember it  
4 completely different.

5 MR. GRIFFITH: Your Honor, I object. It's been asked  
6 and answered.

7 THE COURT: It's cross -- it's an adverse witness.  
8 You may continue. Overruled.

9 MR. SHAHEEN: Thank you, Your Honor.

10 BY MR. SHAHEEN:

11 Q. Can you tell from the number at the bottom of this who  
12 produced this document?

13 A. Well, it looks like HDL did.

14 Q. And is it your position that HDL redacted the exonerating  
15 portion of this email?

16 A. I have no idea.

17 Q. Okay.

18 Can we move on to Plaintiffs' Exhibit Number 1244,  
19 please.

20 Do you recognize this document, Ms. Mallory?

21 A. Yes, I do.

22 Q. And what is the date of this document?

23 A. This is August 30th, 2012.

24 Q. And who drafted this document?

25 A. Derek Kung.

1 : 5 7 P M 1 Q. And to whom does Mr. Kung address this memo?

1 : 5 8 P M 2 A. To the board.

1 : 5 8 P M 3 Q. And who was on the board at this time?

1 : 5 8 P M 4 A. Russ Warnick, Joe McConnell, and myself.

1 : 5 8 P M 5 Q. And what was your reaction when you received this  
1 : 5 8 P M 6 particular document?

1 : 5 8 P M 7 A. That -- a little bit frustrated, because I had given  
1 : 5 8 P M 8 Derek -- well, we all gave Derek the task to do an internal  
1 : 5 8 P M 9 audit, so to speak, find all of the issues that we have and fix  
1 : 5 8 P M 10 them. And so why -- that's why we hired the attorneys,  
1 : 5 8 P M 11 compliance staff.

1 : 5 8 P M 12 So I didn't understand why he's telling us when it  
1 : 5 8 P M 13 was his job to get them fixed. And so I was a little bit  
1 : 5 8 P M 14 frustrated that I'm getting a report but I'm not getting an  
1 : 5 8 P M 15 action plan. And -- but we did ask him to do it, so maybe he  
1 : 5 8 P M 16 felt that it was his obligation to share it with them.

1 : 5 8 P M 17 Q. Is it your understanding that Mr. Kung in this memo is  
1 : 5 8 P M 18 providing recommendations to the board about what it should do  
1 : 5 9 P M 19 with certain HDL practices?

1 : 5 9 P M 20 A. His -- he was tasked with finding anything -- anything  
1 : 5 9 P M 21 that could be a red flag, a pink flag, a yellow flag, any kind  
1 : 5 9 P M 22 of issues that the government might have an issue with,  
1 : 5 9 P M 23 determine the legality of those. And if we can't determine the  
1 : 5 9 P M 24 legality of them from law or case law, then let's go out and  
1 : 5 9 P M 25 figure out how to fix them.

1           So he was tasked with doing an internal audit of HDL,  
2 everything from A to Z, to find out what we needed to fix.

3   Q.   What's the difference between a red flag and a yellow flag  
4 and a pink flag, in your opinion?

5   A.   So a red flag, to me, would be something that is risky  
6 from the company's point of view. A pink flag would be  
7 something that has no risk but looks bad.

8   Q.   Mr. Ashmore in his opening talked about speeding through a  
9 yellow light as opposed to speeding through a red light. Are  
10 you allowed to speed through red lights?

11   A.   No.

12   Q.   Can you read out the first sentence of this memorandum,  
13 please, Ms. Mallory.

14   A.   "This memo provides recommendations in light of the  
15 Federal Anti-Kickback Statute and federal prohibition of  
16 physician self-referral, the Stark Law, with respect to certain  
17 practices of Health Diagnostic Laboratory."

18   Q.   Did it concern you that the practices outlined in this  
19 memo may have certain risks associated with the Anti-Kickback  
20 Statute and the Stark Law?

21   A.   Yes, that's what -- that's what was the assignment, find  
22 out anything that would have an issue.

23   Q.   And in the last -- on the last paragraph of this page,  
24 Mr. Kung wrote, "The board should consider revising or  
25 attempting to eliminate as many potential red flag arrangements

2 : 0 1 P M 1 as possible."

2 : 0 1 P M 2 Did you consider eliminating the red flag practices  
2 : 0 1 P M 3 that Mr. Kung outlines in this email?

2 : 0 1 P M 4 A. Yes, I did.

2 : 0 1 P M 5 Q. And just for the record, it's a memo, not an email.

2 : 0 1 P M 6 what did you understand to be the consequences of not  
2 : 0 1 P M 7 eliminating these red flag programs?

2 : 0 1 P M 8 A. Obviously, government issues with -- with you guys.

2 : 0 1 P M 9 Q. If we turn to page 2, do you see the section titled  
2 : 0 1 P M 10 "Processing and Handling Agreements"?

2 : 0 1 P M 11 A. Yes.

2 : 0 1 P M 12 Q. And under that section, Mr. Kung writes, "The P&H fee is  
2 : 0 1 P M 13 paid per blood draw and is what the OIG considers to be a  
2 : 0 1 P M 14 per-click arrangement."

2 : 0 1 P M 15 Do you see that?

2 : 0 1 P M 16 A. Yes.

2 : 0 1 P M 17 Q. What do you understand that to mean?

2 : 0 1 P M 18 A. That it's paid per sample.

2 : 0 1 P M 19 Q. And, in fact, HDL did pay per sample; correct?

2 : 0 1 P M 20 A. That's correct.

2 : 0 1 P M 21 Q. And Mr. Kung continues, "There is a high risk that the OIG  
2 : 0 2 P M 22 would argue that the P&H fee does not satisfy the  
2 : 0 2 P M 23 set-in-advance requirement and that the arrangement takes into  
2 : 0 2 P M 24 account the volume of referrals and thus does not meet all of  
2 : 0 2 P M 25 the requirements of an AKS safe harbor or Stark Law exception."

2 : 0 2 P M 1 Do you see that?

2 : 0 2 P M 2 A. Yes.

2 : 0 2 P M 3 Q. What do you understand that to mean?

2 : 0 2 P M 4 A. It means that you as the government would not agree with  
2 : 0 2 P M 5 the legal opinions that we had already received from our  
2 : 0 2 P M 6 attorneys.

2 : 0 2 P M 7 Q. Would you agree with me that Mr. Kung concludes in this  
2 : 0 2 P M 8 section of the memo that HDL's P&H fee does in fact take into  
2 : 0 2 P M 9 account the volume of referrals?

2 : 0 2 P M 10 A. Say that again.

2 : 0 2 P M 11 Q. I'll just direct you to the middle of that first  
2 : 0 2 P M 12 paragraph, where Mr. Kung writes, "The OIG would argue that the  
2 : 0 2 P M 13 P&H fee does not satisfy the set-in-advance requirement and  
2 : 0 2 P M 14 that the arrangement takes into account the volume of  
2 : 0 3 P M 15 referrals."

2 : 0 3 P M 16 Do you see that?

2 : 0 3 P M 17 A. Yes.

2 : 0 3 P M 18 Q. Okay. What did you understand that to mean?

2 : 0 3 P M 19 A. What I understood that to mean was that, bottom line, I  
2 : 0 3 P M 20 didn't really understand a lot of the legal mumbo jumbo, but I  
2 : 0 3 P M 21 understood the recommendation was to consider alternatives.

2 : 0 3 P M 22 Q. And then do you see that Mr. Kung references Ameritox? Do  
2 : 0 3 P M 23 you see that?

2 : 0 3 P M 24 A. Yes.

2 : 0 3 P M 25 Q. And that's the same case that Mr. Freedman was forwarding

2 : 0 3 P M 1 you information about; correct?

2 : 0 3 P M 2 A. I think so.

2 : 0 3 P M 3 Q. And if you need to, you can turn back to that exhibit.

2 : 0 3 P M 4 A. I don't know what conversation they had, so I can't --

2 : 0 3 P M 5 Q. And I'm not referring to the conversation; I'm referring  
2 : 0 3 P M 6 to the email you received --

2 : 0 3 P M 7 A. But I don't remember what that case was. I'm sorry. I  
2 : 0 3 P M 8 don't remember all the details. It seems logical that it would  
2 : 0 3 P M 9 be, but I don't know all the details of that Ameritox case.

2 : 0 3 P M 10 Q. And just -- if we turn back to Exhibit 1217, Mr. Freedman  
2 : 0 4 P M 11 writes, "As you requested, attached is some public information  
2 : 0 4 P M 12 about the Ameritox investigation and settlement.

2 : 0 4 P M 13 Do you think that's the same Ameritox?

2 : 0 4 P M 14 A. I think so. I don't know.

2 : 0 4 P M 15 Q. Mr. Kung writes, "The OIG relied heavily on its belief as  
2 : 0 4 P M 16 to the illegality of a processing and handling arrangement  
2 : 0 4 P M 17 implemented by Ameritox to force Ameritox into a \$16.3 million  
2 : 0 4 P M 18 settlement."

2 : 0 4 P M 19 Do you see that?

2 : 0 4 P M 20 A. Yes.

2 : 0 4 P M 21 Q. What do you understand Mr. Kung to be stating there?

2 : 0 4 P M 22 A. That the OIG and the government has a different opinion  
2 : 0 4 P M 23 and forced a settlement -- forced this company to pay  
2 : 0 4 P M 24 \$16.3 million.

2 : 0 4 P M 25 Q. He's saying that the OIG believed that the processing and



2 : 0 4 P M 1 handling arrangement by Ameritox was illegal; correct?

2 : 0 4 P M 2 A. No, he's never said that -- Derek Kung, nor any attorney  
2 : 0 5 P M 3 we ever dealt with, ever told me at any point in time, after  
2 : 0 5 P M 4 the millions of dollars we spent, that process and handling  
2 : 0 5 P M 5 fees were illegal.

2 : 0 5 P M 6 what he said here was that the government's going to  
2 : 0 5 P M 7 have an issue with it; we should think about alternatives.

2 : 0 5 P M 8 Q. And I just want to read it again. "The OIG relied heavily  
2 : 0 5 P M 9 on its belief as to the illegality of a processing and handling  
2 : 0 5 P M 10 arrangement implemented by Ameritox."

2 : 0 5 P M 11 Mr. Kung is saying that the OIG believed that this  
2 : 0 5 P M 12 processing and handling arrangement by Ameritox was illegal;  
2 : 0 5 P M 13 correct?

2 : 0 5 P M 14 A. I'm guessing that's what he's saying. You're -- I mean,  
2 : 0 5 P M 15 this is written by a lawyer, and it's very difficult to  
2 : 0 5 P M 16 understand all the legal mumbo jumbo.

2 : 0 5 P M 17 So what I relied on was the bottom line, which was  
2 : 0 5 P M 18 the process and handling fee is a red flag and poses a high  
2 : 0 5 P M 19 level of risk. So HDL should consider alternatives.

2 : 0 5 P M 20 Q. And we'll get to that, but I guess I want to -- what is  
2 : 0 6 P M 21 unclear about the statement that the OIG believed that the  
2 : 0 6 P M 22 processing and handling arrangement by Ameritox was illegal?

2 : 0 6 P M 23 A. The OIG may have -- believe something, but that doesn't  
2 : 0 6 P M 24 make it legal or not legal. When we were evaluating this, we  
2 : 0 6 P M 25 were looking for case law and laws that could not be found. So

2 : 0 6 P M 1 just because the OIG thought it was didn't make it legal. So  
2 : 0 6 P M 2 that's where all the confusion came from and where I had no  
2 : 0 6 P M 3 clue but for them to tell me what to do.

2 : 0 6 P M 4 Q. And Mr. Kung, as you read, does tell you what to do;  
2 : 0 6 P M 5 correct?

2 : 0 6 P M 6 He says, "The processing and handling fee practice is  
2 : 0 6 P M 7 a red flag for the OIG and poses a high level of risk under the  
2 : 0 6 P M 8 AKS and the Stark Law. HDL should consider alternatives that  
2 : 0 6 P M 9 would permit it to terminate such practice."

2 : 0 6 P M 10 Do you see that?

2 : 0 6 P M 11 A. That's correct.

2 : 0 6 P M 12 Q. Is there anything ambiguous about that?

2 : 0 6 P M 13 A. No.

2 : 0 6 P M 14 Q. Did HDL, after receiving this, terminate the practice of  
2 : 0 7 P M 15 paying P&H?

2 : 0 7 P M 16 A. We considered alternatives. We actually went out to raise  
2 : 0 7 P M 17 money to build sites. We -- we reviewed every one of our  
2 : 0 7 P M 18 policies on it, every interaction with physicians. We actually  
2 : 0 7 P M 19 built -- established about 250 lab-to-lab arrangements. We  
2 : 0 7 P M 20 hired about 40 phlebotomists. We raised -- out to raise  
2 : 0 7 P M 21 venture capital money.

2 : 0 7 P M 22 Every site -- every bricks-and-mortar site, in order  
2 : 0 7 P M 23 to put a draw site in place, cost about a million dollars. So  
2 : 0 7 P M 24 we went out to venture capitalists, raised money for a period  
2 : 0 7 P M 25 of eight months, got six offers from the venture capitalists to

2 : 0 7 P M 1 build those sites, and wrote a business plan on how to make  
2 : 0 7 P M 2 those sites profitable versus just cost centers.

2 : 0 7 P M 3 So, yes, we did a whole lot. In the meantime, in  
2 : 0 8 P M 4 parallel, we were pushing -- I was pushing -- I was screaming  
2 : 0 8 P M 5 for the attorneys to get with the government and tell us what  
2 : 0 8 P M 6 to do, tell us their opinion -- their position on P&H.

2 : 0 8 P M 7 Q. At this point in time, you were screaming for your  
2 : 0 8 P M 8 attorneys to reach out to the government?

2 : 0 8 P M 9 A. Absolutely.

2 : 0 8 P M 10 Q. And why didn't they do that?

2 : 0 8 P M 11 A. I have written about 250 FDA submissions in my life. It  
2 : 0 8 P M 12 tells you Step 1, Step 2, Step 3 what to expect. The  
2 : 0 8 P M 13 government -- you submit it. You get it back. The government  
2 : 0 8 P M 14 tells you what they expect.

2 : 0 8 P M 15 In CAP, in your lab laws, they say you must do this,  
2 : 0 8 P M 16 you must do this. So it seemed simple to me, just ask the  
2 : 0 8 P M 17 government what we should be doing. If we -- if there's all  
2 : 0 8 P M 18 these people that have issues, you as attorneys need to get  
2 : 0 8 P M 19 with them and figure out what we're supposed to do.

2 : 0 8 P M 20 Q. But HDL did not reach out to the United States?

2 : 0 8 P M 21 A. I did not. I relied on what my attorneys told me to do.

2 : 0 9 P M 22 Q. And they told you to consider alternatives that would  
2 : 0 9 P M 23 permit it to terminate such a practice?

2 : 0 9 P M 24 A. That's correct.

2 : 0 9 P M 25 Q. And you told me about all the stuff you did do, but I

2 : 0 9 P M 1 don't think anywhere in there you said that you terminated the  
2 : 0 9 P M 2 practice of paying P&H.

2 : 0 9 P M 3 Did you terminate the practice of paying P&H?

2 : 0 9 P M 4 A. Yes.

2 : 0 9 P M 5 Q. When?

2 : 0 9 P M 6 A. July 25th, 2014.

2 : 0 9 P M 7 Q. And that's --

2 : 0 9 P M 8 A. I'm sorry, June 25th.

2 : 0 9 P M 9 Q. That's one year and 11 months after you received this  
2 : 0 9 P M 10 email; correct?

2 : 0 9 P M 11 A. That's correct. But during that time, we were working  
2 : 0 9 P M 12 with you. We had received the subpoena. Our attorneys were  
2 : 0 9 P M 13 meeting at exactly the same time with Mr. Leventis, with  
2 : 0 9 P M 14 Ms. Strawn. And we had asked you guys to give us a position.  
2 : 0 9 P M 15 Not at this time nor any time after that until early 2014 did  
2 : 0 9 P M 16 the government ever share their position on P&H with us after  
2 : 0 9 P M 17 we had repeatedly asked for it.

2 : 0 9 P M 18 Q. Mr. Kung seems to tell you what our position was.

2 : 0 9 P M 19 A. Mr. Kung said that you may have a problem with it. We  
2 : 1 0 P M 20 wanted to hear from you.

2 : 1 0 P M 21 Q. And just so I'm -- just to be clear, Mr. Freedman writes,  
2 : 1 0 P M 22 "The government took a strong view that cash payments were  
2 : 1 0 P M 23 blatant kickbacks."

2 : 1 0 P M 24 And now Mr. Kung writes, "The OIG relied heavily on  
2 : 1 0 P M 25 its belief as to the illegality of a processing and handling

2 : 1 0 P M 1 arrangement implemented by Ameritox to force Ameritox into a  
2 : 1 0 P M 2 \$16.3 million settlement."

2 : 1 0 P M 3 Again, is there anything ambiguous about what  
2 : 1 0 P M 4 Mr. Freedman and Mr. Kung are writing here?

2 : 1 0 P M 5 A. Yes. Remember there's two points here. One is you're  
2 : 1 0 P M 6 saying that Ameritox settled for whatever the dollar amount is;  
2 : 1 0 P M 7 therefore, they're admitting guilt. That's not the truth.

2 : 1 0 P M 8 what actually happened was Ameritox was threatened by  
2 : 1 0 P M 9 the government and settled so they didn't have to be at trial  
2 : 1 0 P M 10 for four years like this case. But just because they settled  
2 : 1 0 P M 11 did not mean it was illegal.

2 : 1 0 P M 12 That's why it doesn't make any sense for us to go use  
2 : 1 1 P M 13 all these periphery examples. I wanted to hear from the  
2 : 1 1 P M 14 government, from someone in authority what was the right way to  
2 : 1 1 P M 15 go.

2 : 1 1 P M 16 Q. When did you first learn of the Department of Justice  
2 : 1 1 P M 17 investigation into HDL's practice of paying P&H for every  
2 : 1 1 P M 18 specimen that HDL referred?

2 : 1 1 P M 19 A. In January 2013.

2 : 1 1 P M 20 Q. And how did you learn of the investigation?

2 : 1 1 P M 21 A. Our attorneys received a subpoena.

2 : 1 1 P M 22 Q. And was there a discussion about terminating P&H fees at  
2 : 1 1 P M 23 that time?

2 : 1 1 P M 24 A. There was discussion about terminating P&H fees at that  
2 : 1 1 P M 25 time, about a thousand times before it, and about a katrillion

2 : 1 1 P M 1 times after it.

2 : 1 1 P M 2 Q. And just so I'm clear, even -- as those discussions were  
2 : 1 1 P M 3 ongoing, HDL did not stop paying P&H until July of 2014;  
2 : 1 1 P M 4 correct?

2 : 1 1 P M 5 A. We were building -- in my mind, what we were doing, we --  
2 : 1 1 P M 6 I thought that the government was going to come up with two  
2 : 1 2 P M 7 answers: Either P&H is worth X dollars, whatever the dollars  
2 : 1 2 P M 8 amount is, or stop paying.

2 : 1 2 P M 9 As a business, we had to plan for both situations.  
2 : 1 2 P M 10 So we were building up patient service centers so that we could  
2 : 1 2 P M 11 draw. At the same time, we were having the attorneys go to the  
2 : 1 2 P M 12 government and repeatedly have meetings, repeatedly ask for a  
2 : 1 2 P M 13 position. And it wasn't until March of 2014 that the  
2 : 1 2 P M 14 government ever gave us their position on P&H after a year and  
2 : 1 2 P M 15 several months of asking for it.

2 : 1 2 P M 16 Q. That was in March of 2014?

2 : 1 2 P M 17 A. That's correct.

2 : 1 2 P M 18 Q. And did you stop paying P&H immediately then?

2 : 1 2 P M 19 A. No, because the attorneys advised us not to. The  
2 : 1 2 P M 20 attorneys then went to the government, had meetings, presented  
2 : 1 2 P M 21 their position, had exchange between attorneys. Mr. Leventis  
2 : 1 3 P M 22 was there. Mrs. Strawn was there. And you guys actually met  
2 : 1 3 P M 23 with the attorneys to share your difference of opinions to come  
2 : 1 3 P M 24 up with a common opinion. We never got the formal response  
25 from that until June 25th of 2014 when the OIG advisory opinion

1 came out.

2 when that came out, my attorneys were sitting in my  
3 office, and I asked them, "well, what does it mean?"

4 And they said, "well, that means we can pay P&H."

5 And I said, "what?" And I read it. I read it  
6 differently than the attorneys read it. I had them -- I said,  
7 Go back to the DOJ and ask them what was their intent, because  
8 you can either read that advisory opinion, if you meet all  
9 these criteria, P&H is okay, or don't ever pay P&H. So go find  
10 out what they meant by it.

11 After two days, they got in touch with Elizabeth  
12 Strawn. Elizabeth Strawn told our attorneys it meant don't  
13 ever pay P&H. So we stopped paying P&H, and we never paid it  
14 again.

15 Q. Did HDL retain outside counsel to handle the Department of  
16 Justice investigation?

17 A. Yes.

18 Q. Who did they retain?

19 A. Ropes & Gray was one of the major firms. I think there  
20 was two or three or four others.

21 Q. In your opinion, was Ropes & Gray a prestigious law firm?

22 A. That's what I was told.

23 Q. And who were the -- and were the lawyers at Ropes & Gray  
24 that were retained experienced in health care matters?

25 A. Brien O'Connor, which was the lead attorney for us, was

2 : 1 4 P M 1 actually from the DOJ.

2 : 1 4 P M 2 Q. And what about -- was Ms. Hoey also an attorney?

2 : 1 4 P M 3 A. She was an attorney, but I don't know if she was from the  
2 : 1 4 P M 4 DOJ or not.

2 : 1 4 P M 5 Q. And just to be clear, when you say "from the DOJ," you  
2 : 1 4 P M 6 mean before they went to Ropes & Gray, they worked at DOJ?

2 : 1 4 P M 7 A. That's correct. I'm sorry.

2 : 1 5 P M 8 THE COURT: And DOJ is?

2 : 1 5 P M 9 MR. SHAHEEN: The Department of Justice. Thank you,  
2 : 1 5 P M 10 Your Honor.

2 : 1 5 P M 11 BY MR. SHAHEEN:

2 : 1 5 P M 12 Q. In the months following the issuance of the government's  
2 : 1 5 P M 13 subpoena, did Ropes & Gray advise HDL to terminate the P&H  
2 : 1 5 P M 14 fees?

2 : 1 5 P M 15 A. They said very much similar to what Derek said, that the  
2 : 1 5 P M 16 government would have issues with it and, if you want it take  
2 : 1 5 P M 17 away 100 percent of the risk for the company, then yes, you  
2 : 1 5 P M 18 should discontinue it.

2 : 1 5 P M 19 And then they realized that it was an industry  
2 : 1 5 P M 20 standard, that every lab was doing it. They started collecting  
2 : 1 5 P M 21 the P&H agreements from all the other labs in the country. We  
2 : 1 5 P M 22 actually had some CEOs tell me they had legal opinion letters.

2 : 1 5 P M 23 So then they rethought that opinion and understood  
2 : 1 5 P M 24 the crux of the situation. It was a catch-22. And we can stop  
2 : 1 5 P M 25 paying P&H. The rest of the market is. We have no way of



2 : 1 5 P M 1 getting the blood to us. We need time to build up these draw  
2 : 1 6 P M 2 sites, flip over to the draw sites where appropriate.

2 : 1 6 P M 3 So they realized that we needed -- our business would  
2 : 1 6 P M 4 stop. We can't get the blood to the lab if we don't have a way  
2 : 1 6 P M 5 of getting it here. So they gave us time, but then during that  
2 : 1 6 P M 6 other -- during that time, they didn't believe it was illegal.  
2 : 1 6 P M 7 They never told us it was illegal. They actually modified the  
2 : 1 6 P M 8 P&H agreement several times. I don't believe they ever would  
2 : 1 6 P M 9 have modified the P&H agreements if there was any issues  
2 : 1 6 P M 10 whatsoever with them believing in them.

2 : 1 6 P M 11 So it -- many times, one day it would be this is  
2 : 1 6 P M 12 risky. The next day, it would be let's get the government's  
2 : 1 6 P M 13 opinion.

