

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 16, 2018

REPORTER'S OFFICIAL TRANSCRIPT OF THE JURY TRIAL - DAY ONE  
HELD BEFORE THE HONORABLE RICHARD M. GERGEL  
UNITED STATES DISTRICT JUDGE  
January 16, 2018

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1 (Call to order of the Court.)

2 **THE COURT:** Good morning. Please be seated.

3 Good morning, Counsel. We all ready for our  
4 adventure here? I want to tell you I think all of y'all have  
5 worked really diligently, and thank you for your efforts. I  
6 think all of your clients ought to be very pleased with the  
7 efforts everybody has undertaken to get us to this point. And  
8 we're about to proceed with trial.

9 Let me go through a couple of points with  
10 everyone. First of all, I want to confirm that there are no  
11 objections to the current -- the most recent round of the  
12 Court's opening charge from the government?

13 **MR. LEVENTIS:** No objections, Your Honor.

14 **THE COURT:** From the defense?

15 **MR. COOKE:** None other than the burden of proof which  
16 we've already put on the record. Thank you.

17 **THE COURT:** Yes.

18 Mr. Ashmore?

19 **MR. ASHMORE:** None, Your Honor.

20 **THE COURT:** Very good. Are -- are the parties ready,  
21 after we do opening statements, to move stipulated exhibits  
22 into evidence?

23 **MR. LEVENTIS:** Your Honor, I think we talked about  
24 this before. We're hoping to do that before opening  
25 statements. We're both planning on using exhibits during our

9 : 4 7 A M 1 openings.

9 : 4 7 A M 2 THE COURT: Okay. When I bring them in, I will -- I  
9 : 4 7 A M 3 will -- and, folks, because it's a little out of the ordinary,  
9 : 4 7 A M 4 to the extent that somehow out of habit I don't do that, if  
9 : 4 7 A M 5 y'all would remind me. Thank you very much. Okay? I will --  
9 : 4 8 A M 6 but I have a note here to that.

9 : 4 8 A M 7 MR. LEVENTIS: Okay. Your Honor --

9 : 4 8 A M 8 THE COURT: I will do the opening charge, and then I  
9 : 4 8 A M 9 will do it.

9 : 4 8 A M 10 MR. LEVENTIS: Okay. And then we have a list of the  
9 : 4 8 A M 11 uncontested exhibits and exhibits admitted over objections over  
9 : 4 8 A M 12 the past couple of hearings we've had. So I've got that. I  
9 : 4 8 A M 13 can hand it up at the appropriate time.

9 : 4 8 A M 14 THE COURT: Right. To me, it's -- I want you --  
9 : 4 8 A M 15 you'll need to do it on the record, exhibits number so and so.  
9 : 4 8 A M 16 I'm more concerned that Ms. Ravenel have it to keep everything  
9 : 4 8 A M 17 straight.

9 : 4 8 A M 18 MR. LEVENTIS: So there are quite a number. That's  
9 : 4 8 A M 19 why I was thinking to hand it up and have it as a --

9 : 4 8 A M 20 THE COURT: Exhibit?

9 : 4 8 A M 21 MR. LEVENTIS: Yes, Your Honor.

9 : 4 8 A M 22 THE COURT: Okay. Anybody have an objection with  
9 : 4 8 A M 23 doing it as a document? You've given it to the defendants?

9 : 4 8 A M 24 MR. LEVENTIS: It's the ones we've been talking about  
9 : 4 8 A M 25 for every --

9 : 4 8 A M 1           **THE COURT:** Well, I know, but the devil is in the  
9 : 4 8 A M 2 details, guys. And does -- do the defendants have a list to  
9 : 4 8 A M 3 hand up, or do they want me to read theirs?

9 : 4 9 A M 4           **MR. COOKE:** A list of --

9 : 4 9 A M 5           **THE COURT:** Stipulated exhibits, or is this the same  
9 : 4 9 A M 6 list y'all have all worked out? See, I'm going to say, "Does  
9 : 4 9 A M 7 the government move in any exhibits?" They'll say "Yes,  
9 : 4 9 A M 8 exhibits on this list."

9 : 4 9 A M 9           I've never quite done it that way, but I might  
9 : 4 9 A M 10 be open to that. I haven't decided that yet. And then I'm  
9 : 4 9 A M 11 going to say, "Are there any objections from the defendants?"

9 : 4 9 A M 12           **MR. COOKE:** Right.

9 : 4 9 A M 13           **THE COURT:** And then I turn to the defendants, and I  
9 : 4 9 A M 14 say, "Are there any exhibits you wish to offer? And any  
9 : 4 9 A M 15 objections from the government?"

9 : 4 9 A M 16           Then they're in. Okay?

9 : 4 9 A M 17           **MR. COOKE:** Right.

9 : 4 9 A M 18           **THE COURT:** So the question is, when I do that to  
9 : 4 9 A M 19 the -- for the -- for the government list, and y'all say "no  
9 : 4 9 A M 20 objections other than previously raised with the Court" or  
9 : 4 9 A M 21 whatever, and we admit them, we then -- I then turn to you and  
9 : 4 9 A M 22 how -- do you have additional exhibits?

9 : 4 9 A M 23           **MR. COOKE:** This is actually the first I've seen of  
9 : 4 9 A M 24 this list. And we -- you know, we did as we were supposed to  
9 : 5 0 A M 25 do. We exchanged lists and the spreadsheet with all of our

9 : 5 0 A M 1 objections. And I sort of have to take it -- take them at  
9 : 5 0 A M 2 their word that these are all ones that we have not objected to  
9 : 5 0 A M 3 or that the Court has ruled on.

9 : 5 0 A M 4 MR. LEVENTIS: We just took the list and took out the  
9 : 5 0 A M 5 ones that they had objected to.

9 : 5 0 A M 6 THE COURT: Okay. But how about the defendants?  
9 : 5 0 A M 7 what are you going to do? Is this y'all's exhibits as well as  
9 : 5 0 A M 8 the government's exhibits?

9 : 5 0 A M 9 MR. COOKE: No, this is just the government's  
9 : 5 0 A M 10 exhibits.

9 : 5 0 A M 11 THE COURT: All right. How are you going to do your  
9 : 5 0 A M 12 exhibits?

9 : 5 0 A M 13 MR. COOKE: We have a list of exhibits, but we didn't  
9 : 5 0 A M 14 bring them physically to hand up this morning. So --

9 : 5 0 A M 15 THE COURT: Okay.

9 : 5 0 A M 16 MR. COOKE: Can we defer?

9 : 5 0 A M 17 THE COURT: You can certainly defer. I'm trying to  
9 : 5 0 A M 18 do this to accommodate you. Mr. Ashmore, where are you on  
9 : 5 0 A M 19 this?

9 : 5 0 A M 20 MR. ASHMORE: Your Honor, I've handed up a document  
9 : 5 0 A M 21 to Miss Ravenel entitled "Tonya Mallory's exhibit list." I  
9 : 5 0 A M 22 would simply move to introduce those into evidence. I could go  
9 : 5 0 A M 23 through and read each one individually, but that's sort of hit  
9 : 5 0 A M 24 or miss --

9 : 5 0 A M 25 THE COURT: I hear you. Let me -- yeah. I need

9 : 5 0 A M 1 those lists.

9 : 5 1 A M 2 THE DEPUTY CLERK: I need the lists too.

9 : 5 1 A M 3 MR. LEVENTIS: We didn't get a copy of Miss Mallory's  
9 : 5 1 A M 4 list.

9 : 5 1 A M 5 THE COURT: And, Mr. Cooke, you're not -- you would  
9 : 5 1 A M 6 rather defer?

9 : 5 1 A M 7 MR. COOKE: Yes. We do have a list, but I'll hand --  
9 : 5 1 A M 8 we're not going to offer them at this time.

9 : 5 1 A M 9 THE COURT: Okay. So y'all have scratched through --  
9 : 5 1 A M 10 see, here's the problem. Is this an exhibit offered for the  
9 : 5 1 A M 11 jury? Is this for the Court? What are we doing here?

9 : 5 1 A M 12 MR. ASHMORE: Your Honor, Ms. Mallory's is for the  
9 : 5 1 A M 13 Court.

9 : 5 1 A M 14 THE COURT: And this is Ms. Mallory's? Folks, I'm --  
9 : 5 2 A M 15 this is, like, unwieldy. Y'all need to read the list of  
9 : 5 2 A M 16 exhibits. We move numbers -- but go through all the numbers.  
9 : 5 2 A M 17 I need for you to do it even if it takes a while. It's just --  
9 : 5 2 A M 18 you're handing something to people right at the last moment.  
9 : 5 2 A M 19 It makes me uncomfortable. They haven't had a chance to review  
9 : 5 2 A M 20 it. You go through the list. They can follow the list. If  
9 : 5 2 A M 21 they have a problem, they can say something. But when you just  
9 : 5 2 A M 22 do it collectively -- and same for you, Mr. Ashmore.

9 : 5 2 A M 23 MR. ASHMORE: They've had mine for well over 30 days.  
9 : 5 2 A M 24 I don't think there are any problems with mine.

9 : 5 2 A M 25 THE COURT: I'm just concerned -- it's just normally,



9 : 5 2 A M 1 you know, we say it on the record. We don't have an argument  
9 : 5 2 A M 2 later that something in an accordion file wasn't known. I just  
9 : 5 2 A M 3 don't want that. You'll move the exhibits in by number. You  
9 : 5 2 A M 4 got the list. You got a list for them?

9 : 5 2 A M 5 **THE DEPUTY CLERK:** Yes.

9 : 5 2 A M 6 **THE COURT:** I know Ms. Ravenel does, but normally,  
9 : 5 2 A M 7 the way I do it is, you read the numbers in, and then I grant  
9 : 5 2 A M 8 the motion. So be ready to do that. Okay?

9 : 5 3 A M 9 Mr. Ashmore, I want to confirm you still wish to  
9 : 5 3 A M 10 sequester pursuant to Rule 615?

9 : 5 3 A M 11 **MR. ASHMORE:** Yes, please, Your Honor.

9 : 5 3 A M 12 **THE COURT:** Let me remind that the rule has -- that  
9 : 5 3 A M 13 any party has the right under Rule 615 to invoke that. Counsel  
9 : 5 3 A M 14 and party -- and parties and party representatives -- a party  
9 : 5 3 A M 15 representative can be present. If someone is a witness to --  
9 : 5 3 A M 16 in this case and does not fall into that category, they need to  
9 : 5 3 A M 17 leave before opening statements.

9 : 5 3 A M 18 So I don't know -- I don't know the people  
9 : 5 3 A M 19 present, so I'm going to have to have the parties police that  
9 : 5 3 A M 20 for them. The Court can't be responsible for policing this;  
9 : 5 3 A M 21 it's got to be the parties.

9 : 5 3 A M 22 Let me -- in terms of -- I know that the answer  
9 : 5 3 A M 23 and other documents, the Bluewave defendants have acted  
9 : 5 4 A M 24 jointly.

9 : 5 4 A M 25 Mr. Cooke, in terms of, like, opening statement,

9 : 5 4 A M 1 do you intend to speak for -- or you want Mr. Griffith or  
9 : 5 4 A M 2 whoever will be speaking will be collectively for the --

9 : 5 4 A M 3 MR. COOKE: Yes, Your Honor. We'll do one opening  
9 : 5 4 A M 4 for all the BlueWave defendants.

9 : 5 4 A M 5 THE COURT: Mr. Ashmore will do it for Ms. Mallory;  
9 : 5 4 A M 6 is that correct?

9 : 5 4 A M 7 MR. ASHMORE: Yes, Your Honor.

9 : 5 4 A M 8 THE COURT: Any pretrial matters for the Court to  
9 : 5 4 A M 9 address?

9 : 5 4 A M 10 MR. LEVENTIS: Your Honor, if we could, we would like  
9 : 5 4 A M 11 to address one of our witnesses, Kyle Martel, that we brought  
9 : 5 4 A M 12 up last week. We have an update for you and a request, Your  
9 : 5 4 A M 13 Honor.

9 : 5 4 A M 14 THE COURT: Okay. What's that?

9 : 5 4 A M 15 MR. SHAHEEN: This is Michael Shaheen on behalf of  
9 : 5 4 A M 16 the United States Department of Justice. We, I think, told the  
9 : 5 4 A M 17 Court on Thursday of last week that we had had radio silence  
9 : 5 5 A M 18 from Mr. Martel for a couple of days. He did reach out to us  
9 : 5 5 A M 19 finally on Friday, late afternoon, early evening, told us that  
9 : 5 5 A M 20 he'd suffered a knee injury, and provided a doctor's note.  
9 : 5 5 A M 21 Unfortunately, it was too late for business. The doctor's  
9 : 5 5 A M 22 office had closed. We tried to call them, but they had closed.

9 : 5 5 A M 23 We called them this morning, and they relayed to  
9 : 5 5 A M 24 us that Mr. Martel has a chronic knee condition. And last  
9 : 5 5 A M 25 week, he scheduled a surgery for tomorrow. And because of this

9 : 5 5 A M 1 and because of other sort of issues we've had with Mr. Martel,  
9 : 5 5 A M 2 we would request that the Court issue a bench warrant.

9 : 5 5 A M 3 **THE COURT:** Defense response?

9 : 5 5 A M 4 **MR. COOKE:** No objection to that, Your Honor.

9 : 5 5 A M 5 **THE COURT:** Okay.

9 : 5 5 A M 6 Ms. Ravenel, if you would arrange with my --  
9 : 5 5 A M 7 we'll arrange for the issuance of a bench warrant for  
9 : 5 5 A M 8 Mr. Martel. where is he?

9 : 5 5 A M 9 **MR. SHAHEEN:** He is in Florida, Your Honor.

9 : 5 5 A M 10 **THE COURT:** And whoever has ability to communicate  
9 : 5 5 A M 11 with him -- Mr. Cooke, do you have the ability to communicate  
9 : 5 5 A M 12 with him?

9 : 5 5 A M 13 **MR. COOKE:** We had a phone number for him, didn't we?

9 : 5 6 A M 14 **THE COURT:** I -- you know, I'm not sure -- I'm not  
9 : 5 6 A M 15 fully confident in the government's ability to communicate  
9 : 5 6 A M 16 immediately with him. He needs to immediately be advised that  
9 : 5 6 A M 17 a bench warrant is going to be issued today, and he's not to  
9 : 5 6 A M 18 have that surgery tomorrow for a chronic condition which could  
9 : 5 6 A M 19 be scheduled for another time.

9 : 5 6 A M 20 **MR. COOKE:** He's represented by counsel. We can  
9 : 5 6 A M 21 contact his lawyer, Miles Dumville.

9 : 5 6 A M 22 **MR. SHAHEEN:** Your Honor, actually, I spoke with his  
9 : 5 6 A M 23 former counsel on Friday when we learned of this. And he  
9 : 5 6 A M 24 alerted me to the fact that he was no longer retained by  
9 : 5 6 A M 25 Mr. Martel. I did tell him that we would be asking for this

9 : 5 6 A M 1 relief, just to let him know, but --

9 : 5 6 A M 2 **THE COURT:** Okay. Where does Mr. Martel reside?

9 : 5 7 A M 3 **MR. SHAHEEN:** Near Tampa, Your Honor. I don't have  
9 : 5 7 A M 4 his address directly in front of me. We have that information.