2 : 1 6 P M 14 And finally, by October of 2013, the consensus was we  
2 : 1 6 P M 15 have to push the government to give us their position on it.  
2 : 1 7 P M 16 It is not an equal -- well, it doesn't fit in the safe harbor  
2 : 1 7 P M 17 that LeClairRyan had told us it did, so therefore the facts and  
2 : 1 7 P M 18 circumstances has to be equal to the safe harbor and we have to  
2 : 1 7 P M 19 make sure every piece of what we're doing is compliant,  
2 : 1 7 P M 20 buttoned up, and within the guardrails of a safe harbor for the  
2 : 1 7 P M 21 intent to be consistent.

2 : 1 7 P M 22 So we spent hundreds and millions of dollars on  
2 : 1 7 P M 23 compliance to make sure of that.

2 : 1 7 P M 24 Q. Can we introduce Plaintiffs' Exhibit -- or can you pull up  
2 : 1 7 P M 25 Plaintiffs' Exhibit Number 1510, please. Can you turn to the

2 : 1 7 P M 1 second page of this exhibit, Ms. Mallory.

2 : 1 7 P M 2 A. Yes.

2 : 1 7 P M 3 Q. When is this email sent? When does this email chain  
2 : 1 7 P M 4 occur?

2 : 1 7 P M 5 A. This is in May of 2013.

2 : 1 8 P M 6 Q. And so this is roughly eight months after Mr. Kung's memo  
2 : 1 8 P M 7 and nine months after Mr. Freedman weighed in?

2 : 1 8 P M 8 A. Yes. This is Heritage Medical. This is the -- Dr. Mayes  
2 : 1 8 P M 9 testified yesterday. There was the call that they -- they said  
2 : 1 8 P M 10 that they phoned and had their attorneys talk to our attorneys.  
2 : 1 8 P M 11 This was a memo from Derek Kung about that call.

2 : 1 8 P M 12 Q. Okay. And at this time, HDL learned about the DOJ's  
2 : 1 8 P M 13 investigation roughly three to four months earlier?

2 : 1 8 P M 14 A. Yes.

2 : 1 8 P M 15 Q. Can you read the first paragraph of Mr. Kung's memo for  
2 : 1 8 P M 16 the jury, please.

2 : 1 8 P M 17 MR. SHAHEEN: Actually, Your Honor, I would like to  
2 : 1 8 P M 18 move Plaintiffs' Exhibit Number 1510 into evidence, please.

2 : 1 9 P M 19 THE COURT: Any objection from the defense?

2 : 1 9 P M 20 MR. GRIFFITH: Can you scroll this down?

2 : 1 9 P M 21 Your Honor, based on our former objection --

2 : 1 9 P M 22 THE COURT: And, Mr. Ashmore, any objection?

2 : 1 9 P M 23 MR. ASHMORE: No, sir.

2 : 1 9 P M 24 THE COURT: Very good. Objection is overruled, the  
2 : 1 9 P M 25 same base basis as previously stated.

2 : 1 9 P M 1 Plaintiffs' 1510 is admitted over the objection  
2 : 1 9 P M 2 of BlueWave.

2 : 1 9 P M 3 MR. SHAHEEN: Thank you, Your Honor.

2 : 1 9 P M 4 BY MR. SHAHEEN:

2 : 1 9 P M 5 Q. Now, Ms. Mallory, can you please read the first paragraph  
2 : 1 9 P M 6 of Mr. Kung's email that appears on the second page of this  
2 : 1 9 P M 7 document.

2 : 1 9 P M 8 A. This is from Russ and to Joe, myself -- well, to Joe,  
2 : 1 9 P M 9 copying myself, Derek, and himself again.

2 : 1 9 P M 10 Q. Actually, Ms. Mallory, before you proceed, can you repeat  
2 : 2 0 P M 11 again who this -- the first email is from.

2 : 2 0 P M 12 A. This was from Derek to me, Joe, and Russ.

2 : 2 0 P M 13 Q. Thank you. And then what does Mr. Kung say?

2 : 2 0 P M 14 A. Are you reading from the bottom or the top?

2 : 2 0 P M 15 Q. I want -- I'm focused on the paragraph that begins "I  
2 : 2 0 P M 16 wanted to follow up on the Heritage call yesterday."

2 : 2 0 P M 17 A. Sorry. So Derek Kung wanted to follow up on the  
2 : 2 0 P M 18 conversation that we had with Heritage the day before. And it  
2 : 2 0 P M 19 says, "I wanted to follow up on the call." There's discussion  
2 : 2 0 P M 20 about P&H. "Dr. Lenns stated that Cal had previously made  
2 : 2 0 P M 21 certain representations about the legality of P&H to the  
2 : 2 0 P M 22 practice. Cal also reaffirmed the legality of P&H to the  
2 : 2 0 P M 23 practice on yesterday's call. I would strongly recommend that  
2 : 2 0 P M 24 HDL distance itself from statements being made by Bluewave  
2 : 2 0 P M 25 regarding P&H and advise that HDL not make any comments about

1 appropriateness of P&H or legality of P&H to third parties.

2 "In my opinion, Cal misstates opinions -- misstates  
3 the government's position on P&H, the clarity in the law, and  
4 interpretation of the advisory opinions. He references and  
5 places too much reliance on the LeClairRyan opinion and  
6 Exponent time and motion study.

7 "I would not want to negatively impact HDL. I'm  
8 concerned about opening HDL up to additional exposure to claims  
9 by a physician or practice they relied on HDL's representation  
10 regarding the legality of P&H.

11 "We have discussed previously P&H poses a high risk  
12 and the legal opinion relied on is highly flawed and the time  
13 motion study is open to multiple attacks. Ropes has already  
14 advised against P&H and cautioned against reliance on  
15 LeClairRyan opinion."

16 Q. "And the Exponent time and motion study"?

17 A. "And the Exponent time and motion study."

18 Q. Did you reach out to Mr. Dent and Mr. Johnson to tell them  
19 that they were misstating the clarity of the law?

20 A. I was on the conference call, and I remember Cal speaking  
21 up on the conference call when the doctor said that he said  
22 something. And I remember him correcting what the doctor said.  
23 So what -- and, to me, that was correcting the  
24 misrepresentation that the doctor made. So I don't -- I don't  
25 remember talking to him about this.

2 : 2 2 P M 1 Q. It appears in this email that Mr. Kung felt that Mr. Dent  
2 : 2 2 P M 2 was misstating the law. I just want to make sure I get it  
2 : 2 2 P M 3 right. He was misstating the legality of P&H -- Cal -- I'll  
2 : 2 2 P M 4 just read it.

2 : 2 2 P M 5 "Cal also reaffirmed legality of the P&H to the  
2 : 2 3 P M 6 practice on yesterday's call. I would strongly recommend that  
2 : 2 3 P M 7 HDL distance itself from statements being made by Bluewave  
2 : 2 3 P M 8 regarding P&H. In my opinion, Cal misstates the government's  
2 : 2 3 P M 9 position on P&H, the clarity in the law, and interpretation of  
2 : 2 3 P M 10 the advisory opinion he references and places too much reliance  
2 : 2 3 P M 11 on the LeClairRyan opinion and Exponent time and motion study."

2 : 2 3 P M 12 And I just want to break that down.

2 : 2 3 P M 13 Did you tell Mr. Dent that he had been misstating the  
2 : 2 3 P M 14 government's position on P&H?

2 : 2 3 P M 15 A. No. What -- the conversation that took place with  
2 : 2 3 P M 16 Dr. Mayes's office was just -- he's the relator in this case.  
2 : 2 3 P M 17 What was happening was there was a misstatement of what Cal  
2 : 2 3 P M 18 said on that conference -- on that conference call, and Cal  
2 : 2 3 P M 19 chimed up to correct it.

2 : 2 3 P M 20 So it wasn't that -- it wasn't that Cal misstated  
2 : 2 3 P M 21 something. It was that the doctor said he misstated something  
2 : 2 4 P M 22 about the law is what I remember.

2 : 2 4 P M 23 Q. Would you agree with me that this document, this email  
2 : 2 4 P M 24 that we're looking at, indicates that Mr. Kung, HDL's general  
2 : 2 4 P M 25 counsel, believed that Mr. Dent was misstating the government's

2 : 2 4 P M 1 position on P&H?

2 : 2 4 P M 2 A. He said that Dr. Lenns stated it, and he -- I agree that  
2 : 2 4 P M 3 the doctor on the calls said something Cal didn't say. Cal was  
2 : 2 4 P M 4 on the call, and he chimed up and corrected it. And it was  
2 : 2 4 P M 5 something about the OIG has approved this or disproved this.  
2 : 2 4 P M 6 And that's -- that -- we had an OIG opinion. We never had an  
2 : 2 4 P M 7 OIG opinion, and there was some discussion about that.

2 : 2 4 P M 8 Q. And then Mr. Kung says that that was a misstatement by  
2 : 2 4 P M 9 Mr. Dent; correct?

2 : 2 4 P M 10 I mean he -- it says "Cal misstates." It's not  
2 : 2 4 P M 11 "Dr. Lenns misstates." It's "Cal misstates."

2 : 2 4 P M 12 A. I understand what is written here, but the -- what I  
2 : 2 4 P M 13 remember of the situation is a little bit different than what  
2 : 2 5 P M 14 you're trying to get me to say, so I can't remember everything  
2 : 2 5 P M 15 about that.

2 : 2 5 P M 16 Q. I guess all I'm trying to get you to say is whether or not  
2 : 2 5 P M 17 you reached out to Mr. Dent to tell him he was misstating the  
2 : 2 5 P M 18 law.

2 : 2 5 P M 19 A. We had numerous conversations with BlueWave about P&H.

2 : 2 5 P M 20 Q. Did you ever reach out to Mr. Dent and tell him that your  
2 : 2 5 P M 21 general counsel -- HDL's general counsel thought he was  
2 : 2 5 P M 22 misstating the law?

2 : 2 5 P M 23 A. No.

2 : 2 5 P M 24 Q. Did you warn BlueWave that they were -- that their  
2 : 2 5 P M 25 reliance on the Ruggio opinion and the Exponent analysis was

2 : 2 5 P M 1 misplaced?

2 : 2 5 P M 2 A. No.

2 : 2 5 P M 3 Q. Looking at the next paragraph, Mr. Kung indicates that  
2 : 2 5 P M 4 Ropes was -- Ropes was advising against P&H.

2 : 2 5 P M 5 Do you know what Ropes is there?

2 : 2 5 P M 6 A. Ropes & Gray.

2 : 2 5 P M 7 Q. And so is Mr. Kung saying that Ropes & Gray has already  
2 : 2 5 P M 8 advised against P&H?

2 : 2 6 P M 9 A. That's what's written here, but that wasn't the case.  
2 : 2 6 P M 10 we -- it's overly generalized. They told us that the  
2 : 2 6 P M 11 government would have a problem with P&H, just like Derek did,  
2 : 2 6 P M 12 and if we want to remove all risk, we should move against --  
2 : 2 6 P M 13 move away from it. This was in May.

2 : 2 6 P M 14 By October, they had a different opinion. By April  
2 : 2 6 P M 15 of the following year, they had a different opinion and  
2 : 2 6 P M 16 reviewed the P&H agreement.

2 : 2 6 P M 17 So if you take things in chronology, there are  
2 : 2 6 P M 18 moments in time when every attorney we spoke to took a pause  
2 : 2 6 P M 19 and evaluated it, spoke to more attorneys, paid more bills,  
2 : 2 6 P M 20 spoke to more attorneys. And before we would make -- move a  
2 : 2 6 P M 21 battleship this way or that way, we wanted everybody in  
2 : 2 6 P M 22 agreement. So many times I would just stand still and wait for  
23 the attorneys to figure it out.

2 : 2 7 P M 24 Q. And I want to focus on this particular moment in time, and  
2 : 2 7 P M 25 I just want to make sure I understand you correctly.

2 : 2 7 P M 1 You think that Mr. Kung is not accurately stating the  
2 : 2 7 P M 2 situation when he writes, "Ropes has already advised against  
2 : 2 7 P M 3 P&H"?

2 : 2 7 P M 4 A. I don't know that that's accurate for that moment in time  
2 : 2 7 P M 5 because we had so many discussions about it. And if he says  
2 : 2 7 P M 6 it, he believed it. But we had meetings about it, and then  
2 : 2 7 P M 7 they spoke to my attorney -- my personal attorneys and had a  
2 : 2 7 P M 8 different opinion. So maybe that -- that was his point of view  
2 : 2 7 P M 9 in that day, in that month. But I can't say that -- everything  
2 : 2 7 P M 10 was moving, and we had so many opinions that they changed.

2 : 2 7 P M 11 Q. And I think you mentioned before that Mr. Warnick and  
2 : 2 7 P M 12 Dr. McConnell were the other two board members at HDL?

2 : 2 7 P M 13 A. That's correct.

2 : 2 7 P M 14 Q. And they appear to weigh in on this issue later on or --  
2 : 2 8 P M 15 in the email chain. Can you read what Dr. McConnell writes.

2 : 2 8 P M 16 A. "I agree that we have had a legal opinion in the past that  
2 : 2 8 P M 17 we've relied upon. Now having additional information and  
2 : 2 8 P M 18 opinion from Derek and Ropes & Gray questioning that opinion,  
2 : 2 8 P M 19 we should revisit and likely readjust our stance on the issue."

2 : 2 8 P M 20 Q. And what does Mr. Warnick say above that?

2 : 2 8 P M 21 A. "We really need to recognize the new realities and take  
2 : 2 8 P M 22 necessary steps to make HDL not only compliant but also  
2 : 2 8 P M 23 sustainable which, in my view, will require not only such  
2 : 2 8 P M 24 changes as this but moving towards a different relationship  
2 : 2 8 P M 25 with Bluewave. This will be one" -- I guess he meant -- "of



2 : 2 8 P M 1 many steps in that direction."

2 : 2 8 P M 2 Q. Were Dr. McConnell and Mr. Warnick, at this moment in  
2 : 2 8 P M 3 time, in favor of moving away from P&H and terminating that  
2 : 2 8 P M 4 practice?

2 : 2 8 P M 5 A. We all agreed as a board, because we did everything in  
2 : 2 8 P M 6 consensus, that, yes, we needed to be prepared for when P&H  
2 : 2 9 P M 7 would no longer be permissible and that we needed to move away  
2 : 2 9 P M 8 from P&H if possible while maintaining our business as much as  
2 : 2 9 P M 9 we could.

2 : 2 9 P M 10 Q. But HDL did not move away from P&H or terminate P&H until  
2 : 2 9 P M 11 roughly 14 to 15 months after this email; correct?

2 : 2 9 P M 12 A. No. You can't say we didn't move away. What you have to  
2 : 2 9 P M 13 understand is that HDL had 10,000 doctors using our testing.  
2 : 2 9 P M 14 We had 800 employees. We were in every state. And I did not  
2 : 2 9 P M 15 believe -- we all didn't believe -- Joe, Russ, and I don't  
2 : 2 9 P M 16 believe you can flip a switch overnight to do something and do  
2 : 2 9 P M 17 it well. You have to plan. You have to take the necessary  
2 : 2 9 P M 18 steps. You have to finance it.

2 : 2 9 P M 19 So we actually hired an individual to review  
2 : 3 0 P M 20 compliance, and one of his major -- his major responsibilities  
2 : 3 0 P M 21 was a project called Project Twilight. Project Twilight was --  
2 : 3 0 P M 22 was his sole duty. He was to evaluate the markets where we  
2 : 3 0 P M 23 needed to put the draw sites.

2 : 3 0 P M 24 Which one comes first? We're in every state. So  
2 : 3 0 P M 25 where do -- where are the priorities? Where do we go? Where

1 do we put the draw sites? How do we staff them? what is the  
2 business plan for them? How much will they cost?

3 So he was hired for that sole purpose of the pivot  
4 away from P&H and to create the analysis and business plan for  
5 doing that. And so we did a lot of work to move away from it.  
6 So -- and I actively participated in those actions. So you  
7 can't say we didn't move away from it. We did move away from  
8 it, but the pace that we moved away from it was so that we  
9 could maintain our business and move away from it until we got  
10 a government response.

11 Q. Do you recall a meeting in which Bluewave and Bluewave's  
12 attorneys came up to Richmond and HDL and HDL's attorneys all  
13 got together to discuss Project Twilight?

14 A. No, we didn't discuss Project Twilight.

15 Q. What did you -- well, do you recall a meeting in June of  
16 2013 where Bluewave and their lawyers came up to Richmond and  
17 met with HDL and HDL's lawyers?

18 A. Yes. That was my -- at my request.

19 Q. And who all attended that meeting?

20 A. There was a lot of -- a lot of attorneys, I think five or  
21 six from Ropes & Gray. I think Bluewave had two, three. There  
22 was -- all of our executive management was present that I  
23 recollect.

24 Q. And so if that meeting wasn't about Project Twilight, what  
25 was it about?

2 : 3 2 P M 1 A. It was to kind of have a meeting of minds when it comes to  
2 : 3 2 P M 2 here's where we are from a compliance point of view. Here's  
2 : 3 2 P M 3 where we're going. These are the considerations and the areas  
2 : 3 2 P M 4 that we consider high risk that we've got to move on. Here's  
2 : 3 2 P M 5 the action list going forward. We need to change this, this,  
2 : 3 2 P M 6 this. There was a lot of legal discussion and law review  
2 : 3 2 P M 7 that -- of course, I didn't understand that part of it.

2 : 3 2 P M 8 Q. At that meeting, did HDL's lawyers warn that continuing to  
2 : 3 2 P M 9 pay P&H was a red flag for the government?

2 : 3 2 P M 10 A. Red flag, yes.

2 : 3 2 P M 11 Q. And at that meeting, did HDL's lawyers warn that  
2 : 3 2 P M 12 continuing to pay P&H exposed HDL and BlueWave to civil and  
2 : 3 2 P M 13 criminal liability under the AKS and Stark Law?

2 : 3 3 P M 14 A. I don't remember that specifically.

2 : 3 3 P M 15 MR. SHAHEEN: Your Honor, I would like to introduce  
2 : 3 3 P M 16 Ms. Mallory's deposition testimony.

2 : 3 3 P M 17 THE COURT: If you could bring it up to Ms. Ravenel  
2 : 3 3 P M 18 to unseal it.

2 : 3 3 P M 19 MR. SHAHEEN: Yes, Your Honor.

2 : 3 3 P M 20 Do you need the CD as well, Miss Eunice?

2 : 3 4 P M 21 (Pause.)

2 : 3 4 P M 22 MR. SHAHEEN: Can you pull up Ms. Mallory's  
2 : 3 4 P M 23 deposition testimony, page 219, line 25.

2 : 3 4 P M 24 MR. ASHMORE: Does she have a copy?

2 : 3 4 P M 25 MR. SHAHEEN: She does not, but we're going to pull

2 : 3 4 P M 1 it up and put it on the screen.

2 : 3 4 P M 2 THE COURT: Mr. Ashmore, if you want to give her her  
2 : 3 4 P M 3 deposition, you can do that, sir.

2 : 3 4 P M 4 MR. ASHMORE: If I may, Your Honor.

2 : 3 4 P M 5 THE COURT: Yes.

2 : 3 5 P M 6 MR. SHAHEEN: I apologize, Your Honor.

2 : 3 5 P M 7 THE COURT: You can also use it off the screen, but I  
2 : 3 5 P M 8 just want her to have access to her deposition.

2 : 3 5 P M 9 THE WITNESS: Thank you.

2 : 3 5 P M 10 BY MR. SHAHEEN:

2 : 3 5 P M 11 Q. And, Ms. Mallory, if I could direct your attention to page  
2 : 3 5 P M 12 219, line 25.

2 : 3 5 P M 13 Do you see that?

2 : 3 5 P M 14 A. Yes.

2 : 3 5 P M 15 Q. And then I asked, "Did the lawyers who were present tell  
2 : 3 5 P M 16 the other people who were present that there was risks  
2 : 3 5 P M 17 associated under the AKS and Stark Law in continuing to pay  
2 : 3 5 P M 18 P&H?"

2 : 3 5 P M 19 Can you read your response.

2 : 3 5 P M 20 A. It says, "Yes, but that was June. And I've told you, in  
2 : 3 5 P M 21 October, they came back and got together, and everybody agreed  
2 : 3 5 P M 22 that, by facts and circumstances, that fit into that same  
2 : 3 5 P M 23 program."

2 : 3 5 P M 24 Q. Does this refresh your recollection at all as to whether  
2 : 3 5 P M 25 or not there was a discussion at that meeting about the risks

2 : 3 5 P M 1 associated with the -- with the practice of paying P&H under  
2 : 3 5 P M 2 the AKS and Stark Law?

2 : 3 5 P M 3 A. I thought you asked me did they tell us that we were at  
2 : 3 5 P M 4 risk for criminal and civil something something.

2 : 3 6 P M 5 Q. Fair enough. I guess, more generally, was there a  
2 : 3 6 P M 6 discussion about the risks associated with the practice of  
2 : 3 6 P M 7 paying P&H under the AKS and Stark Law?

2 : 3 6 P M 8 A. That's correct.

2 : 3 6 P M 9 Q. How did defendants Dent and Johnson respond to the  
2 : 3 6 P M 10 warnings from HDL's lawyers?

2 : 3 6 P M 11 A. I don't -- I mean, Cal is meticulous for detail. I'm sure  
2 : 3 6 P M 12 that's obvious. So he was pushing the attorneys -- not just  
2 : 3 6 P M 13 ours, but his attorneys and every attorney -- to provide him  
2 : 3 6 P M 14 with some kind of written law or case law that would show it.  
2 : 3 6 P M 15 And that it was illegal. That went to the place that they  
2 : 3 6 P M 16 couldn't show us it was illegal. They could never say it was  
2 : 3 6 P M 17 illegal. The only thing they could ever tell us was that the  
2 : 3 7 P M 18 government would have issues with it.

2 : 3 7 P M 19 So I think there was a lot of discussion about why do  
2 : 3 7 P M 20 we make changes without having the government's input or the  
2 : 3 7 P M 21 government taking a position? How do we get them to take a  
2 : 3 7 P M 22 position? What if we asked them in writing and we submitted it  
2 : 3 7 P M 23 here, there, wherever?

2 : 3 7 P M 24 So there was a lot of discussion around showing us  
2 : 3 7 P M 25 it's legal or illegal, one way or the other. And no one could

2 : 3 7 P M 1 show us it was illegal, so then, therefore, push the government  
2 : 3 7 P M 2 for a position.

2 : 3 7 P M 3 Q. were defendants Dent and Johnson opposed to terminating  
2 : 3 7 P M 4 the P&H payments at that time?

2 : 3 7 P M 5 A. well, I think they -- my impression is that, yes, they  
2 : 3 7 P M 6 were.

2 : 3 7 P M 7 Q. why were they opposed to it?

2 : 3 7 P M 8 A. I mean, it's natural. I've said many times the only way  
2 : 3 8 P M 9 to test a sample is to get the blood to the lab. And if we  
2 : 3 8 P M 10 weren't providing a means to get the blood to the lab, then we  
2 : 3 8 P M 11 couldn't test the samples. Then if we couldn't test the  
2 : 3 8 P M 12 samples, then they wouldn't make any money.

2 : 3 8 P M 13 So, yes, of course, it wasn't just stop paying P&H;  
2 : 3 8 P M 14 it was the pushback from the doctors, the loss of business, the  
2 : 3 8 P M 15 damage to the patients. There was lots of implications that we  
2 : 3 8 P M 16 had to consider.

2 : 3 8 P M 17 Q. Now, I think you referenced loss of business there. Was  
2 : 3 8 P M 18 that one of the concerns, that HDL would lose business if it  
2 : 3 8 P M 19 stopped paying P&H?

2 : 3 8 P M 20 A. Of course, one of many. Yes, I had fiduciary duties to  
2 : 3 8 P M 21 all shareholders at the same time as I had compliance fiduciary  
2 : 3 8 P M 22 as well.

2 : 3 8 P M 23 Q. was there a discussion at that meeting about how much  
2 : 3 8 P M 24 business HDL might lose if it stopped paying P&H?

2 : 3 9 P M 25 A. I don't remember that discussion.

2 : 3 9 P M 1 Q. Can you turn to page 221 of your deposition testimony,  
2 : 3 9 P M 2 Ms. Mallory. And can you read your response starting at line  
2 : 3 9 P M 3 18 there.

2 : 3 9 P M 4 221, line 18.

2 : 3 9 P M 5 A. I'm sorry. Say it again.

2 : 3 9 P M 6 Q. Page 221, line 18.

2 : 3 9 P M 7 A. "My memory," that line?

2 : 3 9 P M 8 Q. Yeah.