9 : 5 7 A M 5 **THE COURT:** Okay. We will request that the marshal  
9 : 5 7 A M 6 service expeditiously address this matter, but I want him to  
9 : 5 7 A M 7 know today. And I don't expect him to go under anesthesia  
9 : 5 7 A M 8 tomorrow and be unavailable to the Court.

9 : 5 7 A M 9 **MR. SHAHEEN:** We certainly will have someone on our  
9 : 5 7 A M 10 team call immediately, Your Honor.

9 : 5 7 A M 11 **THE COURT:** Okay. Very good. Any other matters --  
9 : 5 7 A M 12 preliminary matters to address with the Court, Mr. Cooke?

9 : 5 7 A M 13 **MR. COOKE:** Your Honor, I'm very concerned about  
9 : 5 7 A M 14 these exhibits. I was just -- I pulled up my spreadsheet. You  
9 : 5 7 A M 15 remember how, over Thanksgiving, I told you that I spent the  
9 : 5 7 A M 16 whole holidays going through all the exhibits?

9 : 5 7 A M 17 **THE COURT:** Yes.

9 : 5 8 A M 18 **MR. COOKE:** And we provided a spreadsheet with all of  
9 : 5 8 A M 19 our objections. And I'm looking at -- at numerous exhibits  
9 : 5 8 A M 20 that are on this list that was handed up that we've still got  
9 : 5 8 A M 21 objections to. I mean most of them --

9 : 5 8 A M 22 **THE COURT:** Which exhibits are being referred to in  
9 : 5 8 A M 23 the opening statements? And perhaps if those aren't in  
9 : 5 8 A M 24 contest, we can sort this out. I don't want to keep the jury  
9 : 5 8 A M 25 waiting.

9 : 5 8 A M 1           **MR. LEVENTIS:** Sure. Yes, Your Honor.

9 : 5 8 A M 2           **MR. COOKE:** They did provide us with the graphics  
9 : 5 8 A M 3 that they plan to use in the opening, and we have no objections  
9 : 5 8 A M 4 to those.

9 : 5 8 A M 5           **THE COURT:** Okay. Well, then, I'm going to tell you  
9 : 5 8 A M 6 what we're going to do. We will not -- with that caveat that  
9 : 5 8 A M 7 there's no objection -- Mr. Ashmore, do you have any objection  
9 : 5 8 A M 8 to that?

9 : 5 8 A M 9           **MR. ASHMORE:** No objection.

9 : 5 8 A M 10          **THE COURT:** -- that the exhibits that the government  
9 : 5 8 A M 11 has already indicated will be used can be referred to without  
9 : 5 8 A M 12 moving these into -- these exhibits in. And, to the extent  
9 : 5 8 A M 13 they're not -- these documents are not stipulated, you'll just  
9 : 5 8 A M 14 put them in in the regular order of things.

9 : 5 8 A M 15          **MR. LEVENTIS:** Your Honor, there are documents -- I  
9 : 5 8 A M 16 can list off the exhibit numbers -- that I would like to admit  
9 : 5 9 A M 17 before the opening statement. And part of this is there may --  
9 : 5 9 A M 18 what we've put on the top of the list is the ones that were  
9 : 5 9 A M 19 uncontested, also the ones that you ruled on last week, Your  
9 : 5 9 A M 20 Honor. That may be what Mr. Cooke is referring to.

9 : 5 9 A M 21               And there is one -- there is an email from  
9 : 5 9 A M 22 Mr. Martel that we talked about last week that you overruled  
9 : 5 9 A M 23 their objection and said it was coming in. That's one I'd like  
9 : 5 9 A M 24 to use this morning.

9 : 5 9 A M 25          **THE COURT:** Okay. So tell me -- just give me the

9 : 5 9 A M 1 exhibit numbers.

9 : 5 9 A M 2 MR. LEVENTIS: Sure. It's 1047, 1296, 1162, 1203.  
9 : 5 9 A M 3 The Blasko video, which is -- I'm just going to show a still  
9 : 5 9 A M 4 picture of it.

9 : 5 9 A M 5 THE COURT: What video? I'm sorry?

9 : 5 9 A M 6 MR. LEVENTIS: It's a still picture from 1135.

9 : 5 9 A M 7 THE COURT: Okay.

9 : 5 9 A M 8 MR. LEVENTIS: 1266.

9 : 5 9 A M 9 THE COURT: Hold on a second. Okay.

9 : 5 9 A M 10 MR. LEVENTIS: 1230, 1244, and 1002.

1 0 : 0 0 A M 11 THE COURT: Will there be any objections to those  
1 0 : 0 0 A M 12 specific exhibits?

1 0 : 0 0 A M 13 MR. COOKE: Could I have a moment to look at them --

1 0 : 0 0 A M 14 THE COURT: Yes, you may.

1 0 : 0 0 A M 15 MR. COOKE: -- and see what they are?

1 0 : 0 2 A M 16 THE COURT: Only nine exhibits, guys. Come on. We  
1 0 : 0 2 A M 17 got to get this trial moving. Any objections?

1 0 : 0 2 A M 18 MR. COOKE: Yes, Your Honor.

1 0 : 0 2 A M 19 All right. As to 1296, that may be the one that  
1 0 : 0 2 A M 20 you ruled on.

1 0 : 0 2 A M 21 Is that the one that the judge ruled on?

1 0 : 0 2 A M 22 Yeah, 1296 is a memo. And we asserted lack of  
1 0 : 0 3 A M 23 foundation -- that they have to establish a foundation and that  
1 0 : 0 3 A M 24 the prejudice outweighs the probative value. That's the  
1 0 : 0 3 A M 25 money-hungry doctors criterion memo.

10:03AM 1 THE COURT: Okay. And did I rule on that?

10:03AM 2 MR. COOKE: No.

10:03AM 3 THE COURT: Was I asked to rule on it?

10:03AM 4 MR. LEVENTIS: No, Your Honor. They hadn't had an  
10:03AM 5 objection until right now.

10:03AM 6 MR. COOKE: We did. We -- before the prior trial, we  
10:03AM 7 gave a whole list of all of our objections.

10:03AM 8 THE COURT: Let me hear what your complaint is. Let  
10:03AM 9 me see the document.

10:03AM 10 where did this document come from?

10:03AM 11 MR. COOKE: This was a document that I believe came  
10:03AM 12 originally from Berkeley HeartLabs, and it was a memo that  
10:04AM 13 Mr. Johnson used.

10:04AM 14 THE COURT: Can you go to the top of the document? I  
10:04AM 15 have just the bottom. Does this relate to physician criteria  
10:04AM 16 for Berkeley or for BlueWave?

10:04AM 17 MR. COOKE: At the time that it was created, it was  
10:04AM 18 for Berkeley.

10:04AM 19 THE COURT: And how does the government intend to use  
10:04AM 20 it?

10:04AM 21 MR. LEVENTIS: It was used by BlueWave sales  
10:04AM 22 representatives, Your Honor. It was written by Mr. Johnson.

10:04AM 23 THE COURT: And you have evidence that the -- that  
10:04AM 24 BlueWave sales representatives have represented -- you will  
10:04AM 25 offer testimony to that effect?

10:04 AM 1 MR. LEVENTIS: Yes, Your Honor.

10:04 AM 2 THE COURT: That they received this document?

10:04 AM 3 MR. LEVENTIS: Yes, Your Honor.

10:04 AM 4 THE COURT: Foundation is established. What else?

10:04 AM 5 MR. COOKE: Well, they have not established the  
10:04 AM 6 foundation; that's the foundation that they're going to  
10:04 AM 7 establish. And we objected to -- we haven't objected to  
10:04 AM 8 authenticity, but we objected to numerous documents on the  
10:04 AM 9 basis that --

10:04 AM 10 THE COURT: Are you contesting that they will not  
10:04 AM 11 have salespeople say they received the document?

10:05 AM 12 MR. COOKE: I believe that they will have that  
10:05 AM 13 testimony. But, Your Honor --

10:05 AM 14 MR. LEVENTIS: I guess, Your Honor, it was written by  
10:05 AM 15 Mr. Johnson. And this is about his -- his mental --

10:05 AM 16 THE COURT: State of mind. I overruled that  
10:05 AM 17 objection. That document will be admitted. There's an  
10:05 AM 18 adequate foundation.

10:05 AM 19 Anything else?

10:05 AM 20 MR. COOKE: Yes, Your Honor. But let me -- can I  
10:05 AM 21 speak generally? You remember --

10:05 AM 22 THE COURT: Yes, sir.

10:05 AM 23 MR. COOKE: -- when we were coming up for trial  
10:05 AM 24 before, there was a discussion about trying to put a mass  
10:05 AM 25 introduction. And we said that we had a lot of objections, and



1 Your Honor said you're just going to have to do it the  
2 old-fashioned way. You're going to have to establish a  
3 foundation and --

4 THE COURT: And I dealt with a number of documents at  
5 pretrial. This one was not mentioned by you.

6 MR. COOKE: Right.

7 THE COURT: And I ruled based on a variety of issues.  
8 And to the extent that they've represented to me -- you know,  
9 we'll give them a little leeway in opening statements to the  
10 extent the evidence is going to come in. And it's forecast  
11 here, assuming there's not a dispute that the defendant wrote  
12 it, and it was given to his salesmen and Bluewave, which is a  
13 defendant, no, that's coming in. That's an adequate  
14 foundation.

15 MR. COOKE: I agree. I think it's going to come in,  
16 but it's not in. That's the --

17 THE COURT: I understand. And I'm going to allow  
18 these -- I mean, the issue is this: What leeway am I going to  
19 give in opening statements? And -- and, you know, generally,  
20 the evidence isn't in at opening statements. But we give them  
21 some leeway on documents unless there's an obvious request for  
22 a motion in limine and an objection to a document. And if the  
23 only thing here is lack of foundation, and it's stipulated and  
24 admitted that the foundation is present, it's not in evidence  
25 but it's allowed in opening statement.

10:06AM 1 MR. COOKE: Okay.

10:06AM 2 THE COURT: So if you don't want to stipulate them  
10:06AM 3 in, I'm going to let the government use this even though it's  
10:06AM 4 not yet in evidence because, generally, in opening statements,  
10:06AM 5 it's not in evidence yet.

10:06AM 6 MR. COOKE: And I'm okay. I just want to make sure I  
10:06AM 7 knew the rules, because --

10:06AM 8 THE COURT: Fair enough, Mr. Cooke. And I'm not -- I  
10:07AM 9 only wanted to use the admission of evidence in to speed the  
10:07AM 10 trial up. And now we've been sitting here 20 minutes talking  
10:07AM 11 about it, which is defeating my very purpose.

10:07AM 12 MR. COOKE: Well --

10:07AM 13 THE COURT: I will say you do not need to move any  
10:07AM 14 evidence in before your opening statement. Okay?

10:07AM 15 Any other objections other than that one to  
10:07AM 16 1296?

10:07AM 17 MR. COOKE: Just similar -- similar objections. We  
10:07AM 18 believe that they will be able to establish a foundation for  
10:07AM 19 each of these exhibits. And so, based on that criterion, I  
10:07AM 20 understand that they would be allowed to refer to them. But I  
10:07AM 21 just didn't want my silence to be taken as we agree --

10:07AM 22 THE COURT: I hear you, Mr. Cooke. Let me just do  
10:07AM 23 this: We're not going to move documents in before the opening  
10:07AM 24 statement. If y'all want to talk to each other about trying to  
10:07AM 25 do that; otherwise, we will just admit the documents the

1 old-fashioned way. Okay? All I'm trying to do is help the  
2 parties get the evidence in so we don't spend a lot of time  
3 doing it. If you can't work it out, that would be fine.

4 **MR. LEVENTIS:** But I'll be able to use these, Your  
5 Honor; correct? The ones I just listed out?

6 **THE COURT:** You may use them. They won't be in  
7 evidence, but, generally, in opening statements, evidence is  
8 not in.

9 Okay. Anything further?

10 Let's bring in the jury.

11 Miss Eunice, we have previously sworn this jury?

12 **THE DEPUTY CLERK:** Yes.

13 (Whereupon the jury entered the courtroom.)

14 **THE COURT:** Please be seated. Good morning.

15 **JURY:** Good morning.

16 **THE COURT:** I'm going to begin our trial with an  
17 opening charge to give you some general instructions concerning  
18 your jury service.

19 First, let me address with you the duties of the  
20 jury to find facts and to follow the law. It will be your duty  
21 to determine the facts from all the evidence presented in the  
22 case. You must then apply the law, as I give it to you at the  
23 end of the trial, to those facts you have determined.

24 You must follow the law as I give it to you  
25 whether you agree with it or not. And you must not be

1 influenced by any personal likes or dislikes, opinions, or  
2 sympathy. You must decide the case solely on the evidence  
3 before you and according to the law.

4 Your determination of the facts should not be  
5 influenced by anything that I may say or do during the trial  
6 because deciding the facts of this case is entirely your  
7 responsibility as the jury.

8 Let me discuss with you a little bit about  
9 evidence. The types of evidence which may be presented in this  
10 case and from which you are to decide the facts are as follows:

11 Number one, the sworn testimony of witnesses  
12 both on direct and cross-examination and regardless of which  
13 side calls the witness.

14 Secondly, the exhibits that will be introduced  
15 into evidence.

16 And, third, any facts to which both sides will  
17 agree or stipulate. And we will say "this is stipulated  
18 facts."

19 Let's talk about what is not evidence. You may  
20 consider only the testimony and exhibits allowed into evidence.  
21 Certain things are not evidence, and you may not consider them  
22 in deciding the facts.

23 The following are not evidence, and you may not  
24 consider them in your deliberation:

25 Number one, arguments and statements by lawyers

1 are not evidence. The lawyers are not witnesses, and what they  
2 say in their opening statement, during closing argument, and at  
3 other times, is intended solely to help you interpret the  
4 evidence, but it is not evidence. During the course of the  
5 trial, if the facts as you remember them differ from the way  
6 the lawyers have stated them, your memory of the facts should  
7 control your decision.

8 Secondly, questions and objections by lawyers  
9 are not evidence. The lawyers have a duty to their clients to  
10 object when they believe a question is improper under the rules  
11 of evidence. You should not be influenced by an objection or  
12 the Court's ruling on it.

13 Third, testimony from witnesses that is excluded  
14 or stricken by the Court or that you are instructed to  
15 disregard is not evidence and must not be considered.

16 Additionally, if testimony or exhibits are  
17 admitted for only a limited purpose -- and I will explain if  
18 that is so -- you must follow any limiting instruction as I may  
19 give you.

20 And, finally, anything you may see or hear when  
21 the court is not in session is not evidence. You are to decide  
22 the case solely on the evidence in this trial.

23 Let me explain to you a little bit the  
24 difference between direct and circumstantial evidence. There  
25 are two kinds of evidence: direct and circumstantial.

1 Direct evidence is direct proof of a fact, such  
2 as the testimony of an eyewitness.

3 Circumstantial evidence is indirect evidence,  
4 that is, proof of a fact or a chain of facts from which you  
5 could determine that another fact exists even though the other  
6 fact has not been proven directly.

7 You are to decide the case -- you are to decide  
8 whether another fact has been proven by the circumstantial  
9 evidence. And, in making that decision, you must consider all  
10 the evidence using your reason, common sense, and experience.

11 You're entitled to consider both direct and  
12 circumstantial evidence. The law permits you to give equal  
13 weight to both, but you must decide how much weight to give any  
14 evidence.

15 Now, you will hear evidentiary objections. You  
16 will hear the lawyers say "objection," which references an  
17 objection to some evidentiary matter. This is a normal and  
18 proper part of any civil trial. All of these evidentiary  
19 matters, such as those raised by an objection, are for the  
20 purpose of providing you, the jury, only the proper evidence  
21 under the rules of the court so that the parties have a fair  
22 trial.

23 You may notice from time to time the lawyers  
24 approach the bench to address something to me outside of your  
25 earshot. This is an effort to address an evidentiary matter

1 privately with me so I can make an evidentiary ruling. Again,  
2 this is a normal part of any civil trial. And the reason I do  
3 it in the courtroom is I don't want to have to send you back  
4 and forth every time we do one of those. I'm trying to save  
5 time by doing it, but sometimes my jurors are a little confused  
6 why I'm over there talking to these parties and you don't hear  
7 it. It's we're trying to take care of this matter outside your  
8 presence.

9 I may also, from time to time, have to take a  
10 recess to address one of the issues raised by the attorneys  
11 because the issues are too complex to handle in open court  
12 while you are present. I'm going to do my best to limit the  
13 recesses both in number and duration so we can keep this trial  
14 moving.

15 Credibility of witnesses. In deciding the  
16 facts, you must consider all the evidence. In considering the  
17 evidence, you must decide which testimony to believe and which  
18 testimony not to believe. You may disbelieve all or any part  
19 of any witness's testimony.

20 In deciding what evidence to believe, you may  
21 take into account a number of factors. These are just  
22 examples.

23 Number one, was the witness able to see or hear  
24 or know the things about which that witness is testifying?

25 Secondly, how well does the witness recall and

1 describe those things?

2 Third, what is the witness's manner and demeanor  
3 while testifying?

4 Fourth, does the witness have an interest in the  
5 outcome of this case and does the witness have any bias toward  
6 or prejudice against either side or any other matter involved  
7 in the case?

8 How reasonable is the witness's testimony  
9 considered in light of all the evidence in the case? Was the  
10 witness's testimony contradicted by what that witness has said  
11 or done at another time or by the testimony of other witnesses  
12 or by what other evidence?

13 In deciding whether or not to believe a witness,  
14 keep in mind that sometimes people forget things. Therefore,  
15 you need to consider whether a contradiction is an innocent  
16 lapse of memory or an intentional misrepresentation. And that  
17 may depend on whether the contradiction deals with an important  
18 fact or a small detail.

19 In the end, the jury must decide whether to  
20 believe a witness's testimony. And you may use some of the  
21 factors -- above factors I just mentioned in making that  
22 decision.

23 Number of witnesses. The weight of the evidence  
24 presented by each side does not depend on the number of  
25 witnesses testifying for each side. You must consider all of



1 the evidence in the case, and you may decide that the testimony  
2 of a smaller number of witnesses on one side has a greater  
3 weight than the large number on the other side or vice versa.

4 Burden of proof. The plaintiff in this case,  
5 the United States, has the burden of proving its case by a  
6 preponderance of the evidence. This means the plaintiff has to  
7 produce evidence that, when considered in light of all the  
8 facts, leads you to believe that the plaintiffs' claims are  
9 more likely true than not.

10 In other words, if you were to put the  
11 plaintiffs' evidence and the defendants' evidence on opposite  
12 sides of the scales, plaintiff must make the scales tip in its  
13 favor even if only slightly. And if plaintiff fails to meet  
14 this burden, the verdict must be for the defendants.

15 You may have heard on television or in your  
16 experiences about proof beyond a reasonable doubt in criminal  
17 cases. This is the higher standard that is required in this  
18 case. Therefore, you should not consider the standard of  
19 beyond a reasonable doubt. The correct standard for you to  
20 decide the facts is whether the plaintiffs' claims are more  
21 likely true than not.

22 Let me provide you a very brief summary of the  
23 plaintiffs' claims and applicable law.

24 This is a civil case brought by the United  
25 States against defendants Bluewave Healthcare Consultants,

1 Incorporated; Floyd Calhoun Dent, III; Robert Bradford Johnson;  
2 and Latonya Mallory.

3 The government alleges that defendants engaged  
4 in unlawful marketing and business practices relating to the  
5 ordering of laboratory tests that were reimbursed by Medicare  
6 and TRICARE, which are federal health care programs. The  
7 government asserts that these alleged practices violated the  
8 False Claims Act and the Anti-Kickback Statute and additional  
9 related claims.

10 The defendants deny all liability and assert  
11 that the government's allegations against them are without  
12 merit. They claim that their alleged practices were lawful or,  
13 if they were not lawful, that they are not liable because they  
14 did not have the required knowledge or intent.

15 At the close of the trial, I will instruct you  
16 on the law relevant to the plaintiffs' claims and the  
17 defendants' defenses and provide you with information that will  
18 assist you in addressing the claims and defenses applicable to  
19 each named defendant.

20 Let me provide you just a little bit of  
21 background on Medicare and TRICARE. You will hear evidence  
22 concerning the Medicare and TRICARE programs, and I would like  
23 to provide you with a brief background information regarding  
24 those programs.

25 The Medicare program is a federal health care

1 insurance program that pays health care providers such as  
2 laboratories for health care services that they provide to  
3 people over 65 and certain other people who are eligible for  
4 Medicare benefits.

5 The Centers for Medicare & Medicaid Services,  
6 referred to as CMS, which is an agency of the United States  
7 Department of Health and Human Services, is responsible for  
8 administering the Medicare program.

9 The TRICARE program is a federal health care  
10 insurance program that pays health care providers such as  
11 laboratories for health care services that they provide to  
12 people who are eligible for TRICARE benefits, which includes  
13 active and retired members of the uniformed services and their  
14 dependents. The Defense Health Agency, DHA, which is an agency  
15 of the United States Department of Defense, is responsible for  
16 the administration of the TRICARE program.

17 Let me talk to you a little bit about conduct of the  
18 jury. You as jurors must decide this case based solely on the  
19 evidence presented here within the four walls of this  
20 courtroom. This means that, during the trial, you must not  
21 conduct any independent research about the case. In other  
22 words, you should not consult dictionaries or reference  
23 materials, search the internet, websites, blogs, or use any  
24 other electronic tools to obtain information about this case or  
25 to help you decide the case.

1 Please do not try to find out any information from  
2 any sources outside the confines of this courtroom. You will  
3 find here that all the parties have excellent attorneys and  
4 will provide everything you need to render a just and fair  
5 decision.

6 Until you retire to deliberate, you may not discuss  
7 this case with anyone, even your fellow jurors. The purpose of  
8 this rule is to keep you from committing yourself to a  
9 particular position before you've heard all the evidence in the  
10 case. You need to keep an open mind until all the evidence is  
11 in and you start your deliberations at the end of the case.

12 After you retire to deliberate, you may begin  
13 discussing the case with your fellow jurors, but you cannot  
14 discuss the case with anyone else until you have returned a  
15 verdict and the case is at an end. If anyone should try to  
16 talk to you about the case, bring it to the Court's attention  
17 promptly.

18 I know that many of you use cell phones, the  
19 internet, and other tools of technology. You also must not  
20 talk to anyone about the case or use these tools to communicate  
21 electronically with anyone about the case until you've returned  
22 a verdict and the case is over. This includes your family and  
23 friends.

24 As I told you when we -- you took the oath, if anyone  
25 wants to blame someone, y'all blame me. You tell your loved

1 ones the judge told me I can't talk to you until it's all over.  
2 I'm glad to take the blame.

3 You may not communicate with anyone about the case on  
4 your cell phone, through email or text messaging or by the way  
5 of any social networking websites or apps including Facebook,  
6 Twitter, MySpace, LinkedIn, Instagram, Tumblr, Snapchat, and  
7 YouTube. All my clerks, every year, adding things to it. I  
8 don't know any of these myself.

9 Finally, do not form any opinion until all the  
10 evidence is in. Keep an open mind until you start your  
11 deliberations at the end of this case.

12 Now, you'll see before you on those notepads -- in  
13 just a minute, Ms. Ravenel will provide you notepads and  
14 pencils for anyone who wishes to use them. Let me give you a  
15 few rules about your notes.

16 First of all, your notes are for your personal use  
17 only and should not be shown or read to other jurors.

18 Secondly, do not allow your note-taking to distract  
19 you from observing the witness.

20 Third, when you have a recess or at the end of the  
21 day, leave your notes in your chair facedown. When you finally  
22 retire to deliberate at the end of the trial, you may take your  
23 notes back to the jury room with you but, again, only for your  
24 personal use.

25 Let me ask the juror in the back corner to come to --

1 we got a better seat for you. If you just come right up there  
2 next to the gentleman. I think that'll give you a better view  
3 here. Sometimes we have all those seats occupied and we don't  
4 have that luxury, but we do here.

5 Thank you, ma'am.

6 The trial will now begin with -- in just a moment  
7 with opening statements. Remember an opening statement is  
8 neither evidence nor argument. It is an outline of what the --  
9 what that side intends to prove and is offered only to help you  
10 follow the evidence.

11 After opening statements, the plaintiff in this case,  
12 the government, will present its evidence. And then the  
13 defendants will present their evidence.

14 At the close of the evidence, both parties -- all the  
15 parties will make closing arguments. After the closing  
16 arguments, I will give you the law that will apply to the facts  
17 as you decide them.

18 Last, you will deliberate and give us a verdict.

19 The parties estimate this case will take  
20 approximately 10 days. We will take a morning break. I  
21 usually break -- it's not perfect, but I try to break at about  
22 an hour-and-a-half sequences. Sometimes we're in the middle of  
23 testimony and we don't quite do that. And then we usually  
24 break -- after the second hour and a half, we then have lunch.  
25 And then we come back, and we do the same thing in the

1 afternoon. We have one afternoon break. So about an hour and  
2 a half of testimony or court activity before a break.

3 If you need a break quicker, if you'll alert my court  
4 security officer, we will take care of that situation.

5 Okay. Ms. Ravenel, you want to provide the pads,  
6 please?

7 **THE DEPUTY CLERK:** Yes, sir.

8 **THE COURT:** You're not required to use it. Only if  
9 you wish to have them, she will provide them to you.

10 (Pause.)

11 **THE COURT:** We all good? Very good. Opening  
12 statement by the government?

13 **MR. LEVENTIS:** Thank you, Your Honor.

14 Good morning, ladies and gentlemen of the jury.  
15 Allow me to introduce myself again. My names is James  
16 Leventis. I'm an assistant United States attorney here in  
17 South Carolina.

18 It's now my opportunity in the opening statement  
19 to tell you briefly what this case is all about, and this case  
20 is about the love of money. It's about what the defendants  
21 were willing to do for the love of money.

22 This began back in October of 2009 when the  
23 defendant, Tonya Mallory, had a struggling new laboratory in  
24 Richmond, Virginia, called Health Diagnostic Laboratories, or  
25 HDL for short.

1 Mallory wanted to break into an already crowded  
2 blood testing field, so she needed help getting doctors to  
3 order her tests. Meanwhile, the defendants, Cal Dent and Brad  
4 Johnson, they were salesmen for an established lab that HDL was  
5 competing with. They were making hundreds of thousands of  
6 dollars a year, but they wanted more.

7 Mallory got a tip that Dent and Johnson might be  
8 looking for a change. Mallory, she decided to ask Dent and  
9 Johnson to quit their jobs and compete against their current  
10 employer. So she set up a secret meeting at a hotel near the  
11 Atlanta airport. It was at this meeting that the defendants,  
12 Mallory, Dent, and Johnson, hatched the multimillion-dollar  
13 scheme that's at the center of this trial.

14 And their scheme was simple. It was blood  
15 money. They decided that, in order to take business away from  
16 competitors, they would simply pay the doctors. And they paid  
17 the doctors based on how much blood -- how many samples of  
18 blood they would send to HDL.

19 The defendants later wrote up a contract that  
20 included all the most important parts of their plan, and it  
21 included the blood money payments which they disguised by  
22 calling them process and handling fees or P&H fees for short.  
23 But despite this official-sounding name, we allege that these  
24 payments -- excuse me -- we allege that the defendants used  
25 these process and handling fees to simply bribe doctors to get



10:28 AM 1 them to order HDL tests.

10:28 AM 2 In January of 2010, the defendants got started  
10:28 AM 3 targeting doctors who might take the blood money. And you will  
10:29 AM 4 hear Dent testify that he and Johnson "went out with an  
10:29 AM 5 absolute vengeance" to get as much business as they could.

10:29 AM 6 The defendants' aggressive tactics resulted in  
10:29 AM 7 over 3,500 physicians across the country agreeing to accept  
10:29 AM 8 money in exchange for their -- sending their patients' blood to  
10:29 AM 9 HDL.

10:29 AM 10 You will hear that the defendants told the  
10:29 AM 11 doctors that this payment scheme was legal even though lawyers  
10:29 AM 12 told the defendants that it was prohibited and that it was  
10:29 AM 13 wrong.

10:29 AM 14 Meanwhile, the defendants personally benefited  
10:29 AM 15 from the scheme's success. Mallory was the CEO of HDL and a  
10:29 AM 16 15 percent shareholder of the company, so she made millions in  
10:29 AM 17 salary and bonuses. And for going out and convincing the  
10:29 AM 18 doctors to choose HDL, the defendants Dent and Johnson got paid  
10:29 AM 19 \$50 million each in the span of only about five years.

10:30 AM 20 In this scheme, who did the defendants take  
10:30 AM 21 their money from? well, much of it came from the  
10:30 AM 22 taxpayer-funded health care programs Medicare and TRICARE,  
10:30 AM 23 which paid out at least \$176.5 million.

10:30 AM 24 So what is this trial about? well, the fact of  
10:30 AM 25 the payment is not in dispute. The defendants admit they

1 offered payment and the doctors were paid. The key dispute in  
2 this case is about why the defendants offered and paid the  
3 doctors.

4 And as the judge will instruct you, if the  
5 defendants knowingly and willfully offered or paid money to the  
6 doctors to get them to order from HDL for lab testing, then the  
7 payment was a kickback and the defendants have violated a law  
8 called the Anti-Kickback Statute.

9 So what is the Anti-Kickback Statute and why do  
10 we have it? well, one purpose of the Anti-Kickback Statute is  
11 to protect patients. The law recognizes that a patient has the  
12 right to demand that medical testing decisions be made on his  
13 or her particular medical condition, not what is in the  
14 doctor's financial interest. So the Anti-Kickback Statute  
15 punishes those who participate in payment schemes that may  
16 corrupt a doctor's medical judgment. Kickbacks in health care  
17 can lead to unnecessary testing and to increased health care  
18 costs.

19 Defendants claim that they did not knowingly and  
20 willfully offer kickbacks to doctors, and we allege that they  
21 did. You will hear a lot of evidence to help you determine why  
22 the defendants offered and paid the doctors.

23 But first let's talk about how the defendants  
24 paid the blood money in this case, and then we'll talk about  
25 the evidence and why they did it.

1 The defendants set up two distinct but  
2 intertwined kickback schemes. The first scheme was the blood  
3 money scheme that I mentioned earlier. Simply put, the  
4 doctors -- excuse me -- the defendants paid doctors to send  
5 their patients' blood to HDL.

6 The second scheme was the defendants paid what  
7 they called commissions to independent contractor salesmen who  
8 met the doctors and used the blood money scheme to get them to  
9 order from HDL. So this is also known as the commission  
10 scheme.

11 The defendants executed the commission scheme  
12 through BlueWave Healthcare Consultants, a company that Dent  
13 and Johnson set up for the sole purpose of marketing HDL's  
14 tests. BlueWave, as we call it, is also a defendant in this  
15 case.