2 : 3 9 P M 9 A. "My memory, we were also balancing everybody in the market  
2 : 3 9 P M 10 doing it. So if you suddenly can't get the blood, the doctor  
2 : 3 9 P M 11 is going to go to another competitor. So how do we balance the  
2 : 3 9 P M 12 business and my fiduciary responsibilities to the shareholders  
2 : 3 9 P M 13 in addition to complying with what we -- where we need to go?  
2 : 4 0 P M 14 And the solution for that was to get the OIG to give us an  
2 : 4 0 P M 15 opinion that everyone had to live with."

2 : 4 0 P M 16 Q. And then if you scroll down a little bit to line 8, I  
2 : 4 0 P M 17 asked you, "Do you recall any specifics as to why they were  
2 : 4 0 P M 18 negative or how they were negative about that, those  
2 : 4 0 P M 19 proposals?"

2 : 4 0 P M 20 what was your answer to that question?

2 : 4 0 P M 21 A. "Cal was quite vocal about them because he had the  
2 : 4 0 P M 22 experience in the past that when a patient leaves a doctor's  
2 : 4 0 P M 23 office and goes offsite for a blood draw, that 30 percent of  
2 : 4 0 P M 24 the patients don't show up. I think that's a valid statistic  
2 : 4 0 P M 25 from my experience. So his concern was losing 30 percent of

2 : 4 0 P M 1 the business right away by moving things offsite.

2 : 4 0 P M 2 "And then there was the concern about 30 percent  
2 : 4 0 P M 3 doesn't get the doc's -- doesn't get in the doc seeing" --  
2 : 4 0 P M 4 what's that say? "30 percent doesn't get in the docs seeing  
2 : 4 1 P M 5 the patient, what's it" -- I don't understand that. "Going to  
2 : 4 1 P M 6 do" --

2 : 4 1 P M 7 Q. I think that's enough, unless you want to read more.

2 : 4 1 P M 8 A. No, it doesn't make any sense.

2 : 4 1 P M 9 Q. We got 50 pages to go if you keep reading.

2 : 4 1 P M 10 Did there come a time where your own personal counsel  
2 : 4 1 P M 11 also told you that Mr. Kung's memo put the company on notice  
2 : 4 1 P M 12 that P&H represents a high level of risk?

2 : 4 1 P M 13 A. Did there come a time when my attorney -- I don't -- I  
2 : 4 1 P M 14 don't know that he said it put the company at risk. I don't  
2 : 4 1 P M 15 remember him saying that.

2 : 4 1 P M 16 Q. Can we turn to Plaintiffs' Exhibit Number 1522?

2 : 4 2 P M 17 And the fourth paragraph, Peter.

2 : 4 2 P M 18 well, actually before we go there, can you tell me  
2 : 4 2 P M 19 what this is, Ms. Mallory, Exhibit -- Plaintiffs' Exhibit  
2 : 4 2 P M 20 Number 1522?

2 : 4 2 P M 21 A. This looks like a September 2013 -- so my attorney was  
2 : 4 2 P M 22 Saul Ewing, and they were producing materials to the Justice  
2 : 4 2 P M 23 Department as part of the subpoena. And so he sent this to me  
2 : 4 2 P M 24 as a result of the production of the materials.

2 : 4 2 P M 25 Q. And you say he, Mr. -- Mr. Christopher Hall is the author



2 : 4 2 P M 1 of this document. Is that your -- was that your personal  
2 : 4 3 P M 2 attorney from Saul Ewing?

2 : 4 3 P M 3 A. That's correct.

2 : 4 3 P M 4 Q. Do you know whether or not he ever worked for the  
2 : 4 3 P M 5 Department of Justice?

2 : 4 3 P M 6 A. I don't know.

2 : 4 3 P M 7 Q. If we go down to the fourth paragraph here, the one  
2 : 4 3 P M 8 starting "the benefits of waiving the privilege."

2 : 4 3 P M 9 A. That's correct.

2 : 4 3 P M 10 Q. Can you read that paragraph for me.

2 : 4 3 P M 11 A. "The benefits of waiving the privilege may outweigh the  
2 : 4 3 P M 12 risks of disclosing a redacted version of Derek's memo. To be  
2 : 4 3 P M 13 sure, the memo puts the company on notice that the safe harbor  
2 : 4 3 P M 14 does not apply and that P&H fee presents a high level of risk,  
2 : 4 3 P M 15 but it leaves open the question of whether the facts and  
2 : 4 3 P M 16 circumstances of the P&H fee render it unlawful and does not  
2 : 4 3 P M 17 conclude that the company pays the P&H fee to induce  
2 : 4 3 P M 18 referrals."

2 : 4 3 P M 19 Q. We've gone over Mr. Freedman, who told you that the  
2 : 4 3 P M 20 government took the position that P&H fees regarding Ameritox  
2 : 4 3 P M 21 were blatant kickbacks.

2 : 4 3 P M 22           We've talked about Mr. Kung now, who, in August of  
2 : 4 4 P M 23 2012, sent you a memo -- or sent a memo to the board, who --  
2 : 4 4 P M 24 and in that memo, he described the P&H fee as a red flag and  
2 : 4 4 P M 25 advised that HDL terminate it.

2 : 4 4 P M 1 we've talked about Ropes & Gray, in the spring of  
2 : 4 4 P M 2 2014 -- 2013, advising against P&H and telling you that you  
2 : 4 4 P M 3 couldn't rely on the LeClairRyan opinion.

2 : 4 4 P M 4 we've had the meeting in June that we just talked  
2 : 4 4 P M 5 about, where all the lawyers came.

2 : 4 4 P M 6 And now we have Mr. Hall, your personal attorney,  
2 : 4 4 P M 7 telling you that P&H fees present a high level of risk.

2 : 4 4 P M 8 Did you stop paying P&H fees after all of that?

2 : 4 4 P M 9 A. We paid -- we stopped paying P&H fees when the government  
2 : 4 4 P M 10 took a position on them. And in this letter from my attorneys,  
2 : 4 4 P M 11 he doesn't say he thinks it's a high level of risk; he says  
2 : 4 4 P M 12 that Derek's memo says it's a high level of risk. So he's  
2 : 4 4 P M 13 restating what Derek already had said, which we already knew.

2 : 4 4 P M 14 MR. SHAHEEN: Peter, can we pull up Plaintiffs'  
2 : 4 4 P M 15 Exhibit Number 1527.

2 : 4 5 P M 16 Oh, I'm sorry.

2 : 4 5 P M 17 Can we move Plaintiffs' Exhibit Number 1522 into  
2 : 4 5 P M 18 evidence, Your Honor?

2 : 4 5 P M 19 THE COURT: Any objection?

2 : 4 5 P M 20 MR. GRIFFITH: Same objection.

2 : 4 5 P M 21 MR. ASHMORE: No, sir.

2 : 4 5 P M 22 THE COURT: The Court overrules the Bluewave  
2 : 4 5 P M 23 objection. Plaintiffs' Exhibit 1522 is admitted over  
2 : 4 5 P M 24 Bluewave's objection.

2 : 4 5 P M 25 MR. SHAHEEN: Thank you, Your Honor.

2 : 4 5 P M 1 BY MR. SHAHEEN:

2 : 4 5 P M 2 Q. And now can we turn to -- you've already turned it. Thank  
2 : 4 5 P M 3 you.

2 : 4 5 P M 4 So this is Plaintiffs' Exhibit 1527. Do you see  
2 : 4 5 P M 5 this, Ms. Mallory?

2 : 4 5 P M 6 A. Yes.

2 : 4 5 P M 7 Q. And if we could flip to the back of this. And if you'd  
2 : 4 5 P M 8 just actually skim this email and describe what's happening  
2 : 4 5 P M 9 here, that would be very helpful.

2 : 4 5 P M 10 A. So this was a discussion between Tabitha, who was our  
2 : 4 6 P M 11 sales support manager, to the field. And she announced that --  
2 : 4 6 P M 12 to the field that when -- again this is in October 2013, after  
2 : 4 6 P M 13 the previous Derek Kung memo, after the compliance reviews,  
2 : 4 6 P M 14 after all of the things that you said with Ropes & Gray.

2 : 4 6 P M 15 The compliance officers and the attorneys told us to  
2 : 4 6 P M 16 change the way that we paid P&H. So if a physician, let's say,  
2 : 4 6 P M 17 started to send in a sample on Wednesday, but he didn't return  
2 : 4 6 P M 18 the P&H agreement to HDL until Friday, we would pay the P&H  
2 : 4 6 P M 19 from the time that the sample was sent. And the reason for  
2 : 4 7 P M 20 that was because we only paid P&H on samples received into the  
2 : 4 7 P M 21 laboratory.

2 : 4 7 P M 22 So when -- the way that our computer program worked  
2 : 4 7 P M 23 was that once they were tested into the laboratory and could be  
2 : 4 7 P M 24 tested. So if the sample was spilt or it was cracked or it  
2 : 4 7 P M 25 wasn't handled appropriately, we would not pay the processing

2 : 4 7 P M 1 and handling because they didn't do it right.

2 : 4 7 P M 2 So the lab would queue up processed samples in order  
2 : 4 7 P M 3 to queue up how we pay the doctors. And then that would go  
2 : 4 7 P M 4 into the accounting system. So that the sample would queue it  
2 : 4 7 P M 5 up, but the compliance officer noticed that there was a  
2 : 4 7 P M 6 discrepancy between the time a sample would come in and the  
2 : 4 7 P M 7 time that a doctor would sign the P&H agreement. And she  
2 : 4 8 P M 8 wanted to change the policy immediately to go by the date that  
2 : 4 8 P M 9 the sample -- that the P&H agreement was signed.

2 : 4 8 P M 10 So a lot of discussion about it because there was no  
2 : 4 8 P M 11 notice given to the field, to tell them tell your doctors to  
2 : 4 8 P M 12 sign this today or tell your doctors it will -- they'll be paid  
2 : 4 8 P M 13 from the date that the P&H gets signed. So we changed the  
2 : 4 8 P M 14 policy without any notice to the field except very suddenly.

2 : 4 8 P M 15 So we had some internal communication about it. We  
2 : 4 8 P M 16 talked through it. And, you know, Tabitha had said one thing,  
2 : 4 8 P M 17 and I came back and said, "Look, guys, we've got to tell the  
2 : 4 8 P M 18 docs, to be fair." One, we couldn't handle the volume of  
2 : 4 8 P M 19 complaints and the phone calls. So we got ourselves together  
2 : 4 9 P M 20 and came out with a -- a way forward.

2 : 4 9 P M 21 Q. And Ms. Henley tries to implement that, and you tell her  
2 : 4 9 P M 22 to hold off; correct?

2 : 4 9 P M 23 A. I told her, "wait a minute. Have you thought through all  
2 : 4 9 P M 24 these other issues that were coming up?"

2 : 4 9 P M 25 And so, like I said before, we can't make changes

2 : 4 9 P M 1 suddenly because there's so many downstream effects. So I  
2 : 4 9 P M 2 said, "Hold on. Let's figure out did they take into  
2 : 4 9 P M 3 consideration this, this, and this when we were going to change  
2 : 4 9 P M 4 that policy?"

2 : 4 9 P M 5 We were still paying P&H. It's just how were we  
2 : 4 9 P M 6 paying P&H? So it was not fair without notice to our clients  
2 : 4 9 P M 7 that you're going to get paid P&H differently than -- I mean,  
2 : 4 9 P M 8 it was only a couple days, but it -- and it didn't amount to a  
2 : 4 9 P M 9 whole lot of money, but it's just polite, courteous to your  
2 : 4 9 P M 10 clients to let them know how they're going to anticipate  
2 : 5 0 P M 11 receiving it.

2 : 5 0 P M 12 Q. And was your justification that compliance and legal  
2 : 5 0 P M 13 cannot drive our business decisions?

2 : 5 0 P M 14 A. That's not -- I mean, it sounds bad, but it's not what I  
2 : 5 0 P M 15 meant. What I meant was, yes, compliance wants this done right  
2 : 5 0 P M 16 away. Yes, I agree. Let's do this right away, but let's do it  
2 : 5 0 P M 17 the right way. Let's not create more trouble and give -- make  
2 : 5 0 P M 18 the announcement to the field. It could have been -- I mean,  
2 : 5 0 P M 19 this was Tuesday -- effective Friday or effective Tuesday --  
2 : 5 0 P M 20 Wednesday, effective Thursday. There was nothing that said it  
2 : 5 0 P M 21 had to be done on October 8th.

2 : 5 0 P M 22 So why not be fair to the field to give them notice  
2 : 5 0 P M 23 to get anything that's out there. And they know what P&H  
2 : 5 0 P M 24 agreements are sitting out there on a doctor's desk. Tell them  
2 : 5 0 P M 25 to get them in. And as of tomorrow, we're using -- using the

2 : 5 0 P M 1 date of the P&H agreement.

2 : 5 1 P M 2 Q. Was the decision to continue paying P&H an example of you  
2 : 5 1 P M 3 and the other defendants refusing to let compliance and legal  
2 : 5 1 P M 4 drive the business unit?

2 : 5 1 P M 5 A. Absolutely not.

2 : 5 1 P M 6 MR. SHAHEEN: Your Honor, I have about a half an hour  
2 : 5 1 P M 7 more of questioning. I don't know if you want to break now  
2 : 5 1 P M 8 or --

2 : 5 1 P M 9 THE COURT: We can break now. Let's take our  
2 : 5 1 P M 10 afternoon break, about 10 minutes.

2 : 5 1 P M 11 (Whereupon the jury was excused from the courtroom.)

2 : 5 1 P M 12 THE COURT: Please be seated. Any matters to address  
13 with the Court from the government?

2 : 5 2 P M 14 MR. LEVENTIS: No, Your Honor.

2 : 5 2 P M 15 THE COURT: From the defense?

2 : 5 2 P M 16 MR. GRIFFITH: Your Honor, we would ask that we allow  
2 : 5 2 P M 17 Mr. Ashmore to go out of order -- I mean -- for his cross,  
2 : 5 2 P M 18 because we think it'll -- it will severely limit the amount of  
2 : 5 2 P M 19 time that we need to take if that's -- if that's --

2 : 5 2 P M 20 THE COURT: Does the government object to that?

2 : 5 2 P M 21 MR. SHAHEEN: Not at all, Your Honor.

2 : 5 2 P M 22 THE COURT: I think it's a reasonable suggestion.

2 : 5 2 P M 23 MR. ASHMORE: My preference, Your Honor.

2 : 5 2 P M 24 THE COURT: Thank you very much. Take about a  
25 10-minute break.

2 : 5 2 P M 1 (Recess.)

3 : 0 9 P M 2 THE COURT: Please be seated. Any matters to address  
3 : 0 9 P M 3 to the Court from the government?

3 : 0 9 P M 4 MR. LEVENTIS: No, Your Honor. Thank you.

3 : 0 9 P M 5 THE COURT: From the defense?

3 : 0 9 P M 6 MR. GRIFFITH: No, Your Honor.

3 : 0 9 P M 7 MR. ASHMORE: No, sir.

3 : 0 9 P M 8 THE COURT: Bring in the jury.

3 : 0 9 P M 9 (Whereupon the jury entered the courtroom.)

3 : 1 0 P M 10 THE COURT: Please be seated. Examination to  
3 : 1 0 P M 11 continue, Mr. Shaheen.

3 : 1 0 P M 12 MR. SHAHEEN: Thank you, Your Honor.

3 : 1 0 P M 13 BY MR. SHAHEEN:

3 : 1 0 P M 14 Q. We've spent a lot of time talking about P&H, haven't we?

3 : 1 0 P M 15 A. Too much.

3 : 1 0 P M 16 Q. I agree. Let's move on.

3 : 1 0 P M 17 we've talked also a little bit about HDL's policy of  
3 : 1 0 P M 18 no-balance billing; correct?

3 : 1 0 P M 19 A. Correct.

3 : 1 1 P M 20 Q. And did you receive messages from the field or  
3 : 1 1 P M 21 communications from third parties that that practice was  
3 : 1 1 P M 22 illegal?

3 : 1 1 P M 23 A. Yes. We heard from Signa and -- Signa or Aetna and  
3 : 1 1 P M 24 UnitedHealthcare.

3 : 1 1 P M 25 Q. When did you hear from them?

3 : 1 1 P M 1 A. UnitedHealthcare was in -- I want to say 2000 -- early  
3 : 1 1 P M 2 2013 maybe.

3 : 1 1 P M 3 Q. Had you received warnings prior to that?

3 : 1 1 P M 4 A. I think that our billing policy originally was -- was put  
3 : 1 1 P M 5 together by LeClairRyan, and I'm certain I had them review it  
3 : 1 1 P M 6 as a response to comments from the field a dozen or more times  
3 : 1 1 P M 7 throughout that time.

3 : 1 1 P M 8 Q. Do you recall receiving a memo from the law firm of  
3 : 1 1 P M 9 McDonald Hopkins regarding HDL's practice of paying -- or  
3 : 1 2 P M 10 waiving patient copays and deductibles?

3 : 1 2 P M 11 A. I didn't receive a memo from them. Berkeley HeartLab  
3 : 1 2 P M 12 somehow contracted them to put a paper together about copays,  
3 : 1 2 P M 13 deductibles, patient responsibilities. And the Berkeley  
3 : 1 2 P M 14 HeartLab representatives were distributed in the field to our  
3 : 1 2 P M 15 practices to -- you know, alarm the physicians.

3 : 1 2 P M 16 I gave it to our attorneys. Our attorneys called  
3 : 1 2 P M 17 McDonald Hopkins, who wrote the paper. And they were shocked  
3 : 1 2 P M 18 that Berkeley was using it the way that they'd used it. And  
3 : 1 2 P M 19 they made Berkeley immediately stop and recalled it all from  
3 : 1 2 P M 20 the field. And I don't know what happened after that, but it  
3 : 1 3 P M 21 was taken out of the field immediately.

3 : 1 3 P M 22 Q. Did your own attorneys tell you that waiving patient  
3 : 1 3 P M 23 copays and deductibles was illegal?

3 : 1 3 P M 24 A. No.

3 : 1 3 P M 25 Q. Can we pull up Plaintiffs' Exhibit Number 1112?



3 : 1 3 P M 1 Ms. Mallory, if you'd turn to the attached document to Exhibit  
3 : 1 3 P M 2 1112.

3 : 1 3 P M 3 Do you recognize that?

3 : 1 3 P M 4 A. Yes. That's the paper that Berkeley was distributing to  
3 : 1 3 P M 5 our practices.

3 : 1 3 P M 6 MR. SHAHEEN: And, Your Honor, the United States  
3 : 1 3 P M 7 would like to move Plaintiffs' Exhibit Number 1112 into  
3 : 1 3 P M 8 evidence.

3 : 1 3 P M 9 THE COURT: Any objection?

3 : 1 3 P M 10 MR. GRIFFITH: Same objection.

3 : 1 3 P M 11 MR. ASHMORE: No, sir.

3 : 1 3 P M 12 THE COURT: Very good.

3 : 1 3 P M 13 Overrule Bluewave's objection. Plaintiffs' 1112  
3 : 1 3 P M 14 is admitted over Bluewave's objection.

3 : 1 3 P M 15 BY MR. SHAHEEN:

3 : 1 4 P M 16 Q. Ms. Mallory, can you flip back to Exhibit number 1244.

3 : 1 4 P M 17 And we can bring it up on the screen as well.

3 : 1 4 P M 18 A. 1244?

3 : 1 4 P M 19 Q. Yes.

3 : 1 4 P M 20 A. Okay.

3 : 1 4 P M 21 Q. And are you staring at the memo -- Mr. Kung's memo to the  
3 : 1 4 P M 22 board?

3 : 1 4 P M 23 A. Yes.

3 : 1 4 P M 24 Q. Okay. If you could turn to page 2 there. Can you read  
3 : 1 4 P M 25 out what Mr. Kung says about waivers of copays, coinsurance,

3 : 1 4 P M 1 and deductibles.

3 : 1 4 P M 2 A. "HDL is in the process of instituting a policy of billing  
3 : 1 4 P M 3 and collecting copays, coinsurance, and deductibles which is  
3 : 1 4 P M 4 set to take effect in September with respect to the patients  
3 : 1 4 P M 5 whose site of service is Colorado, Florida, Georgia, Idaho, New  
3 : 1 4 P M 6 Jersey, New York, Texas. State law in each of the  
3 : 1 4 P M 7 aforementioned states specifically requires billing copays,  
3 : 1 5 P M 8 coinsurance, and deductibles. Waiver of private pay, copays,  
3 : 1 5 P M 9 coinsurance, or deductibles in the other states could be viewed  
3 : 1 5 P M 10 by the OIG as incentive to get providers to refer Medicare  
3 : 1 5 P M 11 patients and thus a violation of anti-kickback."

3 : 1 5 P M 12 Q. And then what does he recommend on the next page?

3 : 1 5 P M 13 A. "Consider billing and attempting to collect copays,  
3 : 1 5 P M 14 coinsurance, and deductibles in every state."

3 : 1 5 P M 15 Q. And looking at the seven states that Mr. Kung lists in the  
3 : 1 5 P M 16 earlier sentence, did HDL in fact in September begin collecting  
3 : 1 5 P M 17 copays, coinsurance, and deductibles in those states?

3 : 1 5 P M 18 A. I don't think we did in Idaho because I don't think we had  
3 : 1 5 P M 19 any business there. But if we did have business there, then we  
3 : 1 5 P M 20 did.

3 : 1 5 P M 21 Q. And is it your recollection that that happened in  
3 : 1 5 P M 22 September of 2012?

3 : 1 5 P M 23 A. I don't know the exact date. I know we had some problems  
3 : 1 6 P M 24 with IT converting the billing system over to do it. So I do  
3 : 1 6 P M 25 know that we started them soon after we were instructed to do

3 : 1 6 P M 1 so, but I'm thinking it was -- we started in the month of  
3 : 1 6 P M 2 April. I don't know which year.

3 : 1 6 P M 3 Q. And Mr. Kung writes, "The aforementioned states  
3 : 1 6 P M 4 specifically require billing copays, coinsurance, and  
3 : 1 6 P M 5 deductibles."

3 : 1 6 P M 6 was it your understanding from that that it was in  
3 : 1 6 P M 7 fact illegal to waive copays, coinsurance, and deductibles in  
3 : 1 6 P M 8 those states?

3 : 1 6 P M 9 A. Yes.

3 : 1 6 P M 10 Q. And then Mr. Kung moves from the small to the macro and  
3 : 1 6 P M 11 then recommends that HDL consider billing and attempting to  
3 : 1 6 P M 12 collect copays, coinsurance, and deductibles in every state.

3 : 1 6 P M 13 Do you recall reading that?

3 : 1 6 P M 14 A. Yes.

3 : 1 6 P M 15 Q. And did HDL in fact stop waiving copays, coinsurance, and  
3 : 1 6 P M 16 deductibles in every state as Mr. Kung recommended?

3 : 1 6 P M 17 A. To my knowledge, when I left, they were not. But I don't  
3 : 1 7 P M 18 know what they did after I left.

3 : 1 7 P M 19 Q. And how about in the states where HDL did collect copays,  
3 : 1 7 P M 20 coinsurance, and deductibles? How did HDL do that?

3 : 1 7 P M 21 A. We -- well, there was -- back up.

3 : 1 7 P M 22 There was legal review, a thousand policies and  
3 : 1 7 P M 23 procedures on how to do it prepared. The staff in the billing  
3 : 1 7 P M 24 department, we had 80 to 100 people in the billing department.  
3 : 1 7 P M 25 They were trained. And then we had a billing system called

3 : 1 7 P M 1 Seacoast, and the system was configured to invoice  
3 : 1 7 P M 2 automatically. We sent them to a mailing company, any of the  
3 : 1 7 P M 3 statements that had copays and -- I mean, any of the patient  
3 : 1 7 P M 4 invoices, I guess you'd call them, that had copays -- patient  
3 : 1 8 P M 5 responsibilities on them.

3 : 1 8 P M 6 Q. And you said there were roughly -- or about a thousand  
3 : 1 8 P M 7 policies. And I'm guessing you were being a little bit  
3 : 1 8 P M 8 exaggerating there, but did HDL in fact follow the policies it  
3 : 1 8 P M 9 implemented?

3 : 1 8 P M 10 A. Yes. I think there was close to a thousand.

3 : 1 8 P M 11 Q. I just didn't want to hold you to that.

3 : 1 8 P M 12 A. I'm not sure, but there was a lot.