16 As you will hear, the commission scheme  
17 incentivized BlueWave to push unnecessary tests. BlueWave was  
18 nothing more than a shell corporation through which Dent and  
19 Johnson earned millions. They owned BlueWave 50-50. They were  
20 the -- its only officers and directors.

21 There were only a handful of employees besides  
22 Mr. Dent and Johnson. And for most of the company's life,  
23 there was only just one other employee, and she earned barely  
24 above minimum wage.

25 BlueWave operated out of a small single-family

1 residence in Hanceville, Alabama, out of which the defendant  
2 Johnson operated about a dozen of his other corporations.

3 Bluewave didn't have any departments or  
4 divisions like human resources or legal or accounting. Instead  
5 they hired about 35 independent sales representatives,  
6 instructing those representatives to form their own shell  
7 companies.

8 Bluewave itself had HDL as its main client, and  
9 Bluewave paid out nearly every dime that it got from HDL to  
10 either Dent and Johnson or to the Bluewave sales reps that they  
11 hired.

12 At its start, defendant Bluewave, through  
13 defendants Dent and Johnson, signed a contract with HDL and  
14 ultimately became the exclusive outside sales force for HDL  
15 throughout the United States except for Virginia, where HDL had  
16 hired some of its more typical employee salespeople.

17 We obtained a copy of the contract between  
18 Bluewave and HDL. Here it is.

19 First, you will see down in the right corner  
20 there is a yellow sticker. That's called the exhibit sticker.  
21 You'll see a lot of exhibits during this trial, and so you can  
22 feel free to write down any of the exhibit numbers as we go.

23 So this is a copy of the sales agreement between  
24 Bluewave and HDL that included the most important parts of the  
25 defendants' scheme. You can see that the defendants Johnson

1 and Dent signed on behalf of Bluewave. That's the yellow boxes  
2 on the left. And the defendant Tonya Mallory signed on behalf  
3 of HDL. That's the yellow box on the right.

4 The agreement, it became effective on -- whoops.  
5 Excuse me -- on January 4th of 2010. Now, that's roughly three  
6 months after their meeting at the airport hotel.

7 The evidence will show that this is both when  
8 and how Mallory, Dent, and Johnson created and agreed to  
9 participate in the blood money kickback scheme and the  
10 commission kickback scheme. And this document is a blueprint  
11 for both of those schemes.

12 So here's the section of the contract dealing  
13 with the blood money which they cleverly disguised as process  
14 and handling fees. Here it says, "Provide processing and  
15 handling fees to physicians in the range of 18 to \$21."

16 And here's the part of the agreement that deals  
17 with the commission scheme I mentioned. It says, "Contractors  
18 shall be paid a commission equal to 16 8/10 percent of the  
19 revenue collected by the company from sales in the territory.

20 So as I mentioned earlier, the defendants admit  
21 that they made these payments, but I want to outline for you  
22 how those payments were made for two reasons: First, so you  
23 can follow why the payments were made; and, second, so you can  
24 follow how we calculated the damage from the schemes.

25 The United States' first witness is Eric Hines.

1 He is an accounting expert. He was not involved in this fraud.  
2 He will testify in detail about each step about how the blood  
3 money was paid by reviewing the paper trail that the defendants  
4 left at banks and businesses. I'm going to highlight some of  
5 these steps for you just so you are familiar with them when he  
6 testifies.

7 First, the steps of the blood money or the P&H  
8 scheme. In Step 1, Bluewave -- including Dent, Johnson, and  
9 the other Bluewave sales reps -- they went to doctors' offices  
10 and they marketed the blood tests. Here's where we allege that  
11 the defendants offered the kickback to the doctors, bribing  
12 them with a \$20 payment each time the doctor sent his or her  
13 patient's blood to HDL.

14 In Step 2, the doctors would send their  
15 patients' blood to HDL instead of a competitor. This is known  
16 as a doctor referring blood tests to the lab.

17 Now, you see in this slide there's an additional  
18 laboratory, Singulex. Singulex is no longer a defendant in  
19 this case. But shortly after Dent and Johnson signed the sales  
20 agreement with HDL that I showed you, they agreed to sign -- to  
21 run the same kickback schemes with Singulex, another lab  
22 looking for a sales force.

23 You will hear testimony that Bluewave sales  
24 representatives sold HDL and Singulex tests together. The  
25 evidence will show that Bluewave used the same kickback scheme

1 to get doctors to order Singulex tests as they did to get them  
2 to order HDL tests. So we're here to recover that smaller pot  
3 of money, too.

4 In Step 3, HDL and Singulex would submit the  
5 fraudulent claims to be paid by Medicare and TRICARE. Medicare  
6 provides health insurance for people aged 65 and older, and  
7 TRICARE provides health insurance for our U.S. armed forces and  
8 military retirees and their families.

9 You will hear evidence that at least 30 percent  
10 of HDL's profits were from Medicare and TRICARE patients. The  
11 average amount that Medicare and TRICARE paid for each HDL  
12 panel of tests was as much as \$500.

13 You will hear evidence that, at this step, the  
14 defendants caused HDL to submit false claims to Medicare and  
15 TRICARE. So we allege that these claims were false because the  
16 defendants had knowingly and willfully paid blood money  
17 kickbacks to doctors to order them. And by paying kickbacks  
18 and causing false claims to be submitted, we allege that the  
19 defendants violated a law called the False Claims Act.

20 So what is the False Claims Act and why do we  
21 have it? well, like the Anti-Kickback Statute, the False  
22 Claims Act protects patients from fraud and abuse by penalizing  
23 those who commit health care fraud. The False Claims Act makes  
24 it illegal to knowingly submit claims for tests that are the  
25 result of a kickback.

1 So in this case, the False Claims Act and the  
2 Anti-Kickback Statute work together. We allege that the  
3 defendants knowingly and willfully paid kickbacks to doctors to  
4 get them to order HDL's tests and that those doctors then  
5 ordered HDL tests from Medicare and TRICARE. So we allege the  
6 defendants violated both the Anti-Kickback Statute and the  
7 False Claims Act.

8 In Step 4, the taxpayer-funded Medicare and  
9 TRICARE programs paid the fraudulent claims of HDL and Singulex  
10 to the tune of about \$176.5 million, and you will hear evidence  
11 supporting this calculation.

12 Finally, in Step 5, this illustrates the illegal  
13 blood money kickback payment that was made to the physician for  
14 choosing HDL. The defendants name these per-specimen payments  
15 process and handling fees, or P&H fees for short. And if at  
16 least one purpose of these payments was to get the doctor to  
17 order from HDL, it was a kickback.

18 The second part of the kickback scheme is  
19 focused on who got paid to go out and get the doctors to order  
20 from HDL. And you saw in the sales contract that the  
21 defendants called this a commission. But no matter how they  
22 labeled it, commissions in health care are treated differently  
23 than commissions in other fields.

24 And as the judge will explain, under the  
25 Anti-Kickback Statute, it's illegal to pay someone who's not



1 your employee for going out and getting doctors to order your  
2 tests.

3 why is that? The Anti-Kickback Statute  
4 recognizes that an employer is legally responsible for the  
5 actions of his or her employee. So the statute allows for  
6 commission-based payments just to employees.

7 Generally, though, the Anti-Kickback Statute  
8 prohibits payments for referrals to third parties because it  
9 could encourage unnecessary testing and increased health care  
10 costs. The statute prohibits commissions to third parties for  
11 the same reason it prohibits the payments of blood money  
12 directly to doctors, to protect patients and to protect the  
13 integrity of the doctors' decision-making.

14 BlueWave, Dent, and Johnson were not HDL  
15 employees, so they shouldn't have been paid a percentage of  
16 HDL's profits for getting the doctor to order from HDL. The  
17 evidence will show that this violated the Anti-Kickback  
18 Statute.

19 Now, the commission kickback scheme is  
20 essentially the same as the P&H scheme format. So we'll go  
21 through this one a little quicker.

22 First, BlueWave markets the blood tests using  
23 payments to bribe the doctors to order from HDL. The doctors  
24 order the tests and refer them to the labs. The laboratories  
25 submit false claims to be paid from Medicare and TRICARE. And

1 Medicare and TRICARE pay the laboratories for the false claims.

2 Now, here's where we allege that the two illegal  
3 commission payments were made: First, when Bluewave paid --  
4 excuse me -- when HDL paid Bluewave a commission; and, second,  
5 when Bluewave, in turn, paid commissions to Dent, Johnson, and  
6 the other Bluewave sales representatives.

7 So when you add up all these things that the  
8 defendants were doing to get doctors to choose HDL and to send  
9 HDL as much blood as possible, the next question and the one  
10 you'll have to decide is why. Why did they do it? Was it for  
11 the love of money?

12 Once Mallory, Dent, and Johnson implemented the  
13 kickback scheme, the orders started rolling in and HDL grew  
14 like crazy. You will hear Johnson testify that they were  
15 successful beyond anything they ever imagined. Some doctors  
16 ordered so many tests that they were paid over \$100,000 in just  
17 one year for ordering HDL tests.

18 As HDL grew, so did Bluewave. Bluewave, in just  
19 a few years, their annual revenues jumped by over  
20 1,000 percent. And as I mentioned before, you will hear that  
21 defendant Mallory made millions and that defendants Dent and  
22 Johnson pocketed over \$50 million each as a result of their  
23 blood money scheme in less than five years.

24 Now, remember back in October 2009 when the  
25 defendants Mallory, Dent, and Johnson first met at the airport

1 hotel. Now, back then, Mallory was struggling to get doctors  
2 to order her tests. So why were doctors now suddenly ordering  
3 so much HDL testing? Was it because of the science of the  
4 tests?

5 well, you'll hear from medical experts for both  
6 the United States and for the defendants. The United States  
7 expert, Dr. Jeffrey Trost, is a physician and an assistant  
8 professor of medicine at the Johns Hopkins University School of  
9 Medicine that's near Baltimore.

10 Dr. Trost will explain in his expert opinion  
11 that a number of HDL's tests were medically unnecessary or they  
12 weren't appropriate for the patient population that received  
13 them.

14 If you listen carefully to the defense medical  
15 expert, you will hear him agree with some of Dr. Trost's  
16 opinions. But don't worry; we'll be sure to point out those  
17 for you.

18 Or was one reason that doctors chose HDL because  
19 the defendants were paying them to? The defendants deny this  
20 was their purpose. But the documents and emails we obtained  
21 from the time during the scheme will show otherwise.

22 For example, remember I told you about how, when  
23 Bluewave was first formed, Dent, Johnson, and the other  
24 Bluewave representatives, they went out with a vengeance to get  
25 patients' blood. well, to help the Bluewave salespeople know

1 which doctors to target, we found out that Dent and Johnson  
2 wrote down eight traits in a doctor that they thought were  
3 important.

4 what do you think made that list? well, we have  
5 a copy of that list, and it was entitled "the physician  
6 criteria list." And you will hear testimony about it.

7 Money hungry. Likes money or at least the  
8 thought of making it.

9 The evidence will show that the defendants  
10 distributed this list and trained Bluewave salespeople to focus  
11 on money-hungry doctors because they knew physicians focused on  
12 money would be especially influenced by the blood money and  
13 more likely to order from HDL. We also obtained Bluewave  
14 emails that confirm that Bluewave sales representatives used  
15 the blood money as a sales tactic to bribe doctors to order not  
16 just a few tests but hundreds of tests a week.

17 Just look at this example that we found from  
18 former Bluewave sales representative Kyle Martel. Martel tells  
19 this doctor, "I have an opportunity that would make more  
20 clinical and business sense for your practice than your current  
21 in-office lab services. With regards to business opportunity,  
22 I have a process and handling fee of \$20 that would be paid  
23 directly to the practice on each panel sent out for the  
24 advanced panel. In estimation, the practice has the potential  
25 to draw close to 100 panels a week. Therefore, 100 panels a

1 week would result in a revenue stream for the office of \$2,000,  
2 100 times 20 panels per week."

3 Using the Bluewave salesman's math, he's selling  
4 the doctor on ordering HDL tests by telling the doctor he could  
5 make over \$100,000 a year by ordering HDL tests.

6 Or there's this example that we found from  
7 former Bluewave sales representative Boomer Cornwell. And in  
8 this email, Cornwell emails a physician's practice to see if he  
9 can get them to switch labs and start ordering from HDL.

10 He tells this doctor, "I know we can present a  
11 tremendous and lucrative business partnership with your  
12 company. The key aspect that truly sets us apart from our  
13 competitors is our business model." Cornwell goes on to  
14 describe the business model to include "work with physicians to  
15 show how their bottom line can increase."

16 So remember the physician criteria list that we  
17 found? well, here, the Bluewave salesmen are trolling for a  
18 money-hungry doctor to see if he'll take the bait.

19 You're also going to have the chance to watch a  
20 Bluewave sales representative during an actual sales call in  
21 January of 2012. We obtained an undercover surveillance video  
22 that was taken of Bluewave sales representative Leonard Blasko.  
23 Mr. Blasko didn't know it, but a federal agent filmed him using  
24 the \$20 blood money payments to help convince a doctor to  
25 choose HDL. And during his sales pitch, you will see

1 Mr. Blasko stop, he will lean in, and he will tell the doctor  
2 there's an economic payment to this.

3 Blasko tells the doctor, "We give you a  
4 processing and handling fee -- that's what we call it -- \$20  
5 for each patient."

6 Blasko goes on to tell the doctor that he has  
7 some doctors that order 300 tests a month. And he says to the  
8 doctor, "300 times \$20. You do the math."

9 Toward the end of the undercover video, you will  
10 see Mr. Blasko get on speakerphone with another BlueWave sales  
11 representative. His name is Charles Maimone. When the doctor  
12 asks how much -- excuse me -- the doctor asks how he can make  
13 more money, out of the blue Mr. Maimone tells the doctor, "You  
14 can make an additional \$13 a test if you also send a single  
15 vial of blood to Singulex." So if the doctor orders from both  
16 HDL and Singulex, he can get paid \$33 instead of just 20.

17 Now, as you can imagine, the defendants are  
18 going to try everything they can to distance themselves from  
19 these two BlueWave sales representatives, Mr. Blasko and  
20 Mr. Maimone. The defendants may say that they only sold  
21 doctors on the science of the tests. They may also try and  
22 tell you they didn't intend for the money to influence the  
23 doctors' choice in labs.

24 But watch the Blasko video, listen to the other  
25 witnesses, and decide for yourself. Look to see if the same

1 sales tactics that you witness in the video -- like using the  
2 blood money payments as a selling point, talking about the math  
3 of \$20 times 300 tests -- can be found in other BlueWave emails  
4 or similarly described by any of the other BlueWave salespeople  
5 who are going to testify. As the judge will explain, if even  
6 one purpose of the payments was to induce the doctors to order  
7 from HDL, then the payments were illegal.

8 The defendants may also try to tell you that  
9 they innocently paid the doctors and didn't think the payments  
10 were improper. You may hear the defense argue that everyone  
11 else was paying the fees. We ask you, ladies and gentlemen, to  
12 listen carefully when they say that. Saying it alone isn't  
13 enough. Listen carefully to what actual evidence they put  
14 forth that others were paying these fees. Listen specifically  
15 for which laboratories, when and how much they paid, and  
16 evaluate the witness giving you this information and what  
17 motivation they may have. And apply your common sense. Just  
18 because someone else is paying a kickback doesn't mean it's all  
19 right for you to do it.

20 Finally, always remember that we are here to  
21 evaluate the defendants' liability, not the liability of  
22 others. The evidence, especially documents and emails we  
23 obtained from the time period, will show that these  
24 defendants -- Mallory, Dent, and Johnson -- knew that what they  
25 were doing was paying doctors to get them to order HDL tests

1 and that it was wrong.

2           You will hear that the defendants cumulatively  
3 have decades of experience in the health care industry. Each  
4 had received numerous and repeated trainings on the  
5 Anti-Kickback Statute and the False Claims Act. All of them  
6 were very familiar with these laws and the prohibition against  
7 paying doctors for Medicare and TRICARE referrals.

8           In addition, none of them had ever made so much  
9 money so quickly as they did after they conspired to pay these  
10 alleged kickbacks. You will have to determine whether these  
11 facts show that the defendants knew what they were doing was  
12 wrong.

13           So there's one more detail that I want to cover,  
14 and that's the evidence you will hear about the lawyers,  
15 evidence that the defendants purposely ignored the advice of  
16 multiple attorneys that what they were doing was wrong and that  
17 the defendants should stop paying the doctors.

18           Now, remember I told you that the defendants had  
19 paid off more than 3,500 physicians to order HDL? Well, we  
20 found emails showing that the defendants received copies of  
21 warnings from some lawyers that represented various doctors'  
22 offices that BlueWave was calling on. We allege that these  
23 warnings also put the defendants on notice that their blood  
24 money scheme was wrong and illegal.

25           Here's an example of one such email that we



1 discovered from the defendants involving the defendants.

2 BlueWave salesman Kyle Martel received a copy of an email from  
3 an attorney, Lester Perling, who was apparently a  
4 board-certified health care law attorney.

5 Martel was offering the blood money kickback to  
6 a doctor to try to get him to order from HDL. In this email,  
7 Attorney Perling warned the doctors he was representing that  
8 the P&H blood money payment scheme was blatantly illegal, "as  
9 illegal as anything I've ever seen in a long time. It would be  
10 a criminal violation of the federal and state kickback laws and  
11 can form the basis for liability under the False Claims Act."  
12 And he concludes, "It is absurd."

13 Mr. Perling, he goes on to say, "I strongly  
14 recommend that you cease any discussions with HDL and stay as  
15 far away from them as you can, no matter what they offer."

16 well, the BlueWave sales representative, Kyle  
17 Martel, he shares this with the defendant, with defendant Brad  
18 Johnson. And he tells defendant Johnson, "Brad, please forward  
19 it on to Tonya for her review. I have spoken with Cal about  
20 this already." And, as you will see, he's referencing the  
21 defendants Brad Johnson, Tonya Mallory, and Cal Dent.

22 And one might wonder, was Martel worried about  
23 the legality of what they were doing or was he more focused on  
24 how much potential money was at stake? You will have to  
25 decide. In this email, the BlueWave salesman says to defendant

1 Brad Johnson, "We definitely have to address this very soon as  
2 they have a hefty amount of specimens that are already ready  
3 for shipping today."

4 Finally, you will also hear live testimony from  
5 former BlueWave sales representative Emily Barron and her  
6 attorney, Brian Dickerson. They will describe how they told  
7 BlueWave that they had significant concerns about whether  
8 BlueWave was paying kickbacks to doctors to order HDL tests,  
9 and you will hear how BlueWave ignored them.

10 The evidence will show that the defendants knew  
11 from the beginning that their blood money scheme was wrong.  
12 For example, in October of 2010, Johnson emailed defendants  
13 Mallory and Dent regarding an HDL physician who sought a \$25  
14 fee. In that email, Mr. Johnson wrote to Mallory and Dent, "To  
15 all. I want to refocus this as a P&H fee, not a draw fee. One  
16 word makes it legal; the other illegal."

17 What did Johnson mean by that? Is this evidence  
18 that he knew -- excuse me -- at the time that what he was doing  
19 was wrong?

20 One would think that, before the defendants paid  
21 the blood money, they would have gone out and paid for a formal  
22 legal opinion. But it wasn't until April of 2012 before they  
23 obtained such an opinion. HDL hired attorney Michael Ruggio of  
24 the law firm of LeClairRyan in Richmond. And he wrote a letter  
25 concerning the blood money payments. You'll have an

1 opportunity to review Mr. Ruggio's letter and decide whether it  
2 was appropriate. And when you do, you should ask, did HDL give  
3 Ruggio all the facts? Did the defendant Tonya Mallory tell  
4 Ruggio everything? Did she tell him about BlueWave's sales  
5 tactics? Did she tell them about the emails that she got from  
6 attorneys questioning the legality of the payments? As Judge  
7 Gergel will explain, when you do not give the attorney all the  
8 relevant information, you aren't entitled to rely on the  
9 lawyer's advice.

10 And you will hear testimony from HDL's top  
11 lawyer, general counsel Derek Kung, that he told defendant  
12 Mallory Ruggio's letter was unreliable. Mr. Kung will also  
13 testify about a memo that he wrote in August of 2012 to Mallory  
14 and the HDL board of directors. And this was only about four  
15 months after Mr. Ruggio's letter. And you will get a chance to  
16 read Mr. Kung's memo and hear about it.

17 And in this memo, Mr. Kung wrote, "The process  
18 and handling fee practice is a red flag and poses a high level  
19 of risk under the AKS," which you'll hear is also another name  
20 for the Anti-Kickback Statute. Mr. Kung will testify that he  
21 repeatedly advised Mallory to stop paying the doctors, but she  
22 refused.

23 We also learned that, about four months after  
24 Mr. Kung's memo, Mallory retained a national law firm with  
25 health care expertise called Ropes & Gray to advise HDL. And

10:58 AM 1 you will hear that Ropes & Gray agreed with Mr. Kung that  
10:58 AM 2 Mallory should stop paying the doctors and that the Ruggio  
10:58 AM 3 opinion was wrong, it could not be relied upon.

10:58 AM 4 And so what did defendant Mallory do after  
10:58 AM 5 receiving advice from Mr. Kung and from the health care law  
10:58 AM 6 attorneys at Ropes & Gray to stop paying the doctors? well,  
10:58 AM 7 she called a meeting with the defendants Dent and Johnson.  
10:58 AM 8 Does that sound familiar? Except this time they didn't meet at  
10:58 AM 9 an airport hotel; this time, they got together with their  
10:58 AM 10 attorneys. And they met at HDL headquarters in Richmond. The  
10:59 AM 11 date was June 24th of 2013. So by now the defendants had  
10:59 AM 12 received multiple warnings about paying off doctors. That  
10:59 AM 13 hadn't stopped.

10:59 AM 14 Those who attended the meeting includes the  
10:59 AM 15 defendants Mallory, Dent, and Johnson; HDL health care law  
10:59 AM 16 attorney Laura Hoey from the Ropes & Gray law firm in Chicago;  
10:59 AM 17 HDL health care law attorney Brien O'Connor from the Ropes &  
10:59 AM 18 Gray law firm in Boston; HDL general counsel attorney Derek  
10:59 AM 19 Kung; HDL executive vice president of compliance and attorney  
10:59 AM 20 Nicholas Pace; and at least three attorneys representing  
10:59 AM 21 BlueWave -- Mark White, Augusta Dowd, and Linda Flippo -- from  
10:59 AM 22 the white Arnold & Dowd law firm in Birmingham, Alabama.

10:59 AM 23 Now, according to the defendants, the meeting  
10:59 AM 24 centered around the blood money scheme and whether to stop it.  
10:59 AM 25 And you will hear testimony that the Ropes & Gray attorneys and

1 the HDL attorneys advised defendants Mallory, Dent, and Johnson  
2 to stop the payments. But you will also hear that the  
3 defendant Dent wanted to keep paying the doctors. He got angry  
4 and would not agree to stop paying. Mallory will testify that  
5 defendants Dent and Johnson believed that, if they stopped  
6 paying the doctors, they could lose at least 30 percent of  
7 their business.

8 So what did the defendants Mallory, Dent, and  
9 Johnson do after a roomful of attorneys warned them that their  
10 scheme was improper and should be stopped? They kept paying  
11 the doctors. Defendants Dent and Johnson didn't like what they  
12 heard from the chorus of attorneys present at that meeting in  
13 Richmond, so they went and hired another attorney to see if  
14 they could get a different opinion.

15 why would they do that? They hired Lauren  
16 DeMoss, a health care law attorney at the Maynard Cooper law  
17 firm in Birmingham. In November 2013, Ms. DeMoss wrote to the  
18 defendants -- wrote to defendant Johnson, I should say, that  
19 "when a physician accepts a handling fee from a lab, this may  
20 not only be a double payment, but the government may view the  
21 fee as intended to induce the physician to refer it to the  
22 laboratory."

23 She goes on to say, "The P&H fee appears to be  
24 prohibited." So even when defendants Dent and Johnson tried to  
25 go get a favorable opinion, they were again told that the blood

1 money kickbacks were prohibited.

2 You will hear the defendants Dent and Johnson  
3 say they talked about Ms. DeMoss's opinion, and they just  
4 thought that Ms. DeMoss, a health care law attorney, was just  
5 wrong.

6 You will have to decide what motivation they may  
7 have for saying that. And so again in the face of these  
8 warnings, the defendants continued to pay the doctors.

9 In closing, the evidence will show that one  
10 purpose of the defendants' kickback scheme was to get doctors  
11 to choose HDL over its competitors. The defendants' kickback  
12 scheme consisted of the blood money scheme -- paying doctors to  
13 get them to send their patient's blood to HDL for unnecessary  
14 testing -- and the commission scheme -- paying the defendants  
15 Johnson and Dent and other Bluewave sales reps for offering the  
16 payments to the doctors -- all while being told by multiple  
17 attorneys, including their own, that what they were doing was  
18 wrong.

19 And at the end of the trial, we will ask that  
20 you find that what defendants Mallory, Dent, and Johnson did  
21 violated both the Anti-Kickback Statute and the False Claims  
22 Act. And based on that finding, that the Medicare and TRICARE  
23 programs were damaged by at least \$176.5 million of fraudulent  
24 claims.

25 On behalf of the United States, we thank you for

1 your service in this important case. Thank you.

2 Thank you, Your Honor.

3 **THE COURT:** Very good.

4 opening statement?

5 **MR. COOKE:** Thank you, Your Honor.

6 **THE COURT:** Mr. Cooke?

7 **MR. COOKE:** Good morning, ladies and gentlemen.

8 That's a tough act to follow, but I'm going to tell you the  
9 rest of the story. I'm going to reintroduce some of the folks  
10 that you've already met and some that you're going to be  
11 seeing.

12 I'm Dawes Cooke. I'm the lawyer here from  
13 Charleston. And some of the folks that are here with me are  
14 Joe Griffith. And behind him is Chris Kovach, Philip Lawrence.  
15 They'll be coming in and out. Brad Baniyas is back there. Mel,  
16 who runs the show. She's our legal assistant, and she is going  
17 to be in and out keeping track of us. John Akerman over there  
18 is our media guy who's going to help me with the visuals and to  
19 keep the documents straight.

20 The most important folks here are Brad Johnson  
21 and Cal Dent. Their families are seated back here, their  
22 wives, Christina and Stacy.

23 Cal and Brad founded and owned Bluewave  
24 Healthcare Consultants. And I'm going to tell you a little bit  
25 more about them as we go, and you're going to hear more from

1 the witness stand about them.

2 The opening statement -- the purpose of an  
3 opening statement here is to try to give you a little context.  
4 No matter what you may have seen on television, as lawyers go  
5 through the case, we're not allowed to stop from time to time  
6 and look at the jury and say "The reason I'm asking this  
7 question of the witness is to show such and such" or "the  
8 purpose of putting this exhibit into evidence is -- is such and  
9 such."

10 So we really don't get to talk to you directly  
11 again until the end of the case in which we do closing  
12 statements, closing arguments. So, as Mr. Leventis did, the  
13 purpose of an opening is to kind of give you the broad view and  
14 give you a little heads-up of what you're going to hear from  
15 us. For the next couple of weeks, you're going to be hearing a  
16 lot of things that, as you hear them, may not make a lot of  
17 sense and may be confusing. And so what he told you and then  
18 what I tell you is supposed to help put it into context.

19 So let me tell a little parable or a little  
20 story that will give you an idea of what the defense view of  
21 this case is.

22 Imagine somebody who, every morning during their  
23 entire adult life, wakes up, they have breakfast, they get  
24 dressed, and they drive to work. And they've noticed over the  
25 years that everybody is driving 45 miles an hour, they're



1 taking certain routes, and they do this religiously every  
2 single day, 45 miles an hour to work, 45 miles back.  
3 occasionally, they drive past the local constable and wave at  
4 him, and he waves back. But there's no traffic -- no speed  
5 limit signs in this town. There's nothing that says how fast  
6 you're allowed to go, but everybody has been going 45. He's  
7 been going 45, and everything works fine.

8 well, one day after years and years of going to  
9 work the same way, he's driving along, and all of a sudden he  
10 looks in the rearview mirror and there's blue lights behind  
11 him. And he pulls over to the side of the road. The constable  
12 comes up, knocks on the window. And he rolls the window down  
13 and says, "Yes, sir?"

14 The officer says, "Sir, we've decided that the  
15 speed limit here is 35 miles an hour. It's not 45 like you've  
16 been driving for your entire career."

17 Now, this conversation could go either of two  
18 ways. One is maybe a little bit off, a little bit surprising  
19 given that he's been driving 45 miles an hour all this time  
20 with nobody saying anything to him about it. The other is  
21 downright terrifying.

22 So the first way that this could go is that they  
23 have a discussion about it, and the gentleman driving to work  
24 could say, "Officer, this is news to me. I don't think council  
25 has passed any speed limit. I certainly haven't seen any signs

11:07AM 1 about it."

11:07AM 2 And the officer says, "Yeah, but I've decided,  
11:07AM 3 we've decided that we want you to drive 35."

11:07AM 4 So the citizen, being a good citizen, not  
11:07AM 5 wanting any trouble, says, "well, thank you. I appreciate you  
11:07AM 6 letting me know." Rolls the window up, drives to work, and  
11:07AM 7 from now on he drives 35 miles an hour.

11:07AM 8 There's another way that this conversation could  
11:07AM 9 go, and it's the way it went in this case. The blue light  
11:07AM 10 comes on, the officer pulls up. He rolls down the window. And  
11:08AM 11 he says, "You know, you've been driving to work 45 miles an  
11:08AM 12 hour. We've been watching you do it, going back and forth,  
11:08AM 13 back and forth all these years. And we've decided the speed  
11:08AM 14 limit was really 35 miles an hour. And you've been breaking  
11:08AM 15 the law all this time. You've been breaking the law. And  
11:08AM 16 because of that, you're going to have to pay millions and  
11:08AM 17 millions of dollars, more money than you could ever imagine."

11:08AM 18 And that's really what happened in this case.  
11:08AM 19 And we're going to tell you about that in a little bit more  
11:08AM 20 detail as we go.

11:08AM 21 We've heard a lot about schemes and blood money.  
11:08AM 22 And it's going to be several days before you actually get to  
11:08AM 23 formally meet Brad Johnson and Cal Dent, but let me tell you a  
11:08AM 24 little bit about these guys. These are not flimflam artists.  
11:09AM 25 They're not shysters. They're not schemers.