3 : 1 8 P M 13 Q. Can you turn to the next section of Mr. Kung's memo --

3 : 1 8 P M 14 A. Yes.

3 : 1 8 P M 15 Q. -- titled "Bluewave sales agreement." And can you read  
3 : 1 8 P M 16 for the jury what that says.

3 : 1 8 P M 17 A. "The Bluewave sales agreement provides for a percentage of  
3 : 1 8 P M 18 revenue compensation to a third-party independent contractor  
3 : 1 8 P M 19 sales agreement. The OIG would likely argue that that is --  
3 : 1 8 P M 20 that the compensation agreement does not satisfy the  
3 : 1 8 P M 21 set-in-advance requirements in either the potentially  
3 : 1 8 P M 22 applicable AKS safe harbor or the Stark Law exceptions.  
3 : 1 8 P M 23 Furthermore, the OIG has provided commentary regarding its  
3 : 1 9 P M 24 concern over independent contractor sales agreements with  
3 : 1 9 P M 25 compensation based on percentage of sales. The relationship

3 : 1 9 P M 1 with Bluewave poses a high degree of risk with respect to AKS.  
3 : 1 9 P M 2 The potential to transition to an employee-based sales system  
3 : 1 9 P M 3 should be considered."

3 : 1 9 P M 4 Q. After receiving this warning from Mr. Kung, did HDL  
3 : 1 9 P M 5 transition to an employee-based sales system?

3 : 1 9 P M 6 A. We had the -- now, remember, this was his marching orders.  
3 : 1 9 P M 7 These were the pieces that we found to be at issue. So I  
3 : 1 9 P M 8 remember there was a big legal analysis done by Ropes & Gray on  
3 : 1 9 P M 9 the Bluewave sales agreement. There was discussion with  
3 : 1 9 P M 10 Bluewave about changing the Bluewave sales agreement for  
3 : 1 9 P M 11 compliance, and there was discussion about bringing the  
3 : 1 9 P M 12 Bluewave sales force in-house, but that didn't happen before I  
3 : 2 0 P M 13 left.

3 : 2 0 P M 14 Q. And when did you leave?

3 : 2 0 P M 15 A. September 2014.

3 : 2 0 P M 16 Q. Can you turn to Tab 1580 in your exhibit binder,  
3 : 2 0 P M 17 Ms. Mallory?

3 : 2 0 P M 18 A. Okay.

3 : 2 0 P M 19 Q. Do you recognize this document, Ms. Mallory?

3 : 2 0 P M 20 A. Yes.

3 : 2 0 P M 21 Q. What is this document?

3 : 2 0 P M 22 A. This was -- Project Riggins was the work that we were  
3 : 2 0 P M 23 doing to raise money for the draw sites through the investment  
3 : 2 0 P M 24 bank.

3 : 2 0 P M 25 Q. Why was it named project Riggins?

3 : 2 0 P M 1 A. Doug Sbertoli named it, and I think Riggins is a baseball  
3 : 2 1 P M 2 player or something. I don't know.

3 : 2 1 P M 3 Q. I think he was a football player.

3 : 2 1 P M 4 A. well, whatever.

3 : 2 1 P M 5 Q. He was very important to me growing up.

3 : 2 1 P M 6 A. well, there you have it. That's where it came from.

3 : 2 1 P M 7 Q. That's my gotcha question.

3 : 2 1 P M 8 A. All right.

3 : 2 1 P M 9 Q. And did HDL implement Project Riggins?

3 : 2 1 P M 10 A. Yes.

3 : 2 1 P M 11 Q. Did it approach potential investors?

3 : 2 1 P M 12 A. Yes.

3 : 2 1 P M 13 Q. And can you describe the reaction it got in the field --  
3 : 2 1 P M 14 or did any potential investors bite? How about that?

3 : 2 1 P M 15 A. Yes. We approached 15 investors with offers, and we got  
3 : 2 1 P M 16 letters of intent back from eight.

3 : 2 1 P M 17 Q. And what were the offers ranging from?

3 : 2 1 P M 18 A. We were raising a hundred million, and we got offers of  
3 : 2 1 P M 19 everywhere from 60, 70 million to 150 million or so, I  
3 : 2 1 P M 20 remember.

3 : 2 1 P M 21 Q. And were you a part owner of HDL?

3 : 2 2 P M 22 A. Yes.

3 : 2 2 P M 23 Q. And would you have benefited from that influx of cash or  
3 : 2 2 P M 24 that acquisition?

3 : 2 2 P M 25 A. No. Actually, I would have lost position. So I would

3 : 2 2 P M 1 have been diluted.

3 : 2 2 P M 2 Q. But the company overall would have increased in value?

3 : 2 2 P M 3 A. Not necessarily. You bring on new investors, and you're  
3 : 2 2 P M 4 bringing them on for a specific purpose, 5 and 15 percent, and  
3 : 2 2 P M 5 they take 50 percent of the company, now I own 7.5 percent. So  
3 : 2 2 P M 6 I get diluted out. It doesn't mean that any of it comes to me.

3 : 2 2 P M 7 Q. Do you know how much you received from HDL between 2009  
3 : 2 2 P M 8 and 2014 when you left?

3 : 2 2 P M 9 A. There were reports that HDL gave you guys of 21 million or  
3 : 2 2 P M 10 so.

3 : 2 2 P M 11 Q. HDL gave us 21 million?

3 : 2 2 P M 12 A. No, HDL gave you reports that I earned 21 million or so.

3 : 2 2 P M 13 Q. Can you turn to Tab 14 --

3 : 2 2 P M 14 MR. SHAHEEN: Actually, before I do that, Your Honor,  
3 : 2 2 P M 15 I would like to move Plaintiffs' Exhibit Number 1580 into  
3 : 2 3 P M 16 evidence.

3 : 2 3 P M 17 THE COURT: Any objection?

3 : 2 3 P M 18 MR. GRIFFITH: Same objection.

3 : 2 3 P M 19 MR. ASHMORE: No, sir.

3 : 2 3 P M 20 THE COURT: Very good. Overrule BlueWave's  
3 : 2 3 P M 21 objection. Plaintiffs' 1580 is admitted over the BlueWave  
3 : 2 3 P M 22 objection.

3 : 2 3 P M 23 Please proceed.

3 : 2 3 P M 24 BY MR. SHAHEEN:

3 : 2 3 P M 25 Q. Ms. Mallory, can you turn to the final tab, Tab 1468 in

3 : 2 3 P M 1 your exhibit binder?

3 : 2 3 P M 2 A. Yes.

3 : 2 3 P M 3 Q. Do you recognize this document?

3 : 2 3 P M 4 A. Not really, but it says it came from Cain Brothers, and  
3 : 2 3 P M 5 they were the investment bank that we used.

3 : 2 3 P M 6 Q. The investment bank that did what?

3 : 2 3 P M 7 A. That worked on Project Riggins.

3 : 2 3 P M 8 Q. Do you have any reason to doubt the veracity of the chart  
3 : 2 3 P M 9 you see in Plaintiffs' Exhibit Number 1468?

3 : 2 3 P M 10 A. No, not -- I don't know if it's accurate, but I'm certain  
3 : 2 3 P M 11 they would be working on something like this.

3 : 2 4 P M 12 Q. And going to the accuracy, do you have any reason to doubt  
3 : 2 4 P M 13 the accuracy of this?

3 : 2 4 P M 14 A. No, not really.

3 : 2 4 P M 15 Q. Did Cain Brothers generally do good work?

3 : 2 4 P M 16 A. They did, but there was lots of -- there was lots of  
3 : 2 4 P M 17 different versions. So they would -- they would put something  
3 : 2 4 P M 18 down that they thought was right, and then we'd have to edit  
3 : 2 4 P M 19 it. So there was lots -- lots going on.

3 : 2 4 P M 20 Do you know the date of it?

3 : 2 4 P M 21 Q. I do not. Can you describe for the jury what it says,  
3 : 2 4 P M 22 Ms. Mallory?

3 : 2 4 P M 23 A. It's a historical overview of HDL.

3 : 2 4 P M 24 Q. And a historical overview of what in particular?

3 : 2 4 P M 25 A. Growth, payers, challenges -- changes to billing



3 : 2 5 P M 1 practices, the P&H payment, BlueWave contract, Wall Street  
3 : 2 5 P M 2 Journal article, OIG special fraud alert. It looks like some  
3 : 2 5 P M 3 sort of timeline.

3 : 2 5 P M 4 Q. And is it a timeline of daily sample volume and net  
3 : 2 5 P M 5 revenue?

3 : 2 5 P M 6 A. Daily sample volume -- yes.

3 : 2 5 P M 7 MR. SHAHEEN: Your Honor, I would like to move  
3 : 2 5 P M 8 Plaintiffs' Exhibit Number 1468 into evidence.

3 : 2 5 P M 9 THE COURT: Any objection?

3 : 2 5 P M 10 MR. GRIFFITH: Your Honor, I don't believe that this  
3 : 2 5 P M 11 is a -- is relevant here. It's -- it's a document made by a  
3 : 2 5 P M 12 third party as to HDL's numbers.

3 : 2 5 P M 13 MR. SHAHEEN: It was a document made by an agent of  
3 : 2 5 P M 14 HDL.

3 : 2 5 P M 15 THE COURT: An agent of HDL.

3 : 2 5 P M 16 Any objection?

3 : 2 6 P M 17 MR. GRIFFITH: Same objection.

3 : 2 6 P M 18 THE COURT: Mr. Ashmore?

3 : 2 6 P M 19 MR. ASHMORE: Your Honor, do we know the date of this  
3 : 2 6 P M 20 document? Is there any way to determine that?

3 : 2 6 P M 21 MR. SHAHEEN: We can certainly find the date of this,  
3 : 2 6 P M 22 Your Honor.

3 : 2 6 P M 23 MR. ASHMORE: No objection, Your Honor.

3 : 2 6 P M 24 THE COURT: Very good. I'll overrule BlueWave's  
3 : 2 6 P M 25 objection. Plaintiffs' Exhibit 1468 is admitted over

3 : 2 6 P M 1 Bluewave's objection.

3 : 2 6 P M 2 BY MR. SHAHEEN:

3 : 2 6 P M 3 Q. Can you tell us what the range is in daily sample volume  
3 : 2 6 P M 4 from Q1 2013 through Q2 2014, according to this chart,  
3 : 2 6 P M 5 Ms. Mallory?

3 : 2 6 P M 6 A. Q1 2013 to which --Q4?

3 : 2 6 P M 7 Q. Q2 2014.

3 : 2 6 P M 8 THE COURT: Why don't y'all speak in not financial  
3 : 2 6 P M 9 terms. Say what Q stands for and everything so the jury will  
3 : 2 6 P M 10 understand.

3 : 2 6 P M 11 MR. SHAHEEN: Yes, Your Honor. I was just trying to  
3 : 2 6 P M 12 refer to what appears in the document.

3 : 2 6 P M 13 BY MR. SHAHEEN:

3 : 2 6 P M 14 Q. I'm referring to the first quarter of 2013, the first  
3 : 2 7 P M 15 financial quarter, and I'm looking for you to describe the  
3 : 2 7 P M 16 trend up to the second quarter of 2014.

3 : 2 7 P M 17 THE COURT: Very good.

3 : 2 7 P M 18 THE WITNESS: So it looks to be about the same. This  
3 : 2 7 P M 19 says 3,730. And in the second quarter, it looks to be about  
3 : 2 7 P M 20 3,699.

3 : 2 7 P M 21 BY MR. SHAHEEN:

3 : 2 7 P M 22 Q. Does it remain essentially constant from the first quarter  
3 : 2 7 P M 23 of 2013 through the second quarter of 2014?

3 : 2 7 P M 24 A. Yes.

3 : 2 7 P M 25 Q. The average range only changes by roughly 200 to 220

3 : 2 7 P M 1 samples per day; correct?

2 A. Correct.

3 : 2 7 P M 3 Q. And then what happens to the trend after the second  
4 quarter of 2014?

3 : 2 7 P M 5 A. So we've already stated that we -- I don't, again, know  
6 the date of this. So it's important to have the date in order  
7 to explain everything.

3 : 2 8 P M 8 But we stopped providing P&H instantly when we had  
9 the June 25th fraud alert. We did not have a way to get those  
10 samples into the lab for -- at first. So we were deploying  
11 lots of phlebotomists. We were deploying lots of lab-to-lab  
12 agreements. And we didn't actually reach every doctor at every  
13 location.

3 : 2 8 P M 14 So there was a drop between Q2 to Q3 while we got the  
15 phlebotomists in place and could recover that business.

3 : 2 8 P M 16 Q. Does this chart also track net revenue per quarter?

3 : 2 8 P M 17 A. Yes.

3 : 2 8 P M 18 Q. And, again, does it remain relatively constant from the  
19 first quarter of 2013 through the second quarter of 2014?

3 : 2 9 P M 20 A. Yes. And the reason for that is, in the second quarter,  
21 on March 1st, maybe April 1st, 2014, the CMS actually stopped  
22 paying for all the genetic tests. So it was the MoIDX project,  
23 molecular diagnostic project.

3 : 2 9 P M 24 They actually -- we had about 250, \$350 per sample in  
25 revenue that the government decided that they would no longer

3 : 2 9 P M 1 reimburse. We still performed the tests, but they didn't pay  
3 : 2 9 P M 2 for them. So the revenue dropped drastically between the first  
3 : 2 9 P M 3 quarter, second quarter, and third quarter as a result of the  
3 : 2 9 P M 4 molecular DX impact.

3 : 2 9 P M 5 Q. You said that ruling came down in March of 2014?

3 : 2 9 P M 6 A. In April 1st, I believe, is when the final reimbursements  
3 : 3 0 P M 7 were assigned.

3 : 3 0 P M 8 Q. So the first day of the second quarter; correct?

3 : 3 0 P M 9 A. I think so.

3 : 3 0 P M 10 Q. And if we look at this graph, HDL actually makes 4 million  
3 : 3 0 P M 11 more dollars in that quarter than it did in the previous  
3 : 3 0 P M 12 quarter; correct?

3 : 3 0 P M 13 A. Yes.

3 : 3 0 P M 14 Q. And then after the second quarter of 2014, what happens to  
3 : 3 0 P M 15 HDL's net revenues per quarter?

3 : 3 0 P M 16 A. If this is accurate, there's a decrease.

3 : 3 0 P M 17 Q. A decrease by about 46 million; correct?

3 : 3 0 P M 18 A. That's correct.

3 : 3 0 P M 19 Q. Just over -- or just under half of its net revenues;  
3 : 3 0 P M 20 correct?

3 : 3 0 P M 21 A. Under half? 77 versus 97?

3 : 3 0 P M 22 Q. No, I'm actually looking at 51.4 to 97.6.

3 : 3 0 P M 23 A. I wasn't there then, so I can't talk to that.

3 : 3 0 P M 24 Q. Do you know when HDL declared bankruptcy?

3 : 3 0 P M 25 A. In -- I think it was June 2015.

3 : 3 0 P M 1 Q. So less than a year after HDL stopped paying P&H?

3 : 3 1 P M 2 A. Less than a year after I left.

3 : 3 1 P M 3 MR. SHAHEEN: Your Honor, I have no further questions  
3 : 3 1 P M 4 at this time.

3 : 3 1 P M 5 THE COURT: Cross-examination, Mr. Ashmore?

3 : 3 1 P M 6 MR. ASHMORE: Thank you, Your Honor. May it please  
3 : 3 1 P M 7 the Court.

3 : 3 1 P M 8 THE COURT: And let me just say, you know, under the  
3 : 3 1 P M 9 Court rules, it's -- she's not an adverse witness to you in  
3 : 3 1 P M 10 this, and you cannot lead her. Okay?

3 : 3 1 P M 11 MR. ASHMORE: Okay. Yes, sir, Your Honor.  
3 : 3 1 P M 12 Understood. Thank you.

13 CROSS-EXAMINATION

3 : 3 1 P M 14 BY MR. ASHMORE:

3 : 3 1 P M 15 Q. Ms. Mallory, I'm Beattie Ashmore. How are you?

3 : 3 1 P M 16 A. Good.

3 : 3 1 P M 17 Q. It's been a long road, hasn't it?

3 : 3 1 P M 18 A. Uh-huh.

3 : 3 1 P M 19 Q. Tell us what you did the first 17 years of your  
3 : 3 1 P M 20 professional life.

3 : 3 1 P M 21 A. I worked for a -- well, at first, I was in graduate  
3 : 3 1 P M 22 school. I worked for a laboratory in order to pay for college.  
3 : 3 1 P M 23 I worked the third shift, and I worked in a laboratory from  
3 : 3 1 P M 24 10:00 at night to 8 a.m. and then went to graduate school from  
3 : 3 2 P M 25 noon to 10 p.m.

3 : 3 2 P M 1            Graduated from graduate school and went to work for a  
3 : 3 2 P M 2   Japanese chemical company called wako Chemicals. And that  
3 : 3 2 P M 3   company sold test kits. So everything that you would use to  
3 : 3 2 P M 4   measure glucose and cholesterol and those types of things in  
3 : 3 2 P M 5   the laboratory, this company sold them to the laboratories.

3 : 3 2 P M 6            So for 17 years, I worked for that company. I  
3 : 3 2 P M 7   started in the QC lab and then started with equipment  
3 : 3 2 P M 8   implementation and installation, developing the tests that  
3 : 3 2 P M 9   worked on the instruments, did sales, did marketing, did FDA  
3 : 3 2 P M 10   submissions. It was a Japanese company, so you always wear a  
3 : 3 2 P M 11   lot of hats. And did all their clinical trials.

3 : 3 2 P M 12            My territory was United States, so I traveled to  
3 : 3 2 P M 13   about 250 labs a year and then also did all of their FDA  
3 : 3 3 P M 14   quality systems and made sure that their production facilities  
3 : 3 3 P M 15   overseas were compliant.

3 : 3 3 P M 16   Q.    There came a time when you left that organization and  
3 : 3 3 P M 17   joined Berkeley HeartLab; correct?

3 : 3 3 P M 18   A.    That's correct.

3 : 3 3 P M 19   Q.    And how did that come about?

3 : 3 3 P M 20   A.    I had worked for the Japanese company named wako for  
3 : 3 3 P M 21   almost 17 years at that point. And my mother-in-law was sick  
3 : 3 3 P M 22   and had -- and was living with us on hospice, and I had asked  
3 : 3 3 P M 23   her the day after Christmas, How much longer do you think you  
3 : 3 3 P M 24   have? She told me two weeks. So I asked my boss at wako if I  
3 : 3 3 P M 25   could take two weeks off to be with her while she died. And

3 : 3 4 P M 1 they said no; it would set precedent.

3 : 3 4 P M 2 I had worked about 80-hour weeks for 17 years. So I  
3 : 3 4 P M 3 took two weeks off and was with her when she died, came back to  
3 : 3 4 P M 4 work and decided I didn't want to work there anymore, started  
3 : 3 4 P M 5 looking for a job and got hired by Berkeley the following  
3 : 3 4 P M 6 October.

3 : 3 4 P M 7 Q. What did you do for Berkeley?

3 : 3 4 P M 8 A. I lived half the time in Richmond, Virginia, and half the  
3 : 3 4 P M 9 time in San Francisco where the lab was. I traveled back and  
3 : 3 4 P M 10 forth and took care of all their lab operations.

3 : 3 4 P M 11 So I had the experience from the vendor side of how  
3 : 3 4 P M 12 to write contracts for customers. So I evaluated all of their  
3 : 3 4 P M 13 contracts, evaluated all of their equipment, evaluated all of  
3 : 3 4 P M 14 their staff in order to reduce costs. And I took about  
3 : 3 5 P M 15 \$2 million out of their operating budget the first year and  
3 : 3 5 P M 16 continued to tweak it as time went by.

3 : 3 5 P M 17 Q. Did there come a time when you started HDL?

3 : 3 5 P M 18 A. Yes. So at Berkeley -- I was hired at Berkeley to  
3 : 3 5 P M 19 actually start a lab -- a second lab for Berkeley. They sat on  
3 : 3 5 P M 20 the San Andreas Fault over in San Francisco and needed a second  
3 : 3 5 P M 21 backup lab just in case of emergency.

3 : 3 5 P M 22 I didn't -- but as soon as I got hired, they decided  
3 : 3 5 P M 23 that they would hold that project because all the  
3 : 3 5 P M 24 reimbursements for their tests were changing. CMS director  
3 : 3 5 P M 25 said yesterday that they call their payers MAC payers or MAC

3 : 3 5 P M 1 regions. And basically their contractors were deciding who was  
3 : 3 5 P M 2 going to be in which states and who's going to pay what at that  
3 : 3 6 P M 3 time. And so they put the project on hold.

3 : 3 6 P M 4 So I wound up traveling back and forth, and then they  
3 : 3 6 P M 5 sold Berkeley HeartLab to a company called Celera. And Celera  
3 : 3 6 P M 6 had purchased Berkeley for the purpose of distributing their  
3 : 3 6 P M 7 products without having to do FDA approval. And so it -- they  
3 : 3 6 P M 8 were a strange organization for me. Culturally, it didn't fit.

3 : 3 6 P M 9 I decided that I would either go home to Virginia and  
3 : 3 6 P M 10 get a job or start a company, let them know that, and went home  
3 : 3 6 P M 11 and bet the farm and cashed out our kids' college tuition  
3 : 3 6 P M 12 accounts, second mortgaged the house, bet the farm, and tried  
3 : 3 6 P M 13 to start HDL.

3 : 3 6 P M 14 Q. Who did you start it with?

3 : 3 7 P M 15 A. Started it with Russ Warnick, who was at Berkeley. He  
3 : 3 7 P M 16 said that he would come as soon as we could secure financing  
3 : 3 7 P M 17 for the capital needed to get the company started. He stayed  
3 : 3 7 P M 18 at Berkeley until we closed on the capital.

3 : 3 7 P M 19 And Joe McConnell. And Joe McConnell was at the Mayo  
3 : 3 7 P M 20 Clinic at the time, and he stayed at Mayo Clinic also until we  
3 : 3 7 P M 21 could secure the financing. Somebody needed to make grocery  
3 : 3 7 P M 22 money, and so they stayed there. And we finalized the capital  
3 : 3 7 P M 23 in June of 2009 and got the company started shortly after that.

3 : 3 7 P M 24 Q. How did you get in contact with Joe McConnell?

3 : 3 7 P M 25 A. Joe McConnell and Russ Warnick both were my customers for



3 : 3 7 P M 1 about 15 years when I was at wako. We also were both -- all of  
3 : 3 8 P M 2 us were part of a national -- Association for Clinical  
3 : 3 8 P M 3 Chemistry and officers in that organization.

3 : 3 8 P M 4 Q. And it's been well established that eventually HDL was  
3 : 3 8 P M 5 formed and Bluewave -- there was some association between HDL  
3 : 3 8 P M 6 and Bluewave; correct?

3 : 3 8 P M 7 A. Correct.

3 : 3 8 P M 8 Q. And what was that association?

3 : 3 8 P M 9 A. They were a contracted sales organization.

3 : 3 8 P M 10 Q. Singulex, while I'm there, what -- did you or HDL have  
3 : 3 8 P M 11 anything to do with Singulex?

3 : 3 8 P M 12 A. No.

3 : 3 8 P M 13 Q. Any relationship whatsoever?

3 : 3 8 P M 14 A. When Russ was still out in California, he was a consultant  
3 : 3 8 P M 15 for Singulex. But once he came over to HDL, I think he broke  
3 : 3 8 P M 16 that relationship. I had none. Joe had none. HDL itself had  
3 : 3 8 P M 17 none, but I think Russ had a prior relationship.

3 : 3 8 P M 18 Q. Who -- who owns and ran Singulex?

3 : 3 8 P M 19 A. I don't know.

3 : 3 8 P M 20 Q. Was there a business plan developed for HDL?

3 : 3 9 P M 21 A. Yes.

3 : 3 9 P M 22 Q. When did your association with Dennis Ryan begin?

3 : 3 9 P M 23 A. My association with Dennis Ryan began around 1990 when I  
3 : 3 9 P M 24 was working with Wako. That's the Japanese company. He was --  
3 : 3 9 P M 25 Wako was his first customer when he founded -- he and Gary

3 : 3 9 P M 1 LeClair founded LeClairRyan. And so as their firm was growing,  
3 : 3 9 P M 2 wako was one of their first customers. And I worked with him  
3 : 3 9 P M 3 for many years.

3 : 3 9 P M 4 Q. And did Dennis Ryan help you with the formation of HDL?