1 Cal -- Cal lives outside of Columbia with his  
2 wife, Christy, and their three children. He went to Dreher  
3 High School. He was appointed to the United States Naval  
4 Academy, graduated in 1992, served as captain of the rugby team  
5 while he was there. Probably doesn't surprise you; he's a big  
6 guy. Went into the Navy. Served five years active duty in the  
7 Navy, did duty aboard ship in the Adriatic Sea off the coast of  
8 Bosnia. Served in the Caribbean stopping drug smugglers.  
9 During his five years in the Navy, he earned three Navy  
10 achievement medals and the Navy Commendation Medal. He had  
11 top-secret security clearance. Pretty substantial guy.

12 In 1997, he went to work for a company called  
13 Pfizer Pharmaceuticals in the cardiovascular pharmaceutical  
14 sales. And these are drugs that relate to cardiac disease,  
15 heart disease. He was named rookie of the year. Didn't know  
16 they had rookies of the year in the pharmaceutical sales, but  
17 they do. He was named rookie of the year. He was really good  
18 at what he did because he learned the product and he knew how  
19 to sell it. In 2005, he joined a company called Berkeley  
20 HeartLab, where he was trained by Brad Johnson, who was already  
21 there. And he was again named rookie of the year.

22 In 2009, as you heard, he and Brad Johnson -- by  
23 they, they were by far the top salespeople for Berkeley -- left  
24 to start Bluewave Healthcare Consultants.

25 Brad Johnson lives in Coleman, Alabama, with his

1 wife, Stacy, and their five daughters, four of whom are  
2 adopted; three through foster care, two have special needs. He  
3 attended Auburn University. He was a starter on the football  
4 team all four years, won three SEC championships while he was  
5 there. Then he went on to earn his MBA from Brenau University  
6 in Gainesville, Georgia.

7 He then went to work for Merck  
8 Pharmaceuticals -- a lot of you have probably heard of that --  
9 selling cardiovascular drugs. He was their top salesman for a  
10 drug called Zocor, which you may have seen ads for. He trained  
11 all of Merck's cardiovascular specialists while he was there.  
12 In 1998, he was hired as the district sales manager for a  
13 company called Takeda Pharmaceuticals selling diabetes  
14 medications. He was -- his team was one of Takeda's top sales  
15 teams.

16 In 2001, he went to work for Berkeley HeartLabs,  
17 where he would eventually meet and train Cal. They would  
18 become the top salespeople for Berkeley HeartLab.

19 Now, I'm going to pause for a minute and tell  
20 you a little bit about Berkeley HeartLab. And this will also  
21 later be also about Singulex and HDL.

22 Berkeley HeartLabs was at the forefront of  
23 groundbreaking cardiovascular laboratory testing.  
24 Cardiovascular disease is the leading cause of death in the  
25 United States. Everyone is familiar with the traditional risk

1 factors that we've all grown up hearing about -- diabetes,  
2 smoking, hypertension, high blood pressure, poor exercise  
3 habits, poor diet habits. We've been learning about that since  
4 we were in grade school.

5 The traditional testing for cardiovascular  
6 disease was -- and for the -- most people, still is -- a  
7 standard what we call lipid panel, tests the fatty substances  
8 in your blood. They check for total cholesterol, they check  
9 for triglycerides. In more recent years, we've heard about bad  
10 cholesterol and good cholesterol. But the technology for  
11 testing for those has been around since 1957.

12 In 2002, the American Heart Association  
13 recommended the use of statins. Some of you may have heard of  
14 that to reduce the bad cholesterol. And this has improved  
15 cardiovascular health. Still, over half of the people who have  
16 heart attacks have normal lipid panels.

17 You might remember the famous case that brought  
18 heart disease to the forefront, the case of a very well-known  
19 person named Tim Russert, who was the host of "Face the  
20 Nation." He died in 2008 at age 52 of a massive heart attack  
21 just two weeks after he passed a stress test under the  
22 supervision of his cardiologist. This and other similar cases  
23 brought a lot of public interest and attention to the need for  
24 more advanced cardiac testing. He and many others had tiny  
25 particles in his blood that are not detectable with the

1 standard testing, but they multiply the risk of heart attack  
2 many times over.

3 Brad and Cal and the scientists that they work  
4 with always wanted to find ways to help doctors do better for  
5 their patients. HDL and Singulex were formed by some of the  
6 smartest scientists in the cardiovascular field to take  
7 cardiovascular testing to a new level. Singulex had tests that  
8 nobody else had. HDL had all the best, most advanced,  
9 state-of-the-art tests available under one roof.

10 A physician could order all their -- most of  
11 their tests through HDL instead of having to order some from  
12 this little lab, some from this little lab, some from that  
13 little lab. They had beautiful color-coded reports.  
14 Everything was marked in green, yellow, or red to tell you if  
15 you were good, not so good, or bad and numerous criterion that  
16 these tests would test for. Your doctor could sit down with  
17 you and show you, "This one is yellow. You need to take more  
18 fish oil. This one is red. You need to get on the statin."  
19 And they could vastly improve your chances of avoiding having a  
20 heart attack.

21 They also used a technique -- and Berkeley had  
22 as well -- called no-balance billing, which meant essentially  
23 that the labs would take what the insurance companies would be  
24 willing to pay. This made these tests available to virtually  
25 everybody, not just the most wealthy people who had, you know,

1 Hollywood doctors running tests on them. Everybody now could  
2 have these tests available.

3 Brad and Cal left Berkeley in 2009 to start  
4 BlueWave, to use their talent and their experience to be part  
5 of a health care revolution. BlueWave was to be the  
6 culmination of the work that they had done their entire adult  
7 lives, years of working in the trenches of the cardiovascular  
8 health business.

9 For the next five years, they were -- they were,  
10 as -- as Mr. Leventis said, very successful. They had the best  
11 product. They knew the product inside and out. They knew how  
12 to sell. They had all the experience. It was not by accident  
13 that -- and it was not because of blood money that they were so  
14 successful.

15 Some of their competitors -- and then the  
16 government. To them, their success was less about improving  
17 cardiovascular health care and more about the money. They were  
18 doing so well they must have been cheating. And that's exactly  
19 the case that the government is bringing to you here today.  
20 They want you to believe that, because they were so successful,  
21 they had to have cheated. The government's opening statement  
22 was all about the money. Their case will be all about the  
23 money. Follow the money. You saw the little dollar signs  
24 everywhere on their graphics.

25 Brad, Cal, and BlueWave were undeniably lucky to

1 be at the right place at the right time when the groundbreaking  
2 tests became available to the public, but they're a lot like  
3 people who sold the first automobiles, the people who sold the  
4 first computers, the people that sold the first iPhones.  
5 They did very, very well.

6 Two famous baseball people said it very well.  
7 Branch Rickey said, "Luck is the residue of design. Leo  
8 Durocher said, "Luck is the residue of hard work." Both of  
9 those applied to Cal and Brad throughout their career. Nothing  
10 was done by accident by them. Nobody worked harder to master  
11 their trade than they did. They learned everything there was  
12 to know about the science behind these tests. They could  
13 answer questions the doctors had. They stayed on the road  
14 constantly trying to meet new doctors and to convince them  
15 to -- to order these tests for their patients.

16 If they were as good -- and I've told them this.  
17 If they were as good as coaching football or shooting a  
18 basketball or playing guitars as they were at selling these  
19 tests, they'd be household names and nobody would question them  
20 making many times the amount of money that they made selling  
21 these lifesaving tests.

22 It's a cynical view indeed of the medical  
23 profession to think that these guys could walk into the offices  
24 of 3,500 doctors and tell them to sell their professional souls  
25 for \$20 a specimen.



1           The only way you can get in to convince a doctor  
2 to change the way he practices is to convince him that he can  
3 help his patients, to convince him that he can do better. And  
4 that's what they were able to do, because it was true. They  
5 were able to help these doctors do better for their patients.

6           Bluewave's business model was to sell as many  
7 tests as humanly possible. They have no apologies for that.  
8 They -- their regret is that they didn't have time to sell  
9 more, that they didn't have time to visit every single doctor  
10 and show them the clinical studies and the reasons why these  
11 tests would help them save lives. They did it not by bribing  
12 doctors but by knowing and being able to prove to those doctors  
13 why these tests would make them better.

14           Nothing in the law makes it illegal to talk to  
15 doctors about the financial aspects of their practice. There's  
16 nothing whatsoever wrong with telling a doctor how these tests  
17 can help him be a better doctor, take better care of his  
18 patients and, yes, make more money as a doctor.

19           The phrase "money-hungry doctors," that came  
20 from a -- an old sales piece that -- that Brad had picked up  
21 back when he was at Berkeley HeartLabs, and you're going to  
22 hear what that meant. What that meant was that you're looking  
23 for doctors who are proactive, doctors who are willing to try  
24 new things, who are open-minded to new ideas.

25           Never, never in a million years did they imagine

1 that that would be taken and brought into a courtroom like this  
2 and said, well, this means that you can bribe doctors by paying  
3 them \$20 to order your tests.

4 Some people may look down their nose at  
5 salespeople, but it's an honorable American way to earn a  
6 living. It's the way these gentlemen have made their livings  
7 and supported their families and the things that are important  
8 to them for their whole lives.

9 I do have a few things that I want to show you,  
10 but I think that you're going to hear all the evidence and  
11 you're going to hear about blood money and schemes. I want you  
12 to understand what it is that the government is going to have  
13 to prove to you here.

14 So the first thing I'm going to want to show  
15 you -- don't try to read this now. You're going to hear from  
16 it later. Judge Gergel is the judge of the law. He's going to  
17 instruct you, but I just want to show you to put things in  
18 context.

19 This is the actual statute, the False Claims  
20 Act. It was passed back during the Civil War actually at the  
21 request of President Lincoln, who was tired of government  
22 contractors cheating the government, and so they had Congress  
23 past the False Claims Act. And it provides liability for  
24 certain acts, and I'm going to highlight a couple of things.

25 But somebody who presents or causes to be

1 presented -- and that's what the government is going to try to  
2 prove to you here, because BlueWave and Cal and Brad never made  
3 any claims to the government. But the claim is going to be  
4 that they caused HDL and Singulex to present false or  
5 fraudulent claims.

6 There's a very important word in the beginning  
7 there, "knowingly." If it turns out that you've exceeded that  
8 speed limit but you didn't know there was a speed limit, you  
9 didn't knowingly cause to present -- be presented a false  
10 claim. And then "knowingly" is down there again on the second  
11 part of that statute.

12 This is what's called the Anti-Kickback Statute.  
13 This statute is not as old as the False Claims Act, but it came  
14 into effect with the Social Security Act amendments of 1972.  
15 And as Mr. Leventis said, its primary purpose is to keep people  
16 from bribing doctors.

17 why is that? It's pretty simple. When you go  
18 to your doctor's office, want to know that your doctor is using  
19 his best professional judgment rather than being bribed or  
20 taking some sort of kickbacks to skew his judgment. And this  
21 is the provision that Mr. Leventis was referring to that  
22 basically plugs this criminal statute -- the Anti-Kickback  
23 Statute is a criminal statute. You can actually go to jail if  
24 you prosecute them -- if you're prosecuted criminally for that.  
25 But it plugs it into the False Claims Act civil provision so

1 that if you -- if you break this law, then you've also broken  
2 the False Claims Act.

3 And this is what is illegal. It's illegal to  
4 offer or pay any remuneration which includes any kickback,  
5 bribe, or rebate, directly or indirectly, overtly or covertly,  
6 in cash or in kind to any person to induce that person to  
7 purchase, lease, order, or arrange for or recommend purchasing,  
8 leasing, or ordering any good, facility, service, or item for  
9 which payment may be made in whole or in part under a federal  
10 health care program.

11 That's a mouthful, but what it means is simply  
12 that you cannot bribe somebody to -- to have them order a test  
13 or buy a medical product or do anything that might be  
14 reimbursed by a federal program. We don't disagree with that  
15 at all. That was well known to Brad and Cal. Everybody in the  
16 health care field knows about the Anti-Kickback Statute.

17 In the old days, people used to buy doctors all  
18 kinds of stuff, golf outings, trips, you know, lavish parties,  
19 all sorts of things. But you can't do that. They know that.  
20 Everybody knows that. Everybody that they ever worked for had  
21 rigorous compliance training.

22 But this is -- this is -- this next part is  
23 probably the most important part. Whoever knowingly and  
24 willfully offers to pay -- and that covers the situation where  
25 nobody bothered to put the speed limit signs up, where the

1 government has decided on the fly where the -- what the speed  
2 limit should have been all along, and so it says you're not  
3 liable unless you knowingly and willfully -- and "knowingly and  
4 willfully" means with criminal intent, intending to break the  
5 law.

6 Now, there's a provision down here at the bottom  
7 that says they don't have to prove that you actually knew about  
8 the Anti-Kickback Statute but they have to prove that you meant  
9 to break the law. In this case, that's not an issue.  
10 Everybody knew about the Anti-Kickback Statute.

11 So what is the government going to be proving  
12 with the evidence that they're -- that they have? They're  
13 going to -- they're going to have to prove to you that Bluewave  
14 and Cal Dent and Brad Johnson knowingly and willfully caused  
15 HDL and Singulex to file claims for payment for lab tests that  
16 resulted from the willful payment of kickbacks and specifically  
17 that they knew that what they were doing was wrong and against  
18 the law.

19 So the government refers to this as a scheme,  
20 but let me just show you how this business worked. And there  
21 was nothing secretive or underhanded about it. This is pretty  
22 much the way everybody in this business worked.

23 But you have primary care physicians. They're  
24 out there all over the country everywhere. And then you had --  
25 I can't see the whole thing on this screen. But up there at

1 the top, that's the logo for HDL on the left and Singulex on  
2 the right. They're laboratories. They've got a great product,  
3 but they need a way to introduce it to the doctors and to show  
4 the doctors that it's out there.

5 So along comes BlueWave. Bluewave is Brad and  
6 Cal. They enter into marketing agreements. They're not secret  
7 subversive conspiracy documents. They are contractual  
8 agreements written by lawyers and blessed by lawyers, and they  
9 enter into an agreement. They then enter into separate  
10 agreements with contractors.

11 Again, Mr. Leventis made it sound sort of  
12 nefarious that they worked out of a little house in Alabama.  
13 Yes, that's right. They don't have a -- this business model  
14 does not require a big corporate headquarters. It required two  
15 guys who knew this business inside out who would then go and  
16 enter into contracts with other experienced people who knew the  
17 health care business and let them each set up their own  
18 business.

19 And there might have been 35, 30 -- who knows  
20 how many of them -- set up their own little independent  
21 businesses to then make the sales calls. And they were given,  
22 of course, all the -- all the information about the products.  
23 They were supposed to learn the product just as well as these  
24 guys had it. And if they were successful, then the primary  
25 care physicians would enter into what they call laboratory

1 service agreements with the laboratories. And it would provide  
2 a mechanism by which the physicians, if they so chose, could  
3 send their specimens to the laboratories, have them tested, and  
4 then -- and then -- and then give them the results.

5 Part of that agreement -- and there was nothing  
6 secret or underhanded about it. Part of that agreement, as it  
7 has been with many, many laboratories for many, many years, was  
8 that the physician could be reimbursed a part of his cost of  
9 processing and handling the specimen because it's the  
10 laboratory's responsibility to get the blood to their facility.

11 Singulex was out in California. HDL was in  
12 Richmond, Virginia. And so the doctor can draw blood in his  
13 office, but he's not getting paid to process and handle those  
14 specimens and get them to the laboratories.

15 Interesting thing about these contracts -- I'm  
16 going to talk to you about process and handling fees in a few  
17 minutes. BlueWave never did anything without having it blessed  
18 by lawyers. They weren't big enough to have the biggest health  
19 care lawyers. They had a lawyer by the name of Gene Sellers,  
20 who had been -- Brad had known him for most of his life, great  
21 lawyer.

22 But he knew he was not a health care lawyer  
23 either. So what he did was he worked with the health care  
24 lawyers that HDL hired, which were the finest in the country, a  
25 company called LeClairRyan -- a firm called LeClairRyan to

1 draft this agreement. That same firm drafted the laboratory  
2 service agreements that would be used for the physicians. And  
3 then that same contract was used as a model for negotiating the  
4 agreement with Singulex.

5 And Singulex and HDL both agreed that BlueWave  
6 could sell for both of them. They were sort of competitors but  
7 not really competitors. Their tests complemented one another.  
8 And so they said it was okay for BlueWave to sell for both.  
9 Mr. Leventis is right; most of HDL had a much higher volume --  
10 a lot more tests that they offered than Singulex did.

11 Nobody -- none of these lawyers ever suggested  
12 for a minute that the purpose of the Anti-Kickback Statute was  
13 to keep people from selling on commission. And the entire  
14 pharmaceutical world, physicians -- I mean, salespeople have  
15 always sold by commission. They had always sold by commission.  
16 Everybody had sold by commission.

17 Not once during any of the time that BlueWave  
18 was being set up and that they were negotiating their contracts  
19 and then their contracts with their subcontractors did anybody  
20 ever tell them or suggest really until this case came up that  
21 there was a potential violation of the Anti-Kickback Statute  
22 simply by selling on commission.

23 Obviously, the purpose of the Anti-Kickback  
24 Statute was to keep people from bribing doctors, and it's  
25 common sense that there's a big difference between walking into



1 your doctor's office and having his judgment being tainted  
2 versus having a salesman walk into the doctor's office.  
3 Everybody knows that the salesman is getting paid to sell you  
4 his product. It doesn't have that nefarious character to it as  
5 when your doctor is being paid off.

6 Let's talk about process and handling fees.  
7 This is kind of what the laboratory world looked like. There  
8 were big guys -- and the screen wasn't big enough to make  
9 LabCorp and Quest as big in relation to these other labs as  
10 they really were, but they were the big guys on the planet.

11 These others -- I've got Singulex and HDL and a  
12 number of others included. These are the smaller -- what they  
13 call speciality laboratories, but they all have the same  
14 problem to solve. And that is, how are they going to get their  
15 specimens from the doctor's office to them and in the proper  
16 condition for them to be able to test them?

17 The big guys, they had what they call patient  
18 service centers all over the place. If you drive around and  
19 look long enough, you're going to see signs for Quest and  
20 LabCorp. If you go to your doctor's office, there's a good  
21 chance he's going to say you can just go across the hall or  
22 down the street to a LabCorp or Quest draw center and have your  
23 blood drawn and they'll pack it up and send it off to the labs  
24 for you.

25 Another thing they could do is they can actually

1 hire a phlebotomist. A phlebotomist is simply somebody who  
2 draws blood. They can actually pay for the phlebotomist to  
3 work in the doctor's office. They could afford to do that.  
4 That's very expensive. A phlebotomist can charge -- can cost  
5 anywhere from 32,000 to over \$50,000 a year in salary.

6 Another way that you can get the blood specimens  
7 is you could pay another laboratory to deliver those specimens  
8 for you, but that's very expensive. Imagine going to one of  
9 your competitors, LabCorp and Quest, and saying, "Excuse me,  
10 sir. Do you mind if we use your draw centers to draw our  
11 blood?"

12 They say, of course, "Happy to do it. It's  
13 going to cost us \$25, \$30 a specimen to do it. A  
14 phlebotomist -- it's also very dangerous because, if a  
15 laboratory pays for a phlebotomist to sit in a doctor's office  
16 and take blood, got to be very careful because that  
17 phlebotomist can only take the blood for that laboratory.

18 what if -- what if Bluewave is paying for a  
19 phlebotomist to sit in a doctor's office and that phlebotomist  
20 draws blood and sends it to LabCorp or Quest or one of these  
21 other? Now, that's a payment to a doctor. You're not paying  
22 the doctor for a service he's providing to you; you're paying  
23 him something to help him out with other laboratories. That  
24 could be a kickback.

25 Another problem would be, if you hire a

1 full-time phlebotomist and put them in the office, the doctor's  
2 going to feel a certain amount of pressure; I've got to order  
3 so many tests to justify paying that person's salary.

4           You can sometimes hire mobile phlebotomists who  
5 can just come to the doctor's office occasionally, but those  
6 are very expensive. They're hard to find. So what most of the  
7 laboratories -- all the laboratories that I've shown you down  
8 here in the smaller boxes, what most -- what all of them have  
9 come up with -- and it was long before Cal Dent or Brad Johnson  
10 came along -- was process and handling fees that everybody in  
11 the laboratory business believed that it was legal to  
12 compensate a physician for at least part of the cost of a  
13 service that he was rendering.

14           As long as you pay at a commercially reasonable  
15 amount -- you can't say, "Hey, Doc, I'm going to pay you, you  
16 know, a \$500 process and handling fee, and it's up to you how  
17 many of these you want." That's not what they did.

18           They had to study the market, find out what was  
19 a reasonable reimbursement for the doctor. And it was perfect.  
20 It was perfect. If the doctor was a small practice and he  
21 ordered three tests in a week, that was great. If it was a  
22 giant practice and they were ordering hundreds of tests a week,  
23 that was great. It would automatically adjust for the amount  
24 of service that they were providing to these laboratories by  
25 processing and handling these specimens.

1           You saw that memo that was shown where it said  
2 one word can make a difference between being legal and illegal.  
3 Here's what they were talking about.

4           Drawing blood, believe it or not, is different  
5 than processing and handling. Because many doctors have their  
6 own little laboratories in their offices and they'll draw blood  
7 all the time and they'll do -- you know, check to see if you've  
8 got -- what your antibodies are looking like or all sorts of  
9 things.

10           So Medicare allows that doctor to charge \$3 just  
11 to draw the blood, and that's been the rule for a long time.  
12 It's not enough, but that's what they allow. And everybody  
13 goes along with that.

14           And so what Brad was saying was that, when we  
15 pay a process and handling fee, we can't call that a draw fee;  
16 we're limited to \$3. And that's exactly what both of these  
17 laboratories did.

18           HDL said you can have a \$3 draw fee, which is  
19 what Medicare allows, and you can have a \$17 process and  
20 handling fee.

21           And how do you decide what was a fair process  
22 and handling fee? well, you, first of all, have to figure out  
23 what does "process and handling" mean? You've got to label the  
24 tubes. You've got to mix the specimen with the -- with the  
25 anticoagulant preservative. You have to centrifuge it for a

1 certain length of time. You have to refrigerate it. You have  
2 to catalog it. You have to label the tubes. And then you have  
3 to transport them to the laboratory. Very complicated. If you  
4 don't do it right, the tests aren't going to come out right.

5 Singulex allowed \$10 for that process because  
6 they had one tube. HDL had four tubes. They allowed \$17 for  
7 that process. Doctors did not make money off of process and  
8 handling fees. If a physician's practice made a hundred  
9 thousand dollars, he was spending at least that much, if not  
10 more, for the additional work that his staff had to do to  
11 process and handle those specimens.

12 Throughout Brad and Cal's experience in the  
13 laboratory field, they knew that labs paid process and handling  
14 fees. It was legal to pay process and handling fees as long as  
15 it was a commercially reasonable amount for services performed.

16 But they didn't leave that to chance. All --  
17 going all the way back to their time at Berkeley, Berkeley --  
18 Berkeley HeartLabs had its own lawyers who studied the issues  
19 and gave them an opinion, and they developed this -- this  
20 compliance bulletin.

21 Now, before this bulletin, you're going to hear  
22 testimony that they were paying \$20 for a specimen, for a  
23 single tube. They reduced it for economic reasons. And you  
24 can see from this memo that, effective February 1, 2008, they  
25 were going back up from \$10 to \$11.50. And, again, that was

1 for a single tube.

2 This is a statement that HDL came up with May 1st of  
3 2010. You're going to see this. There's no reason for you to  
4 try to read it in detail right now, but I just wanted you to  
5 see it so you'd be familiar with it. This was their position  
6 statement.

7 Because, as Mr. Leventis said, from time to time  
8 physicians would question whether -- can I take a P&H fee? I  
9 thought you guys weren't allowed to pay doctors anything. And  
10 occasionally they'd even get a letter from a lawyer that said,  
11 you know, I've never heard of this, being able to pay doctors  
12 before. That's the most illegal thing I've ever heard of.

13 well, what they did was they got their lawyers to  
14 study the process and handling process. Tonya Mallory, who was  
15 very experienced in this area, did a study to determine what a  
16 physician's -- bless you -- practice actually has to do in  
17 order to process and handle the specimens. And she and the  
18 lawyers came up with this position statement.

19 And every time somebody would question in the field  
20 whether you can do P&H fees, they were handed this -- this  
21 document. Later, really at the suggestion of Brad and Cal, but  
22 Tonya certainly agreed to it, they decided to be extra careful.  
23 They hired an outside firm whose specialty it was to determine  
24 whether -- what fair market value or commercially reasonable  
25 value was because they were very sensitive about not violating

1 the Anti-Kickback Statute.

2 So they hired this company to come in and study -- do  
3 what they call a time and motion study. And then this law  
4 firm, LeClairRyan -- and there's a lawyer named Michael Ruggio,  
5 who had been a health care lawyer working for the government  
6 for some 25 years before he went into private practice. And he  
7 gave a legal opinion in 2010, and you're going to hear a lot  
8 more about this later.

9 But he says, "Based on this careful study" -- he's  
10 referring to the time and motion study that was done by the  
11 outside contractor -- "this arm's-length, fixed-in-advance,  
12 fair market value fee will fall into the safe harbor exception  
13 under the Anti-kickback Statute and civil False Claims Act to  
14 alleviate any issue in that regard. The safe harbor requires  
15 that the aggregate compensation paid" blah, blah, blah, blah.

16 Essentially what he's telling them is, as long as  
17 you're paying a reasonably -- commercially reasonable amount to  
18 reimburse a physician for part of his services that he's  
19 rendering through the laboratory, you are not violating the  
20 Anti-Kickback Statute.

21 And this, ladies and gentlemen of the jury, is what  
22 these gentlemen relied on. They're not lawyers, but they've  
23 been in the business long enough to know you've got to pay  
24 attention to the Anti-Kickback Statute.

25 Meanwhile, Singulex had a provision in their

1 contract --

2 John, this thing's not going forward.

3 Singulex actually had a provision in its contract  
4 that said, like President Reagan said, trust but verify. It  
5 provided for there to be an independent audit, and they could  
6 do this every single year to -- it's called a compliance audit.

7 They hired this company, which was the largest --  
8 probably the largest anti-kickback evaluation firm called  
9 Navigant -- probably in the world -- to do an exhaustive  
10 evaluation of all of the compliance issues. Never once did  
11 they say you can't have independent contractors to sell your  
12 product. Never once did they say you're paying too much in  
13 process and handling fees or that you can't pay process and  
14 handling fees.

15 Now, things began to change around 2013. As I  
16 mentioned earlier and as you probably now know, the government  
17 began an investigation. Some of the competitors of HDL and  
18 Singulex began to become agitated that had they were so  
19 successful. And so in early 2013, all of a sudden, HDL and  
20 Bluewave wake up to the receipt of a subpoena from the Justice  
21 Department.

22 And so they hired lawyers. They absolutely did.  
23 White Arnold & Dowd is a very fine firm from Alabama. Bluewave  
24 hired them, but the real -- the real lawyers who led the  
25 response to the investigation was the firm called Ropes & Gray,



1 which is probably the largest health care firm in the world.

2           They began to deal with the government lawyers and to  
3 negotiate and say, you know, what do you want? They produced  
4 every single document that the government asked them to  
5 produce, and they began a dialogue. And part of that dialogue  
6 led to this very meeting that Mr. Leventis talked to you about  
7 in June of 2013.

8           And yes, indeed, by then, everybody was very  
9 sensitive to process and handling fees because they now know  
10 that the government is investigating process and handling fees.  
11 The government hasn't told them process and handling fees are  
12 illegal. They haven't told them that we're going to set a  
13 speed limit, but the -- but the -- but these folks are vitally  
14 interested in how that discussion is going.

15           But contrary to what Mr. Leventis may have suggested  
16 to you, never once even during this internal discussion did  
17 anybody ever say you've got to stop paying process and handling  
18 fees. And it's true, Brad and Cal were against -- they were  
19 against the idea of reneging on the agreements that these  
20 laboratories had entered into with all of their customer  
21 physician practices.

22           They'd been in the situation before with their prior  
23 employer where they had reneged on some of their agreements,  
24 and it doesn't go well for the patients. It doesn't go well  
25 for the physicians. So they were against that unless there was

1 a reason to do it, unless they had to do it.

2 All they ever wanted -- all they ever wanted to know  
3 was, what is the speed limit? Can I do this or can I not do  
4 this?

5 Even as late as 2013, in October, Ropes & Gray is not  
6 telling them to stop paying process and handling fees. What  
7 they're being told is let's rewrite -- let's modify the process  
8 and handling agreement to strengthen compliance documentation.

9 You'll hear some more about what changes were made to  
10 the process and handling agreement to make it clearer that  
11 these were not intended to be inducements to the physicians.

12 There was much discussion internally at HDL as -- and  
13 some of that Brad and Cal were privy to about what are we going  
14 to do? If we can't pay process and handling fees, we're going  
15 to have to do something else. And there was a lot of planning  
16 about what they would do in the event that the government told  
17 them they couldn't do process and handling fees.

18 Finally, June 25th, 2014, the speed limit sign  
19 finally went up. This was -- this was in the midst of the  
20 investigation. The office of internal -- of inspector general,  
21 United States government, came out with this document. It's  
22 called a special fraud alert. For the first time ever, they  
23 addressed to the public process and handling fees.

24 And you'll get a chance to read this in detail and  
25 hear more about it than you ever wanted to. But their bottom

1 line is there could be a problem with process and handling fees  
2 if it's intended as an inducement.

3 Now, some of the lawyers involved said, well, this is  
4 good news. For the first time, the government is acknowledging  
5 that process and handling is different than the drawing of  
6 blood that you get the \$3 for. For the first time, they're  
7 acknowledging that there's more to the process and handling  
8 than just the drawing of the blood.

9 And there are a lot of reasons why we would disagree  
10 with this memo. It says, for example, that the doctors are  
11 being double paid because Medicare is paying them for process  
12 and handling at the same time that the laboratory is paying  
13 them. Well, that can't be true because the process and  
14 handling agreements that the doctors have with both HDL and  
15 Singulex specifically say they cannot get a process and  
16 handling fee if they're paid by anybody else.

17 But like the driver who was driving to work every  
18 day, when he rolled the window back up, he thanked the officer  
19 and said, "Thank you, Officer. From now on we'll drive  
20 35 miles an hour." The very next day -- the very next day  
21 after this came out, Brad and Cal said, we're not doing this  
22 anymore. Lawyers or no lawyers, this is -- this is a shot  
23 across the bow, if nothing else, and we are not ever going to  
24 sell another test that has process and handling fees associated  
25 with it.