3 : 3 9 P M 5 A. Yes. I had reached out to him and told him I was thinking  
3 : 3 9 P M 6 about starting this. And he had a lot of questions about  
3 : 3 9 P M 7 whether or not I was working at Berkeley. And he actually told  
3 : 3 9 P M 8 me I needed to leave Berkeley before I started anything,  
3 : 3 9 P M 9 created any business plan, and to just sever ties. And he --  
3 : 4 0 P M 10 they had offered me a severance agreement. He reviewed that as  
3 : 4 0 P M 11 well and told me to decline it. So he was helping me out from  
3 : 4 0 P M 12 the very beginning.

3 : 4 0 P M 13 Q. Who ran -- let me back up.

3 : 4 0 P M 14 You started with three -- three of you; right?

3 : 4 0 P M 15 A. That's right.

3 : 4 0 P M 16 Q. All right. And ultimately you reached what level? How  
3 : 4 0 P M 17 many employees at your greatest mark?

3 : 4 0 P M 18 A. Almost 800.

3 : 4 0 P M 19 Q. And when was that?

3 : 4 0 P M 20 A. That would have been 20 -- towards the end of 2013.

3 : 4 0 P M 21 Q. Who ran HDL?

3 : 4 0 P M 22 A. A lot of people. Of course, I was CEO. Russ and Joe were  
3 : 4 0 P M 23 VPs. Russ was in charge of studies -- clinical studies,  
3 : 4 0 P M 24 writing journal articles. Joe was in charge of all of the test  
3 : 4 0 P M 25 selection and the lab operations.

3 : 4 1 P M 1 But then we had someone -- a VP in charge of billing.

3 : 4 1 P M 2 we had compliance officers. We had VP of strategy. We had

3 : 4 1 P M 3 individuals in charge of the commercial operations. And so

3 : 4 1 P M 4 there was an entire executive team that essentially ran HDL.

3 : 4 1 P M 5 Q. Who was on the board of HDL?

3 : 4 1 P M 6 A. Russ, Joe, and I.

3 : 4 1 P M 7 Q. Just the three of you?

3 : 4 1 P M 8 A. That's -- well, while I was there.

3 : 4 1 P M 9 Q. Who had decision-making authority?

3 : 4 1 P M 10 A. Every -- well, the board had ultimate decision-making

3 : 4 1 P M 11 authority. We chose to do -- not that we had to, but it was

3 : 4 1 P M 12 the way we agreed to from the very beginning, to do everything

3 : 4 1 P M 13 in consensus. There were times that we didn't agree on

3 : 4 1 P M 14 everything. And if we didn't agree on everything, we chose to

3 : 4 1 P M 15 wait until we would agree on everything. And for the most

3 : 4 2 P M 16 part, any action that we took, we all had to a hundred percent

3 : 4 2 P M 17 agree on.

3 : 4 2 P M 18 Q. Was there ever a time when you could have been outvoted

3 : 4 2 P M 19 two to one?

3 : 4 2 P M 20 A. No.

3 : 4 2 P M 21 Q. How was HDL structured?

3 : 4 2 P M 22 A. HDL -- corporate structure was an S corp. We had the

3 : 4 2 P M 23 board that was oversight and then me. And so we had Russ, Joe,

3 : 4 2 P M 24 and I on the board and then me as the CEO and then about 10, 15

3 : 4 2 P M 25 other executives in each department.

3 : 4 2 P M 1 Everyone -- we met every Thursday at 9:00 for an  
3 : 4 2 P M 2 all-hands-on-deck meeting, everyone in the company was invited,  
3 : 4 2 P M 3 where we would talk about each department, what everyone was  
3 : 4 3 P M 4 doing. But it was a culture where everyone had decisions on  
3 : 4 3 P M 5 their own. And if there was a change in policy, then we would  
3 : 4 3 P M 6 meet and discuss it in our managers meetings.

3 : 4 3 P M 7 But we very much knew that every department was a  
3 : 4 3 P M 8 spoke on the wheel, and we had to work together to move the  
3 : 4 3 P M 9 bus.

3 : 4 3 P M 10 Q. What made HDL blood tests different from other tests in  
3 : 4 3 P M 11 the industry?

3 : 4 3 P M 12 A. We didn't sell blood tests. And I know that sounds  
3 : 4 3 P M 13 strange to hear, but what we were trying to show is  
3 : 4 3 P M 14 historically -- I've been in the industry for too many years.  
3 : 4 3 P M 15 But a long time ago, there was -- the laboratory sat in the  
3 : 4 3 P M 16 back office from the physician. And the physician would go to  
3 : 4 3 P M 17 the laboratory and say, Does the patient have this?

3 : 4 3 P M 18 And the laboratory would be the doctor's partner, and  
3 : 4 4 P M 19 they would say, Yes, you have that.

3 : 4 4 P M 20 And the doctor would say, well, I'm going to treat  
3 : 4 4 P M 21 with this. Now, laboratory, check that I treated this person  
3 : 4 4 P M 22 right.

3 : 4 4 P M 23 And then the CLIA '88 rules came into effect. The  
3 : 4 4 P M 24 government wouldn't let the labs be owned by the doctors  
3 : 4 4 P M 25 anymore. So in '91, that kind of broke apart, and then there

3 : 4 4 P M 1 became this modernization of laboratories. The labs got  
3 : 4 4 P M 2 gobbled up by LabCorp and Quest.

3 : 4 4 P M 3 But the lab testing now has become something -- when  
3 : 4 4 P M 4 LabCorp and Quest sell their testing, they don't sell it to a  
3 : 4 4 P M 5 doctor's office; they sell it to an insurance company.

3 : 4 4 P M 6 So based on the lowest bid, the insurance company  
3 : 4 4 P M 7 will say, if you've got this insurance, you go to LabCorp. If  
3 : 4 4 P M 8 you've got this insurance company, you go to Quest.

3 : 4 4 P M 9 So we didn't want our testing to be viewed as lab  
3 : 4 4 P M 10 testing. So we sought to change the way medicine is practiced.  
3 : 4 4 P M 11 And by doing that, what we sold was disease management with lab  
3 : 4 5 P M 12 services. So for cardiovascular disease and diabetes, stroke,  
3 : 4 5 P M 13 insulin resistance, fatty liver disease, we went out to teach  
3 : 4 5 P M 14 the doctors what is going on.

3 : 4 5 P M 15 So if a hundred people are here, then there's 80  
3 : 4 5 P M 16 reasons why they would have heart disease. It's a very  
3 : 4 5 P M 17 complicated disease state. So we went out to teach the  
3 : 4 5 P M 18 physicians about the disease. And these are ways that you can  
3 : 4 5 P M 19 fix it.

3 : 4 5 P M 20 So we were not selling lab tests. We sold a solution  
3 : 4 5 P M 21 for the doctors to solve cardiovascular disease, diabetes, diet  
3 : 4 5 P M 22 liver disease, and insulin resistance. And not only did we  
3 : 4 5 P M 23 tell the doctor this is how you can solve for this, we then  
3 : 4 5 P M 24 gave the patients a health coach. And these health coaches are  
3 : 4 5 P M 25 registered dietitians, diabetic educators, smoking cessation

3 : 4 5 P M 1 experts, exercise physiologists. Farmed these, and they worked  
3 : 4 5 P M 2 directly with the patients and said, "Here's your lab results.  
3 Your doctor said to do this. Now here's how to do it."

4 And if they had issues with medication or if they had  
3 : 4 6 P M 5 to know how to do it, then the coaches would help them along to  
3 : 4 6 P M 6 make the changes.

7 So the physicians would actually now -- we would be  
3 : 4 6 P M 8 connected to the physician, the patient, and the lab. We're  
3 : 4 6 P M 9 working together to reverse this disease, not just watch it.

10 Q. Who decides what tests to run?

11 A. All of the tests that were run were decided by  
3 : 4 6 P M 12 Dr. McConnell and Russ Warnick. The pace that we introduced  
3 : 4 6 P M 13 them was decided by them, but ultimately there was one criteria  
3 : 4 7 P M 14 that every test on our menu had to have, and that was that it  
3 : 4 7 P M 15 had to be actionable. If you have a result, can you do  
3 : 4 7 P M 16 something to change it?

17 And so we didn't offer A to Z. We offered a limited  
3 : 4 7 P M 18 menu of tests so that it was always actionable. Every patient  
3 : 4 7 P M 19 could be read like a book. It was color-coded. It was  
3 : 4 7 P M 20 simplified for the physicians. Copies were given to the  
3 : 4 7 P M 21 patients, and we taught them more about their disease state and  
3 : 4 7 P M 22 what to do to reverse it.

23 Q. The menu that you describe, can you elaborate on that just  
3 : 4 7 P M 24 a bit?

25 A. Sure. So there were -- in the tests that we performed,

3 : 4 7 P M 1 there were -- you're not going to get a strep test from HDL.

3 : 4 7 P M 2 You're not going to get, you know, A-to-Z testing, whatever it  
3 : 4 8 P M 3 has.

3 : 4 8 P M 4 what we focused on was cardiovascular disease and  
3 : 4 8 P M 5 diabetes. And so there were tests that would measure whether  
3 : 4 8 P M 6 or not you had particles in your cholesterol, and essentially  
3 : 4 8 P M 7 that's like sand. So if you have sand in your bloodstream, it  
3 : 4 8 P M 8 would kind of scratch your blood vessel. That would -- that  
3 : 4 8 P M 9 scratching would then cause some irritation. So we would test  
3 : 4 8 P M 10 to see if the irritation is there.

3 : 4 8 P M 11 And then once the irritation gets bad enough, then it  
3 : 4 8 P M 12 actually builds up a fiber cap or a blockage. And so once you  
3 : 4 8 P M 13 build that up, then you start having blockages and heart  
3 : 4 8 P M 14 problems. And so we would test for every aspect of this to  
3 : 4 8 P M 15 find out what is it that needs to be done. Does this person  
3 : 4 8 P M 16 have just high cholesterol or does this person have very high  
3 : 4 9 P M 17 sand particles with inflammation, which means something's got  
3 : 4 9 P M 18 to be done now? Or has that inflammation already created the  
3 : 4 9 P M 19 blockage, and now something else needs to be done?

3 : 4 9 P M 20 So we didn't just look for tests related to the  
3 : 4 9 P M 21 disease. Every test we brought to the market had to be a piece  
3 : 4 9 P M 22 of the whole picture that a doctor could use in his toolbox to  
3 : 4 9 P M 23 treat that patient.

3 : 4 9 P M 24 Q. who made the decision what to choose from the menu?

3 : 4 9 P M 25 A. A doctor did.

3 : 4 9 P M 1 Q. Did HDL have anything to do with that exercise of what --  
3 : 4 9 P M 2 what boxes to check on the menu?

3 : 4 9 P M 3 A. We would give them the limited menu that we had, and we  
3 : 4 9 P M 4 would give them materials and educate them on how you can use  
3 : 4 9 P M 5 this. But every doctor has their own comfort level.

3 : 4 9 P M 6 we had over 5,000 different profiles that were  
3 : 5 0 P M 7 selected by doctors. So every one of them had a different  
3 : 5 0 P M 8 preference. They liked this test, not that test, or they don't  
3 : 5 0 P M 9 know what that one means, so they don't want to order it. So  
3 : 5 0 P M 10 doctors customized their own menu regularly.

3 : 5 0 P M 11 Q. Were you aware of how labs were run in the industry as a  
3 : 5 0 P M 12 whole?

3 : 5 0 P M 13 A. Yes.

3 : 5 0 P M 14 Q. Okay. And how did you acquire that knowledge?

3 : 5 0 P M 15 A. Spending, by that time, almost 25 years in thousands of  
3 : 5 0 P M 16 labs in the country.

3 : 5 0 P M 17 Q. Okay. Did you do anything else to educate yourself about  
3 : 5 0 P M 18 how other labs were conducting their business?

3 : 5 0 P M 19 A. Sure. We heard from the field. I spoke to CEOs. As I  
3 : 5 0 P M 20 mentioned, we would bring in test menu -- so at this time,  
3 : 5 0 P M 21 there was a lab that would sell one test. Then there was a lab  
3 : 5 1 P M 22 that would sell another test that meant something else. And  
3 : 5 1 P M 23 there would be -- so there was lots of little boutique labs  
3 : 5 1 P M 24 that would sell little pieces of the puzzle, but nobody brought  
3 : 5 1 P M 25 them together. So we -- we worked with those labs to bring all



1 of those into one menu so that we could provide the complete  
2 picture for the physician.

3 So during those discussions, those relationships --  
4 you know, we've already mentioned LipoScience, and I had  
5 frequent meetings with the CEO of LipoScience. He had frequent  
6 meetings with the CEO of Atherotech. I had frequent meetings  
7 with the CEO of Cleveland HeartLab. He had frequent meetings  
8 with Boston HeartLab. So I knew what was going on in the  
9 industry from those connections.

10 Q. What was going on in the industry?

11 A. A lot -- it's a crazy industry. There was a lot of battle  
12 for secondary prevention. And what I mean by that is, when I  
13 left Berkeley, Berkeley, LipoScience, Atherotech, even Boston  
14 HeartLab were all trying to get the patient -- the doctor to  
15 send them the patients that had already had a heart attack.

16 And when HDL got started, we didn't -- I had a  
17 personal situation where my sister had had a heart attack, and  
18 I wanted to prevent that from the beginning. So I -- we tried  
19 the primary prevention, which is very difficult because you're  
20 working on a disease before any heart attack or any stroke or  
21 any stints or bypass has occurred.

22 So we started out to do the primary prevention where  
23 everybody else was doing secondary prevention. They actually  
24 started realizing how we were doing it, and they all began  
25 doing primary prevention. LabCorp, Quest was the kings in the

3 : 5 3 P M 1 market. So if we -- I mean, we were so small compared to the  
3 : 5 3 P M 2 big giants. But if we got one account, then they would create  
3 : 5 3 P M 3 noise in the market. And everybody was vying for business and  
3 : 5 3 P M 4 trying to make a name in a market that was changing with  
3 : 5 3 P M 5 reimbursements and policies from the payers.

3 : 5 3 P M 6 Q. Were other labs paying P&H fees?

3 : 5 3 P M 7 A. Every one that I've ever met has always paid P&H.

3 : 5 3 P M 8 Q. Can you --

3 : 5 3 P M 9 A. Except LabCorp and Quest.

3 : 5 3 P M 10 Q. Can you give us a list off the top of your head?

3 : 5 3 P M 11 A. There's a lab in New York called Biotechnical -- or  
3 : 5 3 P M 12 Bioreference Lab.

3 : 5 3 P M 13 Q. And what -- how much did they pay in P&H?

3 : 5 4 P M 14 A. Most of them were sending one or two tubes into the lab,  
3 : 5 4 P M 15 and the average was \$15 across the industry.

3 : 5 4 P M 16 Q. And HDL was sending how many tubes?

3 : 5 4 P M 17 A. Four tubes.

3 : 5 4 P M 18 Q. Okay. All right. So that's one. Any other labs come to  
3 : 5 4 P M 19 mind?

3 : 5 4 P M 20 A. Atherotech, Cleveland HeartLab, Boston HeartLab, Hunter  
3 : 5 4 P M 21 HeartLab, Berkeley HeartLab. Did I say Atherotech?

3 : 5 4 P M 22 LipoScience. There was an Atlanta HeartLab. Maybe -- I can't  
3 : 5 4 P M 23 think of any more after that.

3 : 5 4 P M 24 Q. So at the time -- and I'm going to define that as 2009 to  
3 : 5 4 P M 25 June 25th, 2014. During that period of time, was there clear

3 : 5 4 P M 1 direction from the government or the office of inspector  
3 : 5 4 P M 2 general as to whether or not P&H fees were proper?

3 : 5 4 P M 3 A. Absolutely not. I mean, that's what I've been saying is  
3 : 5 4 P M 4 that, in talking with the other CEOs, Atherotech had actually  
3 : 5 5 P M 5 contacted the OIG or DOJ or someone and told them that they  
3 : 5 5 P M 6 were paying P&H and asked for an opinion or a position from the  
3 : 5 5 P M 7 DOJ in 2011. And so it was -- everyone was begging for a  
3 : 5 5 P M 8 position. No one in the market got one.

3 : 5 5 P M 9 Q. The original P&H agreement, who drew that up?

3 : 5 5 P M 10 A. That was drawn up by Dennis Ryan.

3 : 5 5 P M 11 Q. And he was with LeClairRyan at the time?

3 : 5 5 P M 12 A. That's correct.

3 : 5 5 P M 13 Q. And that was a firm with how many attorneys?

3 : 5 5 P M 14 A. About 200 at that time.

3 : 5 5 P M 15 Q. And was the P&H agreement ever modified?

3 : 5 5 P M 16 A. It was modified by LeClairRyan maybe three times, four  
3 : 5 6 P M 17 times.

3 : 5 6 P M 18 Q. Anybody else modify it?

3 : 5 6 P M 19 A. Ropes & Gray modified it in the spring of 2014.

3 : 5 6 P M 20 Q. I want to take you back to Berkeley quickly.

3 : 5 6 P M 21 Did Berkeley do a time and motion study when you were  
3 : 5 6 P M 22 there?

3 : 5 6 P M 23 A. Yes. I was actually part of the lab team that was working  
3 : 5 6 P M 24 on the time and motion study, and I helped collect some of the  
3 : 5 6 P M 25 data and provide the staff to collect the data for Berkeley's

3 : 5 6 P M 1 time and motion study.

3 : 5 6 P M 2 Q. Okay. Can you remind us all again what a time motion  
3 : 5 6 P M 3 study is.

3 : 5 6 P M 4 A. Yeah. It's essentially someone that sits there with a  
3 : 5 6 P M 5 stopwatch and says, you know, Okay. Put the needle in. Take  
3 : 5 6 P M 6 the needle out. That's -- click. That's one time. Put the  
3 : 5 6 P M 7 tube in the centrifuge. Turn the button on. It spins. Okay.  
3 : 5 6 P M 8 That's -- that's another time. Now label the samples. That's  
3 : 5 6 P M 9 another time.

3 : 5 7 P M 10 So they basically have a stopwatch that's looking at  
3 : 5 7 P M 11 every step of the process and timing what it takes to do that.  
12 So moving a sample from one place to the other, how much time.  
13 And then from that time, they apply costs to it.

3 : 5 7 P M 14 Q. And you actually participated in the Berkeley time and  
3 : 5 7 P M 15 motion study?

3 : 5 7 P M 16 A. I participated in the Berkeley time and motion study data  
3 : 5 7 P M 17 collection. We handed that up to the attorneys after that, and  
3 : 5 7 P M 18 I never knew what happened to it.

3 : 5 7 P M 19 Q. Did HDL ever conduct a time and motion study?

3 : 5 7 P M 20 A. I conducted a time and motion study myself in 2009 with a  
3 : 5 7 P M 21 lab manager that was there at the time who was a phlebotomist.  
3 : 5 7 P M 22 And we calculated with a stopwatch. And then I had asked --  
3 : 5 8 P M 23 that was in 2009. We asked for a legal opinion in 2010.  
3 : 5 8 P M 24 Dennis said that we needed an external time and motion study  
3 : 5 8 P M 25 done. I had asked for him to find someone. We were -- it was

3 : 5 8 P M 1 quite chaotic in 2010.

3 : 5 8 P M 2 So some months went by. I asked Dennis again. He  
3 : 5 8 P M 3 reached out to individuals to get that done. I reached out to  
3 : 5 8 P M 4 them. It didn't happen. Couple of months went by. I went  
3 : 5 8 P M 5 back to Dennis and said "Hey, what's going on? We need to get  
3 : 5 8 P M 6 this time and motion study done."

3 : 5 8 P M 7 He put me in contact with someone else. Eventually,  
3 : 5 8 P M 8 Mike Ruggio took over. And then I said -- you know, he was  
3 : 5 8 P M 9 introduced to me for the purpose of handling the external time  
3 : 5 8 P M 10 and motion study. So then he contracted Exponent to get the  
3 : 5 9 P M 11 time and motion study done.

3 : 5 9 P M 12 Q. Well, what's the whole purpose of a time and motion study?

3 : 5 9 P M 13 A. The whole purpose of the time and motion study is to take  
3 : 5 9 P M 14 the process that you're doing, apply dollars to it so that you  
3 : 5 9 P M 15 can determine if the -- what is the fair market value? What is  
3 : 5 9 P M 16 the true average price for doing those motions? And that's  
3 : 5 9 P M 17 ultimately the -- what was needed in order for the attorneys to  
3 : 5 9 P M 18 give us a legal opinion.

3 : 5 9 P M 19 Q. To determine the dollar amount to reimburse the doctors?

3 : 5 9 P M 20 A. That's correct.

3 : 5 9 P M 21 Q. Do you have training in health care industry regulations?

3 : 5 9 P M 22 A. No, not other than what I've received from the company.

3 : 5 9 P M 23 Q. What did you do to make sure that HDL was complying with  
3 : 5 9 P M 24 the rules and regulations of the U.S. government concerning  
3 : 5 9 P M 25 health care?

4 : 0 0 P M 1 A. Now, I know my weaknesses. Law and accounting are two of  
4 : 0 0 P M 2 them. So I relied heavily on the accountants as well as the  
4 : 0 0 P M 3 lawyers to tell us what to do.

4 : 0 0 P M 4 Q. How many -- other than Dennis Ryan, how many lawyers did  
4 : 0 0 P M 5 HDL employ?

4 : 0 0 P M 6 A. We had internally at least six. Then it became -- we  
4 : 0 0 P M 7 hired three more before I left, so a total of nine.

4 : 0 0 P M 8 Q. Those were HDL lawyers?

4 : 0 0 P M 9 A. Well, they were lawyers hired -- employees of HDL working  
4 : 0 0 P M 10 in all kinds of capacities.

4 : 0 0 P M 11 Q. But did you hire lawyers at HDL with the purpose of giving  
4 : 0 1 P M 12 you legal opinions?

4 : 0 1 P M 13 A. So we had external lawyers and we had -- then we  
4 : 0 1 P M 14 eventually had internal lawyers. And those internal lawyers  
4 : 0 1 P M 15 hired more lawyers. So we had lots of lawyers. There was, at  
4 : 0 1 P M 16 any given time -- I mean, especially in 2013, our legal bills  
4 : 0 1 P M 17 in 2013 averaged anywhere from 700,000 to a million a month.  
4 : 0 1 P M 18 And I would guess there was 15 external lawyers and five or six  
4 : 0 1 P M 19 internal lawyers working on it at all times.

4 : 0 1 P M 20 Q. And of course HDL was wildly successful --

4 : 0 1 P M 21 A. Yes.

4 : 0 1 P M 22 Q. -- in the early years; correct?

4 : 0 1 P M 23 A. That's correct.

4 : 0 1 P M 24 Q. By the way, do you have -- do you have \$21 million?

4 : 0 1 P M 25 A. I wish. No. I'm on the verge of bankruptcy.

4 : 0 2 P M 1 Q. Did -- HDL filed for bankruptcy. Was that before or after  
4 : 0 2 P M 2 you were fired?

4 : 0 2 P M 3 A. That was after I was fired.

4 : 0 2 P M 4 Q. Why did you get fired?

4 : 0 2 P M 5 A. In 2014 -- so I mentioned we had one investor that owned  
4 : 0 2 P M 6 51 percent of the units for HDL. He had tried to take over the  
4 : 0 2 P M 7 company on several occasions to take control of the company.  
4 : 0 2 P M 8 He actually was successful to convince my partner Joe McConnell  
4 : 0 2 P M 9 to unseat me. He promised that he would put a bunch of money  
4 : 0 2 P M 10 into HDL, take care of Joe and Russ, my partners. And he  
4 : 0 2 P M 11 promised the contracted sales organization that he would take  
4 : 0 2 P M 12 care of them and buy them and incorporate them into HDL.

4 : 0 3 P M 13 But at the same time, he wanted the -- complete  
4 : 0 3 P M 14 control of the company. So the day that they allowed him to  
4 : 0 3 P M 15 remove me from the company and control the board, he put two  
4 : 0 3 P M 16 more people on the board. He took over control. Joe McConnell  
4 : 0 3 P M 17 had no business experience, so he was turned into his puppet.

4 : 0 3 P M 18 And the very day I left, they -- they called the --  
4 : 0 3 P M 19 Alvarez, which is the company to reorg the company, and his  
4 : 0 3 P M 20 intention was to draw -- to drive the company into bankruptcy  
4 : 0 3 P M 21 so that he could get the company for -- and not have to buy our  
4 : 0 3 P M 22 shares out.

4 : 0 3 P M 23 So he did everything possible to destroy the business  
4 : 0 3 P M 24 so that -- with Joe's help unknowingly -- so that he could get  
4 : 0 4 P M 25 the company in bankruptcy.

4 : 0 4 P M 1 Q. What was Project Twilight?

4 : 0 4 P M 2 A. Project Twilight was a project that we hired Nick Pace to  
4 : 0 4 P M 3 do that was all about moving away from paying P&H and  
4 : 0 4 P M 4 building -- what we called them was hubs. And essentially  
4 : 0 4 P M 5 these were patient service centers that would service a  
4 : 0 4 P M 6 community but also have the health coaches in them so that the  
4 : 0 4 P M 7 patients would have access to the health coaches.

4 : 0 4 P M 8 Q. So HDL was getting away from the payment of P&H fees; is  
4 : 0 4 P M 9 that correct?

4 : 0 4 P M 10 A. Our intention was to be prepared. The government was  
4 : 0 4 P M 11 either going to say it was -- you can't do it or it was worth  
4 : 0 4 P M 12 this amount of dollars. And we needed to be prepared for both  
4 : 0 4 P M 13 scenarios. And so that's what we were doing. We were moving  
4 : 0 5 P M 14 away from P&H and building these centers. I think by the time  
4 : 0 5 P M 15 I left, we had six or so in place. And there was a plan to put  
4 : 0 5 P M 16 20 in by Q1 of the following year.

4 : 0 5 P M 17 Q. And by the time you were fired, were you acquiring  
4 : 0 5 P M 18 furniture, assets for the implementation of Project Twilight?

4 : 0 5 P M 19 A. There was -- there was ten sets of furniture, when I left,  
4 : 0 5 P M 20 in the warehouse at HDL for ten additional sites in the last  
4 : 0 5 P M 21 quarter. And there was going to be at least ten more sites  
4 : 0 5 P M 22 every quarter of every year going in.

4 : 0 5 P M 23 Q. Have you ever been arrested?

4 : 0 5 P M 24 A. No. I don't think so.

4 : 0 5 P M 25 Q. Ever gotten a traffic ticket for running a red light?



4 : 0 6 P M 1 A. Not running a red light.

4 : 0 6 P M 2 Q. Okay.

4 : 0 6 P M 3 MR. ASHMORE: Your Honor --

4 : 0 6 P M 4 THE COURT: Is there an objection?

4 : 0 6 P M 5 MR. LEVENTIS: Yes, Your Honor. I'm not quite sure  
4 : 0 6 P M 6 what his --

4 : 0 6 P M 7 THE COURT: What's the relevance?

4 : 0 6 P M 8 MR. ASHMORE: I'll move on, Your Honor.

4 : 0 6 P M 9 I have a number of --

4 : 0 6 P M 10 THE COURT: Sustained.

4 : 0 6 P M 11 MR. ASHMORE: Yes, Your Honor.

4 : 0 6 P M 12 I have a number of documents that have already  
4 : 0 6 P M 13 been introduced. I can go into those now?

4 : 0 6 P M 14 THE COURT: Absolutely.

4 : 0 6 P M 15 MR. ASHMORE: Yes, sir.

4 : 0 6 P M 16 May I approach, Your Honor?

4 : 0 6 P M 17 THE COURT: You may.

4 : 0 6 P M 18 BY MR. ASHMORE:

4 : 0 6 P M 19 Q. I'll start with that first document too, please,  
4 : 0 6 P M 20 Ms. Mallory.

4 : 0 7 P M 21 Is that coming up on your screen?

4 : 0 7 P M 22 A. Yes, sir.

4 : 0 7 P M 23 Q. Okay. Can you tell us what Exhibit 2 is, please?

4 : 0 7 P M 24 A. So in March 2010, in the middle of March, we -- I  
4 : 0 7 P M 25 mentioned that HDL had settled the Berkeley lawsuit. And our

4 : 0 7 P M 1 attorneys were working on the Bluewave sales agreement. And so  
4 : 0 7 P M 2 this communication, the attorney had some questions. He had  
4 : 0 7 P M 3 spoken to their attorneys and were working through  
4 : 0 8 P M 4 clarifications, changes, issues with the agreement between  
4 : 0 8 P M 5 Bluewave's attorneys and Dennis Ryan, our attorney.

4 : 0 8 P M 6 Q. And the attorneys drafted this contract; is that correct?

4 : 0 8 P M 7 A. Yes.

4 : 0 8 P M 8 Q. I'll show you Exhibit 3. Tell us what this is.

4 : 0 8 P M 9 A. So in February 2011, this is an email where I had  
4 : 0 8 P M 10 communicated some -- one of the competitors had said that they  
4 : 0 8 P M 11 were reporting us to the OIG for inducement. And they said  
4 : 0 8 P M 12 that the reason that they were doing that was because the  
4 : 0 8 P M 13 process and handling agreement said that they were -- the fee  
4 : 0 9 P M 14 is not acceptable in the case where a single sample type is  
4 : 0 9 P M 15 collected or a single test is ordered.

4 : 0 9 P M 16 And I told the attorneys that this was their concern  
4 : 0 9 P M 17 in February and asked them to take another look at the P&H fee  
4 : 0 9 P M 18 agreement and see if there was anything that we needed to  
4 : 0 9 P M 19 change.

4 : 0 9 P M 20 Q. And is there a follow-up to that?

4 : 0 9 P M 21 A. They did not change the agreement. It stayed. And so we  
4 : 0 9 P M 22 discussed it, and there was no change to the agreement at that  
4 : 0 9 P M 23 time.

4 : 0 9 P M 24 Q. Show you Exhibit 4. What is that, Ms. Mallory?

4 : 0 9 P M 25 A. This is an email from Joe Anastasia, who was in charge of

4 : 0 9 P M 1 all of the -- he reported to Anna McKean. He was in charge  
4 : 0 9 P M 2 of -- he oversaw all of the sales support and all of the client  
4 : 1 0 P M 3 service people. And he -- well, director of business  
4 : 1 0 P M 4 operations was his official title. And he -- at some point in  
4 : 1 0 P M 5 time in 2014, we were asked by Ropes & Gray about how many  
4 : 1 0 P M 6 unique test menus that doctors had selected. And this shows  
4 : 1 0 P M 7 that there was 5,390 unique selections from the physicians at  
4 : 1 0 P M 8 that time.

4 : 1 0 P M 9 Q. And Exhibit 5, this large document, what is that,  
4 : 1 0 P M 10 Ms. Mallory?

4 : 1 0 P M 11 A. Oh, this is a copy -- in January of 2012, Mike Ruggio had  
4 : 1 1 P M 12 started working on the external time and motion study. And,  
4 : 1 1 P M 13 you know, from a theme for the company -- if you can imagine,  
4 : 1 1 P M 14 in 2010 we were just getting started. We were growing rapidly,  
4 : 1 1 P M 15 making every mistake possible. 2011 was our goal of getting in  
4 : 1 1 P M 16 front of -- operationally, making sure that we weren't  
4 : 1 1 P M 17 reacting, things weren't breaking, we were in stable condition.  
4 : 1 1 P M 18 And 2012 was our year to catch up and clean up, was what we  
4 : 1 1 P M 19 called it, and review every process that we had, every issue  
4 : 1 1 P M 20 that had come up, anything that was going on, and make sure  
4 : 1 1 P M 21 everything was buttoned up.

4 : 1 1 P M 22 And so this was -- early that year, I'd led off with  
4 : 1 1 P M 23 a document that I had researched from pharma and from the OIG  
4 : 1 2 P M 24 on their advice to laboratories. I put this document together.  
4 : 1 2 P M 25 It's called regulatory and field compliance guidelines for the

4 : 1 2 P M 1 sales force. I sent them this -- I sent it to Mike Ruggio at  
4 : 1 2 P M 2 the attorney's office and asked them to review it. And we came  
4 : 1 2 P M 3 back -- and sent the attachments of what I'd used as a  
4 : 1 2 P M 4 reference.

4 : 1 2 P M 5 And he reviewed this. And, ultimately, it was  
4 : 1 2 P M 6 approved, finalized. We trained Cal and Brad on it, and they  
4 : 1 2 P M 7 trained the field on it. Then we documented the training and  
4 : 1 2 P M 8 it went into their HR folders.

4 : 1 2 P M 9 Q. Next, Exhibit 6. I don't want to belabor the point. It's  
4 : 1 2 P M 10 already gone through with Mr. Shaheen. But the Lester Perling  
4 : 1 2 P M 11 situation, do you remember that attorney?

4 : 1 2 P M 12 A. That's correct.

4 : 1 3 P M 13 Q. And he claimed at some point that what HDL was doing was  
4 : 1 3 P M 14 illegal. And you referred that to your own legal team; is that  
4 : 1 3 P M 15 correct?

4 : 1 3 P M 16 A. That's correct. This is the email where I forwarded it to  
4 : 1 3 P M 17 Pat Hurd, who works for LeClairRyan and Dennis Ryan, and asked  
4 : 1 3 P M 18 them, how do I respond to that?

4 : 1 3 P M 19 Q. And it was your understanding that eventually they came to  
4 : 1 3 P M 20 an agreement such that that practice began to use HDL?

4 : 1 3 P M 21 A. So both Pat Hurd and Dennis Ryan called Mr. Perling. I'm  
4 : 1 3 P M 22 pretty sure Dr. Reddy was on the phone, but I'm not certain  
4 : 1 3 P M 23 about that. And they --

4 : 1 3 P M 24 MR. SHAHEEN: Objection, Your Honor. This is  
4 : 1 3 P M 25 hearsay. She was not a party to any of these conversations.

4 : 1 3 P M 1 THE COURT: Well, what is it being offered for?

4 : 1 3 P M 2 I'm asking, Mr. Ashmore.

4 : 1 3 P M 3 MR. ASHMORE: Yes, Your Honor. I got lost on her  
4 : 1 3 P M 4 answer, to be honest with you.

4 : 1 3 P M 5 THE COURT: Why don't we rephrase the question? I  
4 : 1 4 P M 6 sustain the objection.

4 : 1 4 P M 7 MR. ASHMORE: Yes, Your Honor.

4 : 1 4 P M 8 BY MR. ASHMORE:

4 : 1 4 P M 9 Q. What was your understanding, Ms. Mallory, as to what  
4 : 1 4 P M 10 happened once the attorneys talked, the HDL attorneys and  
4 : 1 4 P M 11 Mr. Perling?

4 : 1 4 P M 12 A. My understanding was that everything was okay and that --

4 : 1 4 P M 13 MR. SHAHEEN: Your Honor, objection. There's no  
4 : 1 4 P M 14 foundation for her understanding here.

4 : 1 4 P M 15 THE COURT: Well, she was trying to lay the  
4 : 1 4 P M 16 foundation. You objected as hearsay.

4 : 1 4 P M 17 I'm going to let it in as to her state of mind.  
4 : 1 4 P M 18 She can state her understanding.

4 : 1 4 P M 19 Go ahead.

4 : 1 4 P M 20 MR. SHAHEEN: Thank you, Your Honor.

4 : 1 4 P M 21 THE WITNESS: So my understanding was that everything  
4 : 1 4 P M 22 was okay with Dr. Reddy and Lester Perling, and he would start  
4 : 1 4 P M 23 using HDL.

4 : 1 4 P M 24 BY MR. ASHMORE:

4 : 1 4 P M 25 Q. So there was a concern. You got your attorneys involved,

4 : 1 4 P M 1 and there was no longer a concern; is that correct?

4 : 1 4 P M 2 A. That happened almost weekly.

4 : 1 4 P M 3 Q. Okay. Defendants' Exhibit 7. What is that, Ms. Mallory?

4 : 1 5 P M 4 A. All right. So in early April -- it looks like April of  
4 : 1 5 P M 5 2014 -- it was brought to my attention that there were some  
4 : 1 5 P M 6 TRICARE claims that weren't -- where we did not bill the copays  
4 : 1 5 P M 7 or deductibles mistakenly. I was never aware of that; that was  
4 : 1 5 P M 8 brought to my attention by Ropes & Gray.

4 : 1 5 P M 9 Q. Which one are you looking at?

4 : 1 5 P M 10 A. Exhibit 9.

4 : 1 5 P M 11 Q. No, no, no. 7, please.

4 : 1 5 P M 12 A. Sorry.

4 : 1 5 P M 13 THE COURT: Why don't we go ahead -- are you planning  
4 : 1 5 P M 14 to do 9?

4 : 1 5 P M 15 MR. ASHMORE: I'm planning to do 9.

4 : 1 5 P M 16 THE COURT: She's explaining it. Why don't you go  
4 : 1 5 P M 17 ahead and get that done?

4 : 1 5 P M 18 BY MR. ASHMORE:

4 : 1 5 P M 19 Q. Finish up with that, please.

4 : 1 5 P M 20 A. All right. So the -- Ropes & Gray brought it to my  
4 : 1 5 P M 21 attention -- our compliance officer also brought it to my  
4 : 1 5 P M 22 attention -- that there was some TRICARE patients, federal  
4 : 1 5 P M 23 payers, where we did not bill copays and deductibles. And that  
4 : 1 6 P M 24 was never our intention to not bill copays and deductibles. I  
4 : 1 6 P M 25 get billing reports of -- I would see the billing reports for

4 : 1 6 P M 1 the top 20 payers or 10 payers. And they were less than  
4 : 1 6 P M 2 1 percent of our total revenue, so they never showed up in any  
4 : 1 6 P M 3 report that I had.

4 : 1 6 P M 4 But they brought it to my attention, and I was  
4 : 1 6 P M 5 surprised. And so I sent it to the billing manager and the  
4 : 1 6 P M 6 billing supervisor and asked them to make sure that we're  
4 : 1 6 P M 7 billing patient responsibility for all -- all the federal  
4 : 1 6 P M 8 payers. And then they're confirming, on the next page, that  
4 : 1 6 P M 9 that's what they're doing.

4 : 1 6 P M 10 Q. Now let's go to 7.

4 : 1 6 P M 11 A. Sorry about that.

4 : 1 6 P M 12 Q. Tell me what that is.

4 : 1 6 P M 13 A. This is an email from Mr. Ruggio, who was a lawyer at  
4 : 1 7 P M 14 LeClairRyan. And he provided to me the legal opinion letter  
4 : 1 7 P M 15 after receiving the time and motion study.

4 : 1 7 P M 16 Q. Do you know Mr. Ruggio's background?

4 : 1 7 P M 17 A. Mr. Ruggio worked for the DOJ, I want to say for ten years  
4 : 1 7 P M 18 or more.

4 : 1 7 P M 19 Q. We've established that's Department of Justice; right?

4 : 1 7 P M 20 A. That's correct.

4 : 1 7 P M 21 Q. Okay. Well, what was his reputation in terms of the  
4 : 1 7 P M 22 health care industry as an attorney?

4 : 1 7 P M 23 A. I had not known him. I didn't know many of them.

4 : 1 7 P M 24 MR. SHAHEEN: Your Honor, objection.

4 : 1 7 P M 25 THE COURT: Sustained.

4 : 1 7 P M 1 BY MR. ASHMORE:

4 : 1 7 P M 2 Q. Let me ask a better question.

4 : 1 7 P M 3 was he experienced in health care law?

4 : 1 7 P M 4 A. Yes.

4 : 1 7 P M 5 Q. And attached to this document, is this the HDL time and  
4 : 1 7 P M 6 motion study from LeClairRyan?

4 : 1 8 P M 7 A. So this is the legal analysis of the time and motion  
4 : 1 8 P M 8 study.

4 : 1 8 P M 9 Q. Right. And what does Mr. Ruggio conclude?

4 : 1 8 P M 10 A. He concludes that \$36.03 is a fair market value for the  
4 : 1 8 P M 11 processing and handling fee.

4 : 1 8 P M 12 Q. And how do you reconcile that number versus the \$17 that  
4 : 1 8 P M 13 was paid for P&H?

4 : 1 8 P M 14 A. So when I originally did the calculations, the internal  
4 : 1 8 P M 15 time and motion study, I came up with something like 34 or \$35.  
4 : 1 8 P M 16 So I wasn't surprised to see it. We always used 17 to err on  
4 : 1 8 P M 17 the side of caution until the external study was done. So I  
4 : 1 8 P M 18 wasn't surprised to see that amount, but we did not change our  
4 : 1 9 P M 19 processing and handling arrangements with the physicians.

4 : 1 9 P M 20 Q. Defendants' 10, what is that, Ms. Mallory?

4 : 1 9 P M 21 A. This is an email from Doug Sbertoli to Joe, Russ, and I,  
4 : 1 9 P M 22 copying Laura Hoey from Ropes & Gray, and David Rhinesmith and  
4 : 1 9 P M 23 Brien O'Connor from Ropes & Gray were copied on the original  
4 : 1 9 P M 24 email.

4 : 1 9 P M 25 Q. And what does -- what does this email indicate?



4 : 1 9 P M 1 A. This is dated January of 2014, and the discussions with  
4 : 2 0 P M 2 the attorneys said that they were particularly interested in  
4 : 2 0 P M 3 copay waiver practices and that Ropes & Gray made it clear  
4 : 2 0 P M 4 to -- to the DOJ that they were going to table any discussions  
4 : 2 0 P M 5 about waiver of attorney-client privilege with them until the  
4 : 2 0 P M 6 DOJ would take a position.

4 : 2 0 P M 7 And Mr. Leventis had said that he needed to connect  
4 : 2 0 P M 8 with Elizabeth on this issue but agreed that it made sense to  
4 : 2 0 P M 9 put it on hold and said that they would have to -- in the  
4 : 2 0 P M 10 discussion, Mr. Leventis noted that he expected the DOJ will  
4 : 2 0 P M 11 have to take a position on this issue at some point during the  
4 : 2 0 P M 12 course of the investigation and they were going to prepare to  
4 : 2 0 P M 13 do so.

4 : 2 0 P M 14 Q. Ropes & Gray had approached Department of Justice on  
4 : 2 0 P M 15 behalf of HDL; is that correct?

4 : 2 0 P M 16 A. That's correct.

4 : 2 0 P M 17 Q. Okay. And is this a result of some of those  
4 : 2 1 P M 18 communications?

4 : 2 1 P M 19 A. Yes. I said before, we were pushing our attorneys to get  
4 : 2 1 P M 20 a position from the DOJ, whether it was informal or formal.  
4 : 2 1 P M 21 And we wanted the government to take a position on P&H. So the  
4 : 2 1 P M 22 attorneys were doing that. And, here, in January '14, this  
4 : 2 1 P M 23 email is reporting to us the conversation where Mr. Leventis  
4 : 2 1 P M 24 and the DOJ -- Elizabeth Strawn, Mr. Leventis, and the rest of  
4 : 2 1 P M 25 the team at the DOJ -- had still not taken a position.

4 : 2 1 P M 1 Q. A position on what?

4 : 2 1 P M 2 A. P&H fees legality.

4 : 2 1 P M 3 Q. What is this Document 12?

4 : 2 2 P M 4 A. So this is the original draft of the HDL position  
4 : 2 2 P M 5 statement for the P&H fees.

4 : 2 2 P M 6 Q. Let's move on from that one.

4 : 2 2 P M 7 A. All right.

4 : 2 2 P M 8 Q. Let's talk about 11. What is that?

4 : 2 2 P M 9 A. This is -- so this is a process and handling agreement  
4 : 2 2 P M 10 that was sent to us from Bon Secours Hospital, which is a major  
4 : 2 2 P M 11 hospital system. They had reviewed the process and handling  
4 : 2 2 P M 12 agreement for six months, and their attorneys changed the  
4 : 2 3 P M 13 process and handling agreement from the two pages that we had  
4 : 2 3 P M 14 to -- I don't know -- 10 pages here.

4 : 2 3 P M 15 And so after their legal review, they signed this  
4 : 2 3 P M 16 process and handling agreement and sent it back to us with a  
4 : 2 3 P M 17 whole bunch more legal wording.

4 : 2 3 P M 18 Q. So was an entire hospital a client of HDL?

4 : 2 3 P M 19 A. Yes.

4 : 2 3 P M 20 MR. SHAHEEN: Your Honor, objection. This is a  
4 : 2 3 P M 21 document that references lab-to-lab P&H payments. It's not  
4 : 2 3 P M 22 relevant to what we're discussing here in regards to the  
4 : 2 3 P M 23 lab-to-physician payments.

4 : 2 3 P M 24 THE COURT: Why is it relevant?

4 : 2 3 P M 25 MR. ASHMORE: Well, Your Honor, I thought I'd been

1 over all of these exhibits with the government. But, Your  
2 Honor, it is relevant because it demonstrates that Ms. Mallory  
3 and HDL had entire hospitals as clients.

4 THE COURT: Not an issue. If that's the only basis,  
5 I sustain the objection.

6 MR. ASHMORE: Very well, Your Honor.

7 THE COURT: So that's Exhibit HDL 11?

8 MR. ASHMORE: 11.

9 THE COURT: I sustain the government's objection as  
10 to HDL 11.

11 BY MR. ASHMORE:

12 Q. 13. What is this, Ms. Mallory?

13 A. So this is in May of 2014. This was Laura Hoey from  
14 Ropes & Gray, Doug Sbertoli, Kathy Johnson -- Doug Sbertoli was  
15 our in-house counsel; Kathy Johnson was our chief compliance  
16 officer -- and a slew of other attorneys from Ropes & Gray.  
17 And they had modified the P&H position statement for the field.  
18 And they were looking for -- in this -- they were looking for  
19 an older version. And it looks like Laura Hoey was asking Doug  
20 and Kathy for that document.

21 Q. And this begins for the DOJ presentation. What do you  
22 know about that?

23 A. So once the -- in May -- I want to say late March, early  
24 April, the DOJ finally took a position on P&H and said that  
25 they had issues with it. So Ropes & Gray was preparing for the

4 : 2 5 P M 1 meeting with the DOJ and preparing a PowerPoint presentation.

4 : 2 5 P M 2 And so they were looking for some of these old documents to go  
4 : 2 5 P M 3 in that presentation for the meeting with the DOJ.

4 : 2 5 P M 4 Q. Exhibit 15?

4 : 2 5 P M 5 A. So this is an email from -- in July of 2010, where Patrick  
4 : 2 5 P M 6 Hurd had reviewed the processing and handling position paper  
4 : 2 6 P M 7 and came back with some modifications to the position paper,  
4 : 2 6 P M 8 obviously changing the conclusion to much more legalese than  
4 : 2 6 P M 9 I could do, and -- and eventually this went out for  
4 : 2 6 P M 10 distribution.

4 : 2 6 P M 11 Q. 22.

4 : 2 6 P M 12 A. So this was an email between the BlueWave attorneys and  
4 : 2 6 P M 13 our attorneys and then ultimately to myself from Nick Pace. He  
4 : 2 6 P M 14 had asked for some information from Bluewave's compliance team,  
4 : 2 7 P M 15 their attorneys, about their tests. And he had followed up in  
4 : 2 7 P M 16 getting that information.

4 : 2 7 P M 17 Q. And at the bottom of this document, the email from Linda  
4 : 2 7 P M 18 Flipppo, what is that concerning?

4 : 2 7 P M 19 A. She says that she's -- she sent to our attorney the  
4 : 2 7 P M 20 written compliance guidelines that BlueWave had and a couple of  
4 : 2 7 P M 21 binders that they had contained, a PowerPoint presentation,  
4 : 2 7 P M 22 certificates of completion for some coursework, and the tests  
4 : 2 7 P M 23 completed by the independent contractors on various dos and  
4 : 2 7 P M 24 don'ts in dealing with providers.

4 : 2 7 P M 25 And this was at the request of our compliance team to

4 : 2 7 P M 1 make sure that -- that of course BlueWave was compliant.

4 : 2 8 P M 2 Q. Let's jump ahead to 26, the email in the middle, Patrick  
4 : 2 8 P M 3 Hurd in 2009. what does that concern?

4 : 2 8 P M 4 A. So Patrick Hurd was talking to Dennis Ryan, and it -- Pat  
4 : 2 8 P M 5 Hurd was also the health care specialist.

4 : 2 8 P M 6 MR. SHAHEEN: Your Honor --

4 : 2 8 P M 7 THE WITNESS: -- before Mike Ruggio.

4 : 2 8 P M 8 THE COURT: Yes, sir?

4 : 2 8 P M 9 MR. SHAHEEN: Is Ms. Mallory on this document? I  
4 : 2 8 P M 10 can't tell from the screen.

4 : 2 8 P M 11 MR. ASHMORE: You mean is she --

4 : 2 8 P M 12 THE COURT: Copied?

4 : 2 8 P M 13 MR. SHAHEEN: Yes.

4 : 2 8 P M 14 THE COURT: You want to show him that?

4 : 2 8 P M 15 MR. SHAHEEN: But you're talking about a different  
4 : 2 8 P M 16 email. She didn't receive the email you were talking about.

4 : 2 9 P M 17 BY MR. ASHMORE:

4 : 2 9 P M 18 Q. well, let me ask you, have you ever seen this email?

4 : 2 9 P M 19 A. Yes, I've seen this email, but originally it came for me  
4 : 2 9 P M 20 at my request.

4 : 2 9 P M 21 So if you look at October 26th, 2009, I sent Dennis a  
4 : 2 9 P M 22 request. And, you know, this is before BlueWave. This is  
4 : 2 9 P M 23 during the very beginning of the company. I told them that we  
4 : 2 9 P M 24 wanted Dennis -- we wanted to provide the clients that were  
4 : 2 9 P M 25 willing to process their own samples. And could we -- you

4 : 2 9 P M 1 review the changes.

4 : 2 9 P M 2 I had put together kind of a bulleted list. They  
4 : 2 9 P M 3 came back. When Dennis ultimately sent it to Pat Hurd, Pat  
4 : 2 9 P M 4 Hurd and Dennis had a conversation about it. It says "It  
4 : 3 0 P M 5 doesn't run afoul of the anti-kickback. We're good to go."

4 : 3 0 P M 6 Dennis modified the document. And I don't see his  
4 : 3 0 P M 7 communication back to me, but he ultimately sent this back to  
4 : 3 0 P M 8 me with the final P&H agreement.

4 : 3 0 P M 9 **THE COURT:** Overrule the objection.

4 : 3 0 P M 10 **MR. ASHMORE:** Thank you, Your Honor.

4 : 3 0 P M 11 **BY MR. ASHMORE:**

4 : 3 0 P M 12 **Q.** Defendants' 28, what is that?

4 : 3 0 P M 13 **A.** That's actually the very first page of the communication  
4 : 3 0 P M 14 to Dennis that you saw in 26, the page 3 or 2 there. That was  
4 : 3 0 P M 15 the original email I sent to Dennis requesting him to help me  
4 : 3 0 P M 16 with the P&H agreement.

4 : 3 1 P M 17 **Q.** And 29?

4 : 3 1 P M 18 **A.** So this was in October 25th, 2013. This was after Ropes &  
4 : 3 1 P M 19 Gray had modified -- you know, worked with HDL for 10, 11  
4 : 3 1 P M 20 months now. They modified the P&H agreement again to  
4 : 3 1 P M 21 strengthen compliance documentation. And I sent the new P&H  
4 : 3 1 P M 22 agreement to Cal and Brad, giving them notice that this was  
4 : 3 1 P M 23 going to be the new document.

4 : 3 1 P M 24 **Q.** 31, what is that, Ms. Mallory?

4 : 3 1 P M 25 And let's back up in that document a little bit and

4 : 3 2 P M 1 get some background. Tell the members of the jury what this  
4 : 3 2 P M 2 concerns.

4 : 3 2 P M 3 THE COURT: Mr. Ashmore, how much further are you  
4 : 3 2 P M 4 going to go? We've been going about an hour and a half.

4 : 3 2 P M 5 MR. ASHMORE: Yes, Your Honor. Perfect breaking  
4 : 3 2 P M 6 point now.

4 : 3 2 P M 7 THE COURT: Let's take a 10-minute break.

4 : 3 2 P M 8 (Whereupon the jury was excused from the courtroom.)

4 : 3 2 P M 9 THE COURT: Please be seated. Mr. Ashmore, what do  
4 : 3 2 P M 10 you estimate further examination?

4 : 3 3 P M 11 MR. ASHMORE: 30 to 45 minutes.

4 : 3 3 P M 12 THE COURT: Fair enough. And any estimates,  
4 : 3 3 P M 13 Mr. Griffith or Mr. Cooke?

4 : 3 3 P M 14 MR. GRIFFITH: Your Honor, I'd like to see what he  
4 : 3 3 P M 15 finishes, but it would be very limited, I think, from this  
4 : 3 3 P M 16 point.

4 : 3 3 P M 17 THE COURT: How about redirect?

4 : 3 3 P M 18 MR. SHAHEEN: There would be some redirect, Your  
4 : 3 3 P M 19 Honor.

4 : 3 3 P M 20 THE COURT: I'm sorry?

4 : 3 3 P M 21 MR. SHAHEEN: We will do some redirect, Your Honor.  
4 : 3 3 P M 22 I'm not quite sure how long. It will depend on --

4 : 3 3 P M 23 THE COURT: We're obviously going to go for a while  
4 : 3 3 P M 24 longer, but I don't want to wear my jury out. Every witness is  
4 : 3 3 P M 25 important. This is an important witness, and I don't want them

4 : 3 3 P M 1 so exhausted they just tune out after a while.

4 : 3 3 P M 2 So we'll go a while, but if I start watching  
4 : 3 3 P M 3 that they seem exhausted and inattentive -- it doesn't sound  
4 : 3 3 P M 4 like to me we're actually going to finish with Ms. Mallory  
4 : 3 3 P M 5 today. So just doesn't sound that way. If I'm wrong, we'll --  
4 : 3 3 P M 6 that's fine. But let's see how far we can go.

4 : 3 3 P M 7 I'm not trying to rush you, Mr. Ashmore.

4 : 3 3 P M 8 MR. ASHMORE: Thank you, Your Honor. I can speed it  
4 : 3 3 P M 9 up.

4 : 3 4 P M 10 THE COURT: And we'll sort of see how far we go, but  
4 : 3 4 P M 11 if we don't finish, unlike some witnesses who come in from out  
4 : 3 4 P M 12 of town, Ms. Mallory is going to be with us. So I don't think  
4 : 3 4 P M 13 it's the world's biggest deal other than she probably would  
4 : 3 4 P M 14 love to have this over with.

4 : 3 4 P M 15 Does that make sense to everybody?

4 : 3 4 P M 16 MR. LEVENTIS: Yes, Your Honor. I was just going to  
4 : 3 4 P M 17 ask. We have some witnesses that are waiting in the wings.

4 : 3 4 P M 18 THE COURT: Well, you know, you called Ms. Mallory;  
4 : 3 4 P M 19 they didn't, you know.

4 : 3 4 P M 20 MR. LEVENTIS: I just wanted to -- I mean, I was  
4 : 3 4 P M 21 thinking, would it be all right to tell them they can go home  
4 : 3 4 P M 22 for the day?

4 : 3 4 P M 23 THE COURT: Yes, they can go home for today. Tell  
4 : 3 4 P M 24 them to be back --

4 : 3 4 P M 25 MR. LEVENTIS: I just wanted to make sure I checked



4 : 3 4 P M 1 with you before I --

4 : 3 4 P M 2 THE COURT: Yeah, sorry. I don't believe we're going  
4 : 3 4 P M 3 to finish. I think by the time we finish Ms. Mallory, whenever  
4 : 3 4 P M 4 it is, if we were to finish earlier, I think everybody is ready  
4 : 3 4 P M 5 to go home. So that'll be fine.

4 : 3 4 P M 6 Let's take about a 10-minute break.

4 : 3 4 P M 7 Guys, let me raise an issue. It's -- it's what  
4 : 3 5 P M 8 now?

4 : 3 5 P M 9 THE DEPUTY CLERK: 1468.

4 : 3 5 P M 10 THE COURT: 1468. That was a BlueWave exhibit -- I  
4 : 3 5 P M 11 mean a government exhibit?

4 : 3 5 P M 12 THE DEPUTY CLERK: Yes.

4 : 3 5 P M 13 THE COURT: What's with that?

4 : 3 5 P M 14 THE DEPUTY CLERK: When he started direct, he had  
4 : 3 5 P M 15 moved to put all these in at one time.

4 : 3 5 P M 16 THE COURT: Yes.

4 : 3 5 P M 17 THE DEPUTY CLERK: And then just now they just  
4 : 3 5 P M 18 admitted it over BlueWave's objection, but they didn't object  
4 : 3 5 P M 19 when they put it in. Remember when they put in all these at  
4 : 3 5 P M 20 once?

4 : 3 5 P M 21 THE COURT: It had already been in. It was already  
4 : 3 5 P M 22 in.

4 : 3 5 P M 23 I was concerned about HDL Exhibit 11, because  
4 : 3 5 P M 24 there was an objection.

4 : 3 5 P M 25 Had that not come in earlier, and then --

4 : 3 5 P M 1 MR. ASHMORE: Your Honor, all my exhibits are in. I  
4 : 3 5 P M 2 don't --

4 : 3 5 P M 3 THE DEPUTY CLERK: No, I'm not talking about you.

4 : 3 5 P M 4 THE COURT: I know, but I'm raising it now because  
4 : 3 5 P M 5 then the government raised the issue.

4 : 3 5 P M 6 Tell me about that, Mr. Shaheen. Did you  
4 : 3 5 P M 7 already --

4 : 3 5 P M 8 MR. SHAHEEN: I objected to the line of questioning,  
4 : 3 5 P M 9 Your Honor.

4 : 3 5 P M 10 THE COURT: Huh?

4 : 3 5 P M 11 MR. SHAHEEN: I was objecting to the line of  
4 : 3 5 P M 12 questioning.

4 : 3 5 P M 13 THE COURT: Okay. I'm going to just clarify the  
4 : 3 5 P M 14 record. HDL 11 is in.

4 : 3 6 P M 15 Your objection was that he was pursuing  
4 : 3 6 P M 16 something that was -- tell me the nature of your objection.

4 : 3 6 P M 17 MR. SHAHEEN: It's hard in the abstract, Your Honor.  
4 : 3 6 P M 18 I don't have the document in front of me.

4 : 3 6 P M 19 MS. SHORT: I believe it's Mallory Exhibit 11.

4 : 3 6 P M 20 MR. ASHMORE: A relevance objection, I believe.

4 : 3 6 P M 21 THE COURT: This was the laboratory -- lab-to-lab  
4 : 3 6 P M 22 document?

4 : 3 6 P M 23 MR. LEVENTIS: Yes, Your Honor.

4 : 3 6 P M 24 MR. COOKE: Bon Secours agreement.

4 : 3 6 P M 25 THE COURT: Bon Secours. And I agree with you that

4 : 3 6 P M 1 it's not -- that it's apples and oranges regarding a physician  
4 : 3 6 P M 2 agreement, but the difficulty is -- and I said he'd just been  
4 : 3 6 P M 3 offering it, but it did occur to me after I said that that he'd  
4 : 3 6 P M 4 already gotten it in and you had not objected.

4 : 3 6 P M 5 MR. ASHMORE: And a better argument from me would  
4 : 3 6 P M 6 have been state of mind, which is why I was offering it, Your  
4 : 3 6 P M 7 Honor.

4 : 3 6 P M 8 THE COURT: Well, that's not great because it's  
4 : 3 6 P M 9 apples and oranges. My problem is you had already not objected  
4 : 3 6 P M 10 to it and it came in.

4 : 3 6 P M 11 MR. SHAHEEN: Yes, Your Honor. And I think, you  
4 : 3 7 P M 12 know, that -- that's on us, Your Honor. The line of  
4 : 3 7 P M 13 questioning doesn't necessarily come in.

4 : 3 7 P M 14 THE COURT: Let me clarify. HDL 11 came in without  
4 : 3 7 P M 15 objection. It's in. So to the extent that I indicated -- I  
4 : 3 7 P M 16 sustained the objection, I now reverse myself on that because  
4 : 3 7 P M 17 it came in.

4 : 3 7 P M 18 In terms of if he should go back and address the  
4 : 3 7 P M 19 issue of trying to compare the two, you can -- you know, I will  
4 : 3 7 P M 20 sustain an objection that it's apples and oranges, but you had  
4 : 3 7 P M 21 already allowed that document in. And, of course, at closing  
4 : 3 7 P M 22 argument, you can make that point if you wish to.

4 : 3 7 P M 23 MR. SHAHEEN: Yes, Your Honor. And I was not  
4 : 3 7 P M 24 objecting to the document itself. I was objecting to the line  
4 : 3 7 P M 25 of questioning.

4 : 3 7 P M 1 THE COURT: I may have misunderstood you. I thought  
4 : 3 7 P M 2 you were.

4 : 3 7 P M 3 So anyway HDL 11 is in, as are all of the  
4 : 3 7 P M 4 documents previously admitted.

4 : 3 7 P M 5 Take a 10-minute break.

4 : 3 7 P M 6 MR. GRIFFITH: Your Honor, you called it HDL. I just  
4 : 3 7 P M 7 want to -- for the record, it's Mallory.

4 : 3 7 P M 8 THE COURT: It's Mallory. I'm sorry.

4 : 3 7 P M 9 MR. GRIFFITH: I just want it for the record.

4 : 3 7 P M 10 THE COURT: Thank you very much. It is Mallory.  
4 : 3 7 P M 11 Thank you.

4 : 3 7 P M 12 (Recess.)

4 : 4 7 P M 13 THE COURT: Please be seated.

4 : 4 7 P M 14 Yes?

4 : 4 7 P M 15 MR. LEVENTIS: Can we do one real quick housekeeping  
4 : 4 7 P M 16 matter?

4 : 4 7 P M 17 THE COURT: Yes.

4 : 4 7 P M 18 MS. SHORT: Yes, Your Honor. We are still optimistic  
4 : 4 7 P M 19 that sometime tomorrow we will be playing the video clip  
4 : 4 7 P M 20 depositions from the Bluewave defendants.

4 : 4 7 P M 21 Given the technology issue today and trying to  
4 : 4 8 P M 22 get the resolution right on the screens, our intention is to  
4 : 4 8 P M 23 very quickly tonight test a projector and a screen that we  
4 : 4 8 P M 24 would set up --

4 : 4 8 P M 25 THE COURT: That would be fine. Let's take care of

4 : 4 8 P M 1 this once we finish today.

4 : 4 8 P M 2 MS. SHORT: Assuming that we present that, depending  
4 : 4 8 P M 3 on where that comes during the day, if it comes during a break  
4 : 4 8 P M 4 and we can set up quickly we will --

4 : 4 8 P M 5 THE COURT: We'll make sure you can do that.

4 : 4 8 P M 6 MS. SHORT: Yeah.

4 : 4 8 P M 7 THE COURT: Okay. Bring in the jury.

4 : 4 8 P M 8 Mr. Ashmore, don't feel like you're rushed. You  
4 : 4 8 P M 9 got all the time you need.

4 : 4 8 P M 10 MR. ASHMORE: It's just me I'm worried about.

4 : 5 0 P M 11 THE COURT: Please be seated.

4 : 5 0 P M 12 Mr. Ashmore, you may continue.

4 : 5 0 P M 13 MR. ASHMORE: Thank you, Your Honor.

4 : 5 0 P M 14 BY MR. ASHMORE:

4 : 5 0 P M 15 Q. Ms. Mallory, Exhibit 32, can you tell us about this  
4 : 5 0 P M 16 particular document?

4 : 5 0 P M 17 A. So in October 2011, I went through -- well, this email was  
4 : 5 0 P M 18 sent to Mike Ruggio, copying LeClairRyan attorneys Dennis Ryan  
4 : 5 0 P M 19 and Charles Sims. It said that I had committed to the Bluewave  
4 : 5 0 P M 20 and our sales team that we would create a sales training  
4 : 5 0 P M 21 program for any of the people that contacted doctors on a daily  
4 : 5 1 P M 22 basis.

4 : 5 1 P M 23 And so this was me requesting some time on their  
4 : 5 1 P M 24 calendar so that they could be present on the call where we  
4 : 5 1 P M 25 would -- would do the training. And the specific requests that

4 : 5 1 P M 1 I made to the attorneys were to cover explanation of the  
4 : 5 1 P M 2 anti-kickback rules, the use of gift cards, the explanation of  
4 : 5 1 P M 3 what to say and not to say that will create problems when it  
4 : 5 1 P M 4 comes to our billing policy, and anything else that they could  
4 : 5 1 P M 5 think of that we needed to be trained on.

4 : 5 1 P M 6 Q. So was this one of your efforts to make sure HDL was in  
4 : 5 1 P M 7 compliance?

4 : 5 1 P M 8 A. Absolutely.

4 : 5 1 P M 9 Q. 34?

4 : 5 1 P M 10 A. 34? This is a physician -- an email from a Bluewave rep  
4 : 5 2 P M 11 in our -- a BlueWave rep had -- a contractor out of New Jersey  
4 : 5 2 P M 12 had contacted our sales support person Tabitha, and she asked  
4 : 5 2 P M 13 me if the practice could receive the P&H check made out to  
4 : 5 2 P M 14 their charity of choice. I don't remember which charity it  
4 : 5 2 P M 15 was.

4 : 5 2 P M 16 And my response was I wish we could do this and  
4 : 5 2 P M 17 respect the doc's passion for the cause, but we can't. We are  
4 : 5 2 P M 18 reimbursing the doctor for the services rendered, and the fees  
4 : 5 2 P M 19 have to be paid to the doc to keep everything legally clear on  
4 : 5 2 P M 20 our side as well on the physician's side. They could put her  
4 : 5 2 P M 21 at risk for Stark issues in the future. Once they receive the  
4 : 5 2 P M 22 check, they can, in turn, do whatever they want to do with the  
4 : 5 2 P M 23 check, but we had to pay the doc directly.

4 : 5 2 P M 24 So I communicated that back to the sales contractor  
4 : 5 3 P M 25 and to our sales support team.

4 : 5 3 P M 1 Q. what is 40?

4 : 5 3 P M 2 A. 40 is a copy of the -- one of the slides that we worked  
4 : 5 3 P M 3 with Ropes & Gray to put together for their meeting with the  
4 : 5 3 P M 4 DOJ. This shows an example of a few of the labs that were in  
4 : 5 3 P M 5 the market that competed with HDL. And the amount of process  
4 : 5 3 P M 6 and handling fee that they paid is in the column labeled P&H.  
4 : 5 3 P M 7 And the number of tubes that they collected is in the next  
4 : 5 3 P M 8 column.

4 : 5 3 P M 9 And so if you think about it as per container or per  
4 : 5 3 P M 10 tube, what was the fee that HDL paid in comparison to the rest  
4 : 5 3 P M 11 of the labs? And it was \$3.40 per tube versus -- so we -- you  
4 : 5 4 P M 12 know, there were discussions that \$17 was high, but we really  
4 : 5 4 P M 13 needed so many tubes that it was less dollars per tube than  
4 : 5 4 P M 14 anyone else in the market.

4 : 5 4 P M 15 Second page is the same schematic, but it's including  
4 : 5 4 P M 16 the draw fee and the P&H fees.

4 : 5 4 P M 17 Q. 42?

4 : 5 4 P M 18 A. This was a copy of the document that I received from -- a  
4 : 5 4 P M 19 Berkeley sales rep said that this is what they used in the  
4 : 5 4 P M 20 field when they were selling or had questions about Berkeley's  
4 : 5 4 P M 21 processing and handling.

4 : 5 4 P M 22 And this was what I sent to Dennis Ryan, you can see,  
4 : 5 5 P M 23 in November of 2009 when I was asking him to put together our  
4 : 5 5 P M 24 processing and handling agreement and reviewing the -- well, he  
4 : 5 5 P M 25 hadn't reviewed it yet, but I was putting together the

4 : 5 5 P M 1 justification document, our internal thinking of the processing  
4 : 5 5 P M 2 and handling. And so this is what I received from Berkeley  
4 : 5 5 P M 3 HeartLab and sent to Dennis to be considered.

4 : 5 5 P M 4 Q. Going to move ahead. Let's do 44.

4 : 5 5 P M 5 A. So this is a copy of the new account form that I was asked  
4 : 5 5 P M 6 about earlier. And what you see on the right-hand side -- in  
4 : 5 6 P M 7 the bottom right-hand side where it's bold, it says "Test,"  
4 : 5 6 P M 8 there's a -- there's a list of HDL's tests there. Remember, I  
4 : 5 6 P M 9 didn't -- we didn't do everything. So these are the most  
4 : 5 6 P M 10 common tests ordered, so that would be what's listed there.

4 : 5 6 P M 11 Q. And the doctors would fill this out?

4 : 5 6 P M 12 A. The doctors would fill this out. They would sign it,  
4 : 5 6 P M 13 provide their NPI numbers, provide any special requests. And  
4 : 5 6 P M 14 more importantly, on the right-hand side, they would select  
4 : 5 6 P M 15 their panel of tests that they want routinely run?

4 : 5 6 P M 16 And this correlates to that email earlier that was  
4 : 5 6 P M 17 5,600 and -- or 300 -- whatever, over 5,000 different panels.  
4 : 5 6 P M 18 And that meant that there was 5,000 -- over 5,000 different  
4 : 5 6 P M 19 combinations of tests that the doctors selected.

4 : 5 6 P M 20 Q. All right. Let's look at 54.

4 : 5 6 P M 21 what is that, Ms. Mallory?

4 : 5 7 P M 22 A. So this was a letter -- when HDL --

4 : 5 7 P M 23 Q. Let me stop you.

4 : 5 7 P M 24 who's at the top of the letter? who was this from?

4 : 5 7 P M 25 A. Heritage Medical Partners.



4 : 5 7 P M 1 Q. You recognize any names?

4 : 5 7 P M 2 A. Yes. So this was from Dr. Lenns, Dr. Long, Dr. Mayes.

4 : 5 7 P M 3 That was Dr. Mayes who testified yesterday. He's one of the  
4 : 5 7 P M 4 relators.

4 : 5 7 P M 5 Q. Okay. What is this letter?

4 : 5 7 P M 6 A. So this letter shows -- we informed Heritage Medical that,  
4 : 5 7 P M 7 during three and a half months of time, we had paid P&H, as he  
4 : 5 7 P M 8 mentioned. We moved over to having a phlebotomist in the  
4 : 5 7 P M 9 office. And there was a three-and-a-half-month period of time  
4 : 5 7 P M 10 when there was an overlap where we were paying P&H and had  
4 : 5 7 P M 11 phlebotomist in-house.

4 : 5 8 P M 12 So we informed them that this -- that that occurred.  
4 : 5 8 P M 13 We asked them to return either the phlebotomist -- the fee  
4 : 5 8 P M 14 for -- I think it was the fee for the phlebotomist. And then  
4 : 5 8 P M 15 we reported it to the government that we had done that and  
4 : 5 8 P M 16 returned all the claims, which means all the revenue we  
4 : 5 8 P M 17 generated during that three-and-a-half-month time for that  
4 : 5 8 P M 18 practice, we returned that to the government.

4 : 5 8 P M 19 Q. And so this was a mistake?

4 : 5 8 P M 20 A. It was a mistake, and we --

4 : 5 8 P M 21 Q. And you can't pay P&H and a phlebotomist at the same time;  
4 : 5 8 P M 22 correct?

4 : 5 8 P M 23 A. That's correct.

4 : 5 8 P M 24 Q. And what did you do about that mistake?

4 : 5 8 P M 25 A. We fixed the mistake. We reported it on ourselves to the

4 : 5 8 P M 1 government. we self-declared about it, and we returned all the  
4 : 5 8 P M 2 claims.

4 : 5 8 P M 3 Q. what is 57?

4 : 5 9 P M 4 A. 57 is a copy of the case studies that you've heard Paul  
4 : 5 9 P M 5 Mincey and others discuss. If you look at the top where it  
4 : 5 9 P M 6 says "patient's name," it will have Case Study Number 1, Case  
4 : 5 9 P M 7 Study Number 2, Case Study Number 3. And these were the  
4 : 5 9 P M 8 examples that we created in order to explain to the doctor the  
4 : 5 9 P M 9 value of the tests.

4 : 5 9 P M 10 Q. And this is -- this is an example of what the doc gets  
4 : 5 9 P M 11 back from HDL; correct?

4 : 5 9 P M 12 A. That's correct.

4 : 5 9 P M 13 Q. Okay. well, talk us through that. what does this  
4 : 5 9 P M 14 particular one -- is it --

4 : 5 9 P M 15 A. well, Case Study Number 2 is my sister, so it's easiest  
4 : 5 9 P M 16 for me to talk to that one. She is -- she's always been Type 1  
4 : 5 9 P M 17 diabetic and had cardiovascular disease. She actually had  
4 : 5 9 P M 18 double-bypass surgery. And so --

5 : 0 0 P M 19 Q. Let me interrupt you.

5 : 0 0 P M 20 This says Case Study Number 2, gender male?

5 : 0 0 P M 21 A. we changed a lot of her to make it anonymous, so --

5 : 0 0 P M 22 Q. All right. All right.

5 : 0 0 P M 23 A. Even some of the genetics. It's my sister, but it's  
5 : 0 0 P M 24 modified slightly to keep her identity hidden.

5 : 0 0 P M 25 Q. Fair enough.

5 : 0 0 P M 1 A. So what we see is -- what you're -- we always told docs  
5 : 0 0 P M 2 and what -- how to explain this is that, when you use the  
5 : 0 0 P M 3 traditional lipid test, your cholesterol, your LDL, your  
5 : 0 0 P M 4 triglycerides, those don't actually find a lot of the disease.

5 : 0 0 P M 5 So 50 percent of all patients who go to a hospital  
5 : 0 0 P M 6 that has a heart condition that gets admitted to a hospital for  
5 : 0 0 P M 7 a heart condition has normal cholesterol. And so in this  
5 : 0 0 P M 8 example, you see at the top, everything is green. So this is a  
5 : 0 0 P M 9 perfect patient where everything looks normal using the  
5 : 0 1 P M 10 traditional ways of testing.

5 : 0 1 P M 11 So at the bottom, you actually see all the red, the  
5 : 0 1 P M 12 yellows there, and very little green. And so this patient  
5 : 0 1 P M 13 would be masked by using traditional lab tests. And for HDL,  
5 : 0 1 P M 14 we unveiled that there was a lot of absolutes that needed to be  
5 : 0 1 P M 15 addressed. And after showing them to a cardiologist, he  
5 : 0 1 P M 16 actually treated her -- changed her medication and treated her  
5 : 0 1 P M 17 differently.

5 : 0 1 P M 18 Q. Then what is 58?

5 : 0 1 P M 19 A. So as I mentioned, Nick Pace was in charge of Project  
5 : 0 1 P M 20 Twilight. Project Twilight was the -- we called it a pivot  
5 : 0 1 P M 21 away from P&H. And so he is giving us an update in May of 2013  
5 : 0 2 P M 22 of his activities.

5 : 0 2 P M 23 Now, I -- I handed this project to him, told him to  
5 : 0 2 P M 24 tell me what you need, but it was up to him to take it and run  
5 : 0 2 P M 25 with it and get it done. So I wasn't involved in any of the

5 : 0 2 P M 1 meetings too much.

5 : 0 2 P M 2 And so this was an email to Russ and Joe. I think he  
5 : 0 2 P M 3 had already updated Dennis and I, and that's why we were cc'd  
5 : 0 2 P M 4 here. I'd asked him to update everyone, and this was his  
5 : 0 2 P M 5 effort so far in May of 2013.

5 : 0 2 P M 6 Q. 63, please, Ms. Mallory, what's that?

5 : 0 2 P M 7 A. So there was great deal of discussion from physicians. We  
5 : 0 3 P M 8 took everything seriously, not only from a legal point of view  
5 : 0 3 P M 9 but from a cost point of view.

5 : 0 3 P M 10 So there was physician feedback that would say, "This  
5 : 0 3 P M 11 test costs too much. I don't, you know, want my patients to  
5 : 0 3 P M 12 have. It's a waste of money. It's a waste of health care  
5 : 0 3 P M 13 dollars."

5 : 0 3 P M 14 And our theory was that lab tests are only 3 to  
5 : 0 3 P M 15 5 percent of total health care expenditure. It's a very small  
5 : 0 3 P M 16 amount of the big bucket of health care expenditure. So it  
5 : 0 3 P M 17 didn't really matter which lab tests you did as long as they  
5 : 0 3 P M 18 were effective in stopping a more expensive health care cost.

5 : 0 3 P M 19 So if we did more lab tests and we found out what was  
5 : 0 3 P M 20 happening, could we, in fact, affect heart attacks,  
5 : 0 3 P M 21 hospitalizations, stints, bypasses, those types of things? And  
5 : 0 4 P M 22 what we spent -- what we did was spent -- collected data for  
5 : 0 4 P M 23 two years, spent \$220,000 buying data and paying an external  
5 : 0 4 P M 24 data analysis company that was owned by Blue Cross Blue Shield  
5 : 0 4 P M 25 to do the study and compare patients that had HDL's testing

5 : 0 4 P M 1 versus those that didn't have HDL's testing because we needed  
5 : 0 4 P M 2 to answer the question.

5 : 0 4 P M 3 And we wanted to find out outcomes, which means did  
5 : 0 4 P M 4 the patients get better and did it cost less.

5 : 0 4 P M 5 Now, that is the name of the game if anybody has been  
5 : 0 4 P M 6 paying attention to Medicare in the last two years. They want  
5 : 0 4 P M 7 to improve health care for everyone, reduce the cost, and have  
5 : 0 4 P M 8 patients be very satisfied. HDL's -- that was what we did  
5 : 0 5 P M 9 before Medicare, CMS ever came up with Obamacare Innovation  
5 : 0 5 P M 10 Institute. We wanted to drive down costs and improve the  
5 : 0 5 P M 11 patient's health, so we had to measure it.

5 : 0 5 P M 12 And what this was was after extensive study -- this  
5 : 0 5 P M 13 was not done by HDL. This was done by an external group, an  
5 : 0 5 P M 14 insurance company. And what they found was that, by year two,  
5 : 0 5 P M 15 we actually affected a 23 percent reduction in total health  
5 : 0 5 P M 16 care costs.

5 : 0 5 P M 17 And what we -- I checked that because I had doctors  
5 : 0 5 P M 18 repeatedly tell me, before using HDL, they would have 20 to 30  
5 : 0 5 P M 19 heart attacks a year, and when you look at the population, was  
5 : 0 5 P M 20 that reasonable? I always do the -- just a common-sense,  
5 : 0 5 P M 21 sanity check, and that was reasonable.

5 : 0 5 P M 22 But after using HDL, these doctors tell me that they  
5 : 0 6 P M 23 would go from 20 to 30 to 1 to 2 per year. So I wanted it in  
5 : 0 6 P M 24 real numbers. I wanted the data, and we couldn't -- two  
5 : 0 6 P M 25 years -- the two years' data was not enough because we didn't

5 : 0 6 P M 1 have enough cases. So we had to extend the study, and this was  
5 : 0 6 P M 2 the first two years.

5 : 0 6 P M 3 We extended it another two years, and we actually did  
5 : 0 6 P M 4 determine in the second set -- and that was published right as  
5 : 0 6 P M 5 I was leaving HDL -- that we saved -- or there was a 12 percent  
5 : 0 6 P M 6 reduction in heart attacks with our patients versus all other  
5 : 0 6 P M 7 labs.

5 : 0 6 P M 8 Q. Let me show you 72. What is that?

5 : 0 7 P M 9 A. So this is an example -- now, I think you guys are  
5 : 0 7 P M 10 familiar with report cards. So it wasn't enough for me to tell  
5 : 0 7 P M 11 a physician, "Here is your patient results." I want them -- I  
5 : 0 7 P M 12 wanted them to check on themselves to see if they were actually  
5 : 0 7 P M 13 making a difference for the whole patient population.

5 : 0 7 P M 14 Again, this is what CMS -- Obamacare is pushing for  
5 : 0 7 P M 15 for value-based reimbursement. Is your patient population  
5 : 0 7 P M 16 getting better? And so what we did was, every quarter, we  
5 : 0 7 P M 17 issued every doctor that we worked with a report card. And we  
5 : 0 7 P M 18 gave them an analysis of every patient in aggregate. So look  
5 : 0 7 P M 19 at the population. And are you improving the diabetes? Are  
5 : 0 7 P M 20 you improving the thyroid disease? Are you improving heart  
5 : 0 8 P M 21 disease, whatever? And this is an example of the 12-page  
5 : 0 8 P M 22 report card that we gave every doctor every quarter at HDL.

5 : 0 8 P M 23 Q. Let's jump ahead, Ms. Mallory, to 92. What is that?

5 : 0 8 P M 24 A. So this is where I was telling you that Heritage -- I  
5 : 0 8 P M 25 forget the practice name. Heritage Medical, Dr. Mayes's

5 : 0 8 P M 1 office, had said that we had an overlap of phlebotomy and -- we  
5 : 0 9 P M 2 had a phlebotomist on staff, and we were paying P&H.

5 : 0 9 P M 3 Q. And was it self-reported to the government by HDL?

5 : 0 9 P M 4 A. It was self-reported.

5 : 0 9 P M 5 Q. And did it --

5 : 0 9 P M 6 A. And this is the document that self-reports that.

5 : 0 9 P M 7 Q. All right. And then were monies refunded to the  
5 : 0 9 P M 8 government?

5 : 0 9 P M 9 A. Yes, we refunded 1. -- almost \$1.8 million to the  
5 : 0 9 P M 10 government.

5 : 0 9 P M 11 Q. You hired a lot of lawyers?

5 : 0 9 P M 12 A. Yes, too many.

5 : 0 9 P M 13 Q. 98? What is 98?

5 : 0 9 P M 14 A. 98? This is -- so 98 is an example of one month's bill.  
5 : 0 9 P M 15 You can see that it is for multiple attorneys, multiple  
5 : 0 9 P M 16 branches. But one month, it totaled almost \$800,000.

5 : 1 0 P M 17 Q. What is 105?

5 : 1 0 P M 18 A. So 105 is a copy of the information that Cain Brothers put  
5 : 1 0 P M 19 together for HDL to share with the investment banker -- I mean  
5 : 1 0 P M 20 with the potential venture capitalist firms that were -- HDL  
5 : 1 0 P M 21 was presenting a deal to.

5 : 1 0 P M 22 Q. And then 114. Let's jump ahead. What is that?

5 : 1 1 P M 23 MR. GRIFFITH: Did you say 114?

5 : 1 1 P M 24 MR. ASHMORE: 114.

5 : 1 1 P M 25 MR. GRIFFITH: Thank you.

5 : 1 1 P M 1           **THE WITNESS:** So in January 8th, 2014, this is a copy  
5 : 1 1 P M 2 of communication between Jennifer Short; Elizabeth Strawn; Su  
5 : 1 1 P M 3 Kim; and David Rhinesmith, who is our attorneys; James  
5 : 1 1 P M 4 Leventis, who's with the government; Brien O'Connor and Laura  
5 : 1 1 P M 5 Hoey, who is with -- so Laura Hoey and Brien O'Connor were  
5 : 1 1 P M 6 our -- and David Rhinesmith were our attorneys. The rest of  
5 : 1 1 P M 7 these are with OIG or with the Department of Justice.

5 : 1 1 P M 8           And this is a communication where we are  
5 : 1 2 P M 9 responding to their request for documentation and having the  
5 : 1 2 P M 10 communication to set up the meeting and -- setting up a meeting  
5 : 1 2 P M 11 on the 29th.

5 : 1 2 P M 12 **BY MR. ASHMORE:**

5 : 1 2 P M 13 **Q.** And then let's look at 115.

5 : 1 2 P M 14 **A.** So this was a meeting between HDL and Elizabeth Strawn  
5 : 1 2 P M 15 with the government and James Leventis with the -- both with  
5 : 1 2 P M 16 the Department of Justice. And this is continuing the  
5 : 1 2 P M 17 discussion on anti-kickback as it pertains to the -- to the  
5 : 1 3 P M 18 P&H.

5 : 1 3 P M 19           So after they met, I believe there was a discussion  
5 : 1 3 P M 20 about -- or prior to their meeting on May 5th -- so let me back  
5 : 1 3 P M 21 up. I'm making it confusing.

5 : 1 3 P M 22           So I had said that we kept asking the government for  
5 : 1 3 P M 23 a position on P&H. In March-April time frame, the  
5 : 1 3 P M 24 government -- March-April of 2014, the government finally took  
5 : 1 3 P M 25 a position and said that they thought there -- they were



5 : 1 3 P M 1 illegal.

5 : 1 3 P M 2 So our attorneys set up a meeting with them for  
5 : 1 3 P M 3 May 15th and outlined their legal position on why they weren't  
5 : 1 3 P M 4 illegal in advance of that meeting. And so they went to meet  
5 : 1 3 P M 5 with the government on that day and discuss it, and this  
5 : 1 3 P M 6 document was prepared for the purpose of having that discussion  
5 : 1 4 P M 7 with the government.

5 : 1 4 P M 8 MR. ASHMORE: Your Honor, I have three documents  
5 : 1 4 P M 9 left, but they're lengthy. I'm happy to proceed or --

5 : 1 4 P M 10 THE COURT: Go ahead.

5 : 1 4 P M 11 MR. ASHMORE: Yes, sir.

5 : 1 4 P M 12 BY MR. ASHMORE:

5 : 1 4 P M 13 Q. 87, what is this, Ms. Mallory?

5 : 1 4 P M 14 A. So this is a copy of the presentation that Ropes & Gray  
5 : 1 4 P M 15 put together in preparation for that meeting I just mentioned  
5 : 1 4 P M 16 with the government. So they showed the government how we had  
5 : 1 4 P M 17 been handling P&H, also the advice that we had gotten from our  
5 : 1 4 P M 18 attorneys.

5 : 1 4 P M 19 All of the -- this will show all of the  
5 : 1 4 P M 20 communication, all of the contact, me asking for responses,  
5 : 1 4 P M 21 them telling us everything was fine with P&H. And so they  
5 : 1 5 P M 22 outlined this, laid this out for the government, and showed  
5 : 1 5 P M 23 this to the government in that meeting.

5 : 1 5 P M 24 Q. Was this a PowerPoint presentation?

5 : 1 5 P M 25 A. This was a PowerPoint presentation.

5 : 1 5 P M 1 Q. And are these the points that were made to the government  
5 : 1 5 P M 2 at that meeting?

5 : 1 5 P M 3 A. Yes.

5 : 1 5 P M 4 Q. And does it contain advice of counsel PowerPoint  
5 : 1 5 P M 5 presentations?

5 : 1 5 P M 6 A. Yes, it does.

5 : 1 5 P M 7 Q. And Ropes & Gray -- I'm just flipping through it as we  
5 : 1 5 P M 8 talk.

5 : 1 5 P M 9 Ropes & Gray argues as to the legality of P&H?

5 : 1 5 P M 10 A. That's correct.

5 : 1 5 P M 11 Q. And that you received advice of counsel saying just that,  
5 : 1 5 P M 12 that P&H was legal?

5 : 1 5 P M 13 A. That's correct.

5 : 1 6 P M 14 Q. Okay. And we talked about this. When somebody wonders  
5 : 1 6 P M 15 about the legality, you got your attorneys involved.

5 : 1 6 P M 16 And those attorneys communicated and worked through  
5 : 1 6 P M 17 that; is that correct?

5 : 1 6 P M 18 MR. SHAHEEN: Objection, Your Honor. He's leading  
5 : 1 6 P M 19 the witness.

5 : 1 6 P M 20 THE COURT: Don't lead the witness.

5 : 1 6 P M 21 MR. ASHMORE: Yes, sir.

5 : 1 6 P M 22 THE COURT: Restate your question.

5 : 1 6 P M 23 MR. ASHMORE: I'll withdraw that one, Judge.

5 : 1 6 P M 24 THE COURT: Thank you.

5 : 1 6 P M 25 BY MR. ASHMORE:

5 : 1 6 P M 1 Q. This -- all of this was presented to the government, to  
5 : 1 6 P M 2 the best of your knowledge?

5 : 1 6 P M 3 A. All of this was presented to the government.

5 : 1 6 P M 4 Q. And did you talk with the Ropes & Gray attorneys after  
5 : 1 6 P M 5 this was presented to the government?

5 : 1 6 P M 6 A. Yes, and our in-house attorneys that were there.

5 : 1 6 P M 7 Q. And can we assume that they gave you a complete debriefing  
5 : 1 6 P M 8 and reporting of what transpired?

5 : 1 7 P M 9 A. Yes.

5 : 1 7 P M 10 Q. well, what did transpire?

5 : 1 7 P M 11 A. They told me that the government heard them, appreciated  
5 : 1 7 P M 12 the meeting and, like we would expect, they'd take it under  
5 : 1 7 P M 13 advisement and consideration. And we were waiting for the  
5 : 1 7 P M 14 outcome of this meeting when we saw the OIG special fraud  
5 : 1 7 P M 15 alert, which came the very next month.

5 : 1 7 P M 16 Q. Now, this exhibit, 87, is dated May 15th, 2014; correct?

5 : 1 7 P M 17 A. Correct.

5 : 1 7 P M 18 Q. Now, Exhibit 91 is dated December 9th, 2013.

5 : 1 7 P M 19 what is -- what is this one?

5 : 1 7 P M 20 A. We had had -- that's another meeting that Ropes & Gray had  
5 : 1 7 P M 21 with the government where they actually took a physician and  
5 : 1 8 P M 22 one of our quality managers to the government -- a meeting with  
5 : 1 8 P M 23 the government and explained the difference between phlebotomy  
5 : 1 8 P M 24 and process and handling and outlined everything that it takes  
5 : 1 8 P M 25 to actually collect a blood sample and answered questions for

5 : 1 8 P M 1 the government and everyone else that was there.

5 : 1 8 P M 2 So they -- this was another meeting that Ropes & Gray  
5 : 1 8 P M 3 had with the government.

5 : 1 8 P M 4 Q. And is it -- did your attorneys outline exactly what HDL  
5 : 1 8 P M 5 was doing?

5 : 1 8 P M 6 A. Yes, and showed what the market was doing.

5 : 1 8 P M 7 Q. Last one. 88, what is that, Ms. Mallory?

5 : 1 8 P M 8 A. So this is -- let me pull this. So there was -- Humana  
5 : 1 9 P M 9 actually questioned the medical necessity --

5 : 1 9 P M 10 Q. All right. Hold on. Who is Humana?

5 : 1 9 P M 11 A. Humana is an insurance company like Blue Cross or  
5 : 1 9 P M 12 UnitedHealthcare.

5 : 1 9 P M 13 Q. Okay.

5 : 1 9 P M 14 A. And so they had questioned the medical necessity for many  
5 : 1 9 P M 15 of HDL's tests and stopped paying, reimbursing HDL for those  
5 : 1 9 P M 16 tests until they could be -- have a meeting and discuss the  
5 : 1 9 P M 17 medical utility, medical necessity.

5 : 1 9 P M 18 So Ropes & Gray, with Dr. McConnell, arranged a  
5 : 1 9 P M 19 meeting with Humana's chief medical officers and their  
5 : 1 9 P M 20 attorneys in Chicago. And they prepared this document for  
5 : 1 9 P M 21 every one of the tests that Humana was questioning about  
5 : 2 0 P M 22 whether or not they were medically necessary and sent this to  
5 : 2 0 P M 23 Humana in advance of the meeting, met with them. They agreed  
5 : 2 0 P M 24 to the medical necessity of our tests and started reimbursing  
5 : 2 0 P M 25 HDL for the tests.

5 : 2 0 P M 1 Q. Did they ever withhold any monies ever again on lack of  
5 : 2 0 P M 2 medical necessity?

5 : 2 0 P M 3 A. No.

5 : 2 0 P M 4 Q. Did HDL get paid all the monies they were due?

5 : 2 0 P M 5 A. To my knowledge, yes.

5 : 2 0 P M 6 Q. Okay.

5 : 2 0 P M 7 MR. ASHMORE: Your Honor, that's all I have.

5 : 2 0 P M 8 THE COURT: Very good. Ladies and gentlemen, I think  
5 : 2 0 P M 9 this is a good time to break. We've had a full day. And do  
5 : 2 0 P M 10 not discuss the case. And be here bright and early at 9:00  
5 : 2 0 P M 11 tomorrow morning. You're free to leave.

5 : 2 0 P M 12 (Whereupon the jury was excused from the courtroom.)

5 : 2 1 P M 13 THE COURT: Please be seated. If the government  
5 : 2 1 P M 14 wishes to get here early tomorrow to set up something, we  
5 : 2 1 P M 15 can -- we will be here at 8:30. You can come through, and  
5 : 2 1 P M 16 Ms. Ravenel will make sure you have access to the courtroom to  
5 : 2 1 P M 17 set anything up we need.

5 : 2 1 P M 18 Let me address just for a moment again this  
5 : 2 1 P M 19 issue of the potential government shutdown. Of course, we're  
5 : 2 1 P M 20 all occupied here. We have no idea what's going on out there.  
5 : 2 2 P M 21 And they may have worked out a deal this afternoon. Let's  
5 : 2 2 P M 22 certainly hope that.

5 : 2 2 P M 23 I have confirmed during our breaks that my --  
5 : 2 2 P M 24 that my court staff and the United States Marshals Service will  
5 : 2 2 P M 25 be accessible. Our court security officers will be available.

5 : 2 2 P M 1 The issue -- I don't have direct control over the Department of  
5 : 2 2 P M 2 Justice attorneys. If I need to enter an order directing you  
5 : 2 2 P M 3 to be here, I will.

5 : 2 2 P M 4 Mr. Leventis, do you know any status of that?

5 : 2 2 P M 5 MR. LEVENTIS: Yes, sir, I was going to tell you I've  
5 : 2 2 P M 6 confirmed with my office that apparently the way it will have  
5 : 2 2 P M 7 to work -- and I'll find out the details -- is I may have to  
5 : 2 2 P M 8 stand and ask for a continuance that you can certainly --

5 : 2 2 P M 9 THE COURT: Denied.

5 : 2 2 P M 10 MR. LEVENTIS: -- deny, right.

5 : 2 2 P M 11 THE COURT: I'll take that as a motion, and it is  
5 : 2 2 P M 12 denied.

5 : 2 2 P M 13 MR. LEVENTIS: So -- but I'll wait and see if we  
5 : 2 2 P M 14 actually have to do it. Apparently, if I do that and you deny  
5 : 2 3 P M 15 it, then that --

5 : 2 3 P M 16 THE COURT: It's already been denied. You can report  
5 : 2 3 P M 17 to them it has been denied.

5 : 2 3 P M 18 MR. LEVENTIS: All right.

5 : 2 3 P M 19 THE COURT: Ms. Strawn?

5 : 2 3 P M 20 MS. STRAWN: Yes, Your Honor. For the folks from our  
5 : 2 3 P M 21 office in LaCrosse, we have asked for an exception from any  
5 : 2 3 P M 22 furlough, and we're waiting for direction. We haven't received  
5 : 2 3 P M 23 it yet, but the request has been made.

5 : 2 3 P M 24 THE COURT: Please advise your -- I can't control  
5 : 2 3 P M 25 whether the -- the arrangements between you and your employer.

5 : 2 3 P M 1 You're officers of the court. You are under my jurisdiction as  
5 : 2 3 P M 2 to this case, and I'm going to direct you to be here. You work  
5 : 2 3 P M 3 out later everything else. We have obligations to maintain the  
5 : 2 3 P M 4 rule of law in this country. And I can't control anything but  
5 : 2 3 P M 5 my courtroom, and I intend to do that.

5 : 2 3 P M 6 So my obvious preference is for your employer to  
5 : 2 3 P M 7 compensate you, but as I tell people who take cases and their  
5 : 2 3 P M 8 clients don't pay them, I don't -- it is of no moment to me.  
5 : 2 3 P M 9 You are an officer of this court, and I expect you to be here  
5 : 2 3 P M 10 to continue your responsibilities on behalf of the United  
5 : 2 3 P M 11 States of America.

5 : 2 3 P M 12 Okay. Any other questions?

5 : 2 4 P M 13 MR. LEVENTIS: Thank you, Your Honor.

5 : 2 4 P M 14 THE COURT: Thank you very much. We'll see you  
5 : 2 4 P M 15 tomorrow morning.

5 : 2 4 P M 16 \* \* \* \* \*

5 : 2 4 P M 17 CERTIFICATE

5 : 2 4 P M 18 I, Tana J. Hess, CCR, FCRR, Official Court Reporter  
5 : 2 4 P M 19 for the United States District Court, District of South  
5 : 2 4 P M 20 Carolina, certify that the foregoing is a true and correct  
5 : 2 4 P M 21 transcript, to the best of my ability and understanding, from  
5 : 2 4 P M 22 the record of proceedings in the above-entitled matter.

5 : 2 4 P M 23  
5 : 2 4 P M 24  
5 : 2 4 P M 25  
5 : 2 4 P M  
5 : 2 4 P M  
5 : 2 4 P M



Tana J. Hess, CRR, FCRR, RMR  
Official Court Reporter