1 And they stopped right there. HDL stopped, Singulex  
2 stopped. They stopped selling process and handling fees. But  
3 instead of saying, "From now on, this is what we want you to  
4 do," the government is here trying to tell you that they were  
5 breaking the law all along. They just didn't know where the  
6 line was. There was no double payment for process and handling  
7 fees.

8 All the government sees is the money. They talked to  
9 you about Mr. Blasko. They -- they've done exhaustive  
10 investigation and discovery in this case. They secretly  
11 recorded conversations. They gave a script to this doctor that  
12 was talking to that Mr. Blasko and said, "Be sure to ask him  
13 this and this and this. Get him to talk about money and  
14 process and handling fees."

15 Out of all the thousands of emails, they picked out  
16 the one from Mr. Martel and the one from Mr. Cornwell where  
17 they're emphasizing the financial aspects of this. The  
18 warnings that supposedly came, you're going to find out where  
19 all those warnings came from.

20 There were differences of opinion among lawyers about  
21 what you could and couldn't do, but every single time one of  
22 these issues or complaints or questions came up, Brad and Cal's  
23 response was exactly the same. They would go back to HDL -- or  
24 if it related to Singulex, go back to them -- and say, "Talk to  
25 your lawyers. What do your lawyers say?" And in every single

1 case, they always followed the advice that they were given.

2           You're going to find out about the training processes  
3 that BlueWave used and that HDL used. And you're going to  
4 find -- you're going to find that it was never said that you  
5 can't answer questions that a doctor asks you about the  
6 financial aspect of the practice. You can't -- you don't have  
7 to tell a doctor that he can't make more money if he takes  
8 better care of his patients.

9           But you're going to find that every single time, the  
10 training that Brad and Cal gave to their independent sales  
11 contractors and the training that HDL prescribed said you must  
12 sell based on the merits of these tests. You can tell doctors  
13 about process and handling fees. You can tell doctors about  
14 how they can make money by taking better care of their  
15 patients, but that can't be what you're trying to use to sell  
16 these doctors.

17           And think about that. Imagine a physician. We're  
18 not talking about bad doctors; we're talking about all doctors.  
19 Imagine knocking on a doctor's door or calling them up and  
20 saying, "Doc, I want to come talk to you about a money-making  
21 scheme." Do you think that doctor is going to let you in? No.

22           The reason that these guys got their foot into the  
23 doors of so many physicians is because they had the best  
24 product; they knew it was the best product; they knew how to  
25 explain to these doctors that it was the best product.

1 I'm going to wrap up in just a minute. I've taken  
2 far too much of your time already, but I want to talk a little  
3 bit about what we're going to be doing here this week.

4 You're part of the government now. We all are here.  
5 We're all part of the judiciary. But there are three branches  
6 of government: there's the legislative, the executive, and  
7 the judicial. Congress makes the laws. Judge Gergel is going  
8 to explain to you what the law is at the end of the case.

9 Congress passed the False Claims Acts and the  
10 Anti-Kickback Statute. The executive branch, which is  
11 represented by the government lawyers here and by the OIG and  
12 by CMS, they are responsible for administering the law and  
13 enforcing the law, not writing the law, not telling us after  
14 the fact what the law was all along.

15 The executive branch, I submit to you, is not  
16 infallible. They're very good at what they do. They're very  
17 knowledgeable. They've got a lot of resources. They've got  
18 tremendous power. You're going to hear witnesses who are going  
19 to come here who have been subpoenaed from all over the  
20 country. Some of them are physicians. Some of them are former  
21 Bluewave sales contractors. And they're afraid of their  
22 shadows. Some of them are going to plead the Fifth Amendment  
23 rather than testify.

24 Not a single one of them thinks that they ever did  
25 anything wrong or that they ever potentially violated the law,

1 but some of them are so afraid that the government is going to  
2 do to them what they're doing to Brad and Cal and Bluewave that  
3 they're going to refuse to testify, which they have a  
4 constitutional right to do.

5 The fact is the government can be wrong, though.  
6 When the executive branch goes too far, there's one body in the  
7 entire world that can stop them. And it's right here. It's  
8 the judicial branch. And it's you, ladies and gentlemen of the  
9 jury.

10 The government knows how to tell somebody what to do  
11 when that's what they want to do. We know what yes means and  
12 no means and wrong way and street closed and speed limit 35  
13 miles an hour. We know -- Congress knows how to pass laws.  
14 But as you listen to the testimony -- and when you get towards  
15 the end of the case, you're going to have to answer this  
16 question: Did the government show you what the law is? And  
17 did they show that Brad and Cal and Bluewave knowingly and  
18 willfully caused HDL or Singulex to file false claims that  
19 resulted from a deliberate violation of the law, deliberate  
20 illegal payment of kickbacks, illegal payments to these  
21 doctors?

22 You're going to -- you're going to be tired of us by  
23 the time this is over. You're going to hear a lot of things  
24 that are confusing. You've already had to listen to me longer  
25 than you wanted to. But I'm going to ask you to indulge us and

1 consider the possibility that the work that we're going to do  
2 here together for the next two weeks or so may be the most  
3 important thing that you've ever done.

4 Because, at the end of the day, we're going to ask  
5 you to return a verdict for the defendants. We're going to ask  
6 you to tell the government that you've gone too far. You need  
7 to back off. You can't make up the rules as you go. And you  
8 have not proven to us that these gentlemen, in doing the best  
9 they could, doing what Benjamin Franklin said to -- referred to  
10 as "doing well by doing good," that they didn't break the law  
11 and, if they did, they didn't mean to break the law.

12 They sold these tests. Their only regret is they  
13 couldn't have sold more. And maybe one of these days, when  
14 this case is over and everybody is getting these tests, their  
15 goals will be achieved. It won't be by them but maybe by the  
16 people that follow them.

17 Thank you very much.

18 **THE COURT:** Ladies and gentlemen of the jury, let's  
19 take our morning break. It's a little later, but I didn't want  
20 to interrupt the opening statement. So let's go back to the  
21 jury room for about 10 minutes.

22 (Whereupon the jury was excused from the courtroom.)

23 **THE COURT:** Okay. You can be seated.

24 Mr. Ashmore, without rushing you, how long do  
25 you anticipate this might be?



11:55 AM 1 MR. ASHMORE: 10 minutes, Your Honor.

11:55 AM 2 THE COURT: Okay. Mr. Cooke did not go to the same  
11:55 AM 3 school of opening statements you did.

11:55 AM 4 MR. ASHMORE: He covered everything I ever wanted to  
11:55 AM 5 cover.

11:55 AM 6 MR. COOKE: He ceded some of his time to me.

11:55 AM 7 THE COURT: Very good. We'll be at ease for a few  
11:55 AM 8 minutes.

11:55 AM 9 (Recess.)

12:14 PM 10 THE COURT: Please be seated.

12:14 PM 11 Any matters we need to take up before I bring  
12:14 PM 12 the jury back from the government?

12:14 PM 13 MR. LEVENTIS: Yes, Your Honor. We have an update on  
12:14 PM 14 Mr. Martel.

12:14 PM 15 MR. SHAHEEN: Yes, Your Honor. Our team was able to  
12:14 PM 16 reach out to Mr. Martel. It's our understanding that he is  
12:14 PM 17 prepared to board a plane at 4:50 that has him arriving in  
12:14 PM 18 Charleston at 9:00 p.m. this evening. And, in light of that, I  
12:14 PM 19 think we will withdraw our request for a bench warrant.

12:14 PM 20 THE COURT: Very good. I'm sure you'll make it clear  
12:14 PM 21 that, if he doesn't get on that plane for any reason, we're  
12:14 PM 22 prepared to sign the bench warrant.

12:14 PM 23 MR. SHAHEEN: Yes, Your Honor. He is fully aware of  
12:14 PM 24 the stakes right now.

12:14 PM 25 THE COURT: I'm sure y'all explained to him it's

1 actually an arrest. You know, the Marshals Service would  
2 arrest him. That's the nature of a bench warrant.

3 **MR. SHAHEEN:** Yes, Your Honor.

4 And I have one more issue before the jury comes  
5 back that I'd like to raise. Mr. Hines is going to be our  
6 first witness. He's an expert witness. And there are several  
7 exhibits that he -- I'm going to put in front of him, Your  
8 Honor. And several of them, there are no objections from the  
9 defendants. I've spoken with defendants. And they are okay  
10 with this plan, but I was hoping to move into evidence Exhibits  
11 2008, 2009, 2626, 1052, 2434, 1297 --

12 **THE COURT:** Hold on. 2434. Keep going.

13 **MR. SHAHEEN:** 1297, 2919, 2099, 2685, 2971, and 2006.

14 **THE COURT:** Will there be any objections to those  
15 from the defense?

16 **MR. COOKE:** Can I speak even though Mr. Griffith is  
17 going to be handling this witness?

18 **THE COURT:** You certainly may.

19 **MR. COOKE:** All right. No, there are no objections.

20 The one that we had issues about, they were  
21 going to put in bank records. And, as Your Honor recalls, we  
22 moved in limine to preclude evidence of their financial worth,  
23 and it was overruled. So subject to that, we don't object.

24 **THE COURT:** Sure. Thank you.

25 Mr. Ashmore?

1 12:16 PM 1 MR. ASHMORE: Same position, Your Honor.

2 12:16 PM 2 THE COURT: Very good.

3 12:16 PM 3 what we will do is Mr. Ashmore is going to do  
4 12:16 PM 4 his opening statement. And then, after that, if you'll rise  
5 12:16 PM 5 and say, "Your Honor, I'd like to admit by agreement the  
6 12:16 PM 6 following documents." You'll list them for the record. I'll  
7 12:16 PM 7 ask the defendants. They will be admitted. And then you may  
8 12:16 PM 8 call your next witness. Okay?

9 12:16 PM 9 MR. SHAHEEN: Thank you, Your Honor.

10 12:16 PM 10 THE COURT: Let's bring in the jury.

11 12:18 PM 11 (Whereupon the jury entered the courtroom.)

12 12:18 PM 12 THE COURT: Please be seated.

13 12:18 PM 13 opening statement for defendant Mallory.

14 12:18 PM 14 Mr. Ashmore?

15 12:18 PM 15 MR. ASHMORE: Thank you, Your Honor. May it please  
16 12:18 PM 16 the Court.

17 12:18 PM 17 THE COURT: Yes.

18 12:18 PM 18 MR. ASHMORE: Ladies and gentlemen, I'm Beattie  
19 12:18 PM 19 Ashmore. I introduced myself to you last Tuesday during jury  
20 12:18 PM 20 selection. I've been practicing law about 30 years here in  
21 12:19 PM 21 South Carolina. I graduated from College of Charleston in  
22 12:19 PM 22 1981. And I actually was a federal prosecutor here in the  
23 12:19 PM 23 early '90s. So it's good being back in Charleston.

24 12:19 PM 24 I represent Tonya Mallory. You might hear her  
25 12:19 PM 25 called Latonya.

1 Tonya, if you would raise your hand?

2 Tonya is my client, and I am my team. It is me  
3 and it is Tonya versus the United States of America.

4 Ladies and gentlemen, Tonya has been married 27  
5 years. She's got two sons -- one in college, one in high  
6 school. She's been in the health care business for 17 some-odd  
7 years, worked in a number of different blood labs. One of her  
8 jobs carried her to 300 different blood-testing services around  
9 the country in a single year. So she's very familiar with that  
10 business.

11 And because of that, ladies and gentlemen, she  
12 decided to sell everything she had, quit her job, and start  
13 HDL, Health Diagnostics Laboratories, along with two other  
14 individuals -- you hadn't heard their names mentioned yet --  
15 Dr. Joe McConnell and Russ Warnick. Don't know where they are.  
16 Don't know where HDL is. It's just Tonya here today.

17 But those three started HDL. Those three  
18 created a huge business that went from those three to 800  
19 people in a short period of time, and it was wildly successful.  
20 They did very, very well, and they did it the right way.

21 Tonya is a hardworking lady. She is tough as  
22 nails. She's a good business person. Her dad was a welder.  
23 Her parents both had high school diplomas, and she's a  
24 hardworking lady. And she left Berkeley HeartLabs and she  
25 started HDL with these two other individuals that are not in

1 this lawsuit, although they all three had an equal role in  
2 everything that transpired.

3 So along the way, as you've come to realize from  
4 Mr. Leventis and from Mr. Cooke, there was an issue as to the  
5 legality of P&H fees, process and handling fees. Is it legal  
6 to pay doctors \$17 to gather these tests and send them to HDL?

7 Tonya Mallory at all times was absolutely  
8 convinced that certainly, it's legal. It's legal. She knew  
9 the industry. She knew what was going on in the industry. And  
10 she knew that \$17 was fair market value. It wasn't a bribe; it  
11 was the fair market value. It's what doctors were being paid  
12 to pay their staff to gather these blood tests to send them to  
13 HDL.

14 why send them to HDL? Because they're better at  
15 blood tests. They're better than the ones that we get. They  
16 make people better. You're not going to hear any testimony  
17 whatsoever about somebody being harmed by HDL blood tests. To  
18 the contrary, HDL blood tests were a better mousetrap. It  
19 worked. It came with a health coach that helped you understand  
20 your blood tests, what you need to do, what you need to not do,  
21 exercise, eat. It was more than just a routine blood test. It  
22 was a better blood test.

23 So the issue of P&H came up. And it was -- it  
24 was well known in the industry, is P&H legal? So Tonya Mallory  
25 did what any reasonable person would do and hired the best

1 lawyers in the land to answer that very question, lawyers from  
2 Chicago, Boston, Philadelphia, Richmond. "Can we pay P&H fees?  
3 I need you to tell me that."

4 And these lawyers looked at it and they studied  
5 it, and they're the -- they are the cream of the crop, the best  
6 of the best, and they said, "Tonya, we've looked at it. We've  
7 met with the government. We've talked to the government. And  
8 here's what we're telling you, Tonya. It's risky. It's  
9 risky."

10 Not a single lawyer is going to take that stand  
11 and tell you that they told Tonya Mallory that P&H fees were  
12 illegal. No government witness is going to take the stand and  
13 tell you that they told Tonya Mallory that P&H fees were  
14 illegal.

15 If somebody -- her own lawyers, if the  
16 government tells you it's illegal, she's not stupid, she's  
17 going to stop. She's going to stop right then and there. The  
18 problem is the government would never tell HDL whether or not  
19 P&H fees were permissible. "Well, maybe here or maybe there.  
20 Could be this. Could be that. Depends on this. Depends on  
21 that."

22 Tonya just wanted to know. Can we do it? If we  
23 can, like everybody else, we're going to keep doing it. But if  
24 not, we're going to stop. Okay? And this case goes away.

25 Let me make this perfectly clear. Tonya Mallory

1 doesn't owe the government a dime. We're \$176 million apart on  
2 this case. All right? That's what the government wants. At  
3 the end of this two-week trial, I think you're going to come  
4 back and find that Tonya Mallory is not liable. She doesn't  
5 owe the government anything. She acted reasonably throughout.  
6 She relied on the best lawyers in America for advice. She  
7 didn't do anything wrong.

8           It's like Mr. Cooke's analogy of doing 45 in a  
9 35 and the government knew about it. The Ropes & Gray team  
10 went and met -- the lawyers from Chicago and Boston went to the  
11 Department of Justice, sat down with them, and had a -- in a  
12 power -- and you'll see all this -- PowerPoint presentation  
13 says we're paying these doctors \$17 P&H. Here's how it all  
14 works. This scheme, this conspiracy, they laid it all out to  
15 the Department of Justice, saying "This is what we're doing.  
16 You got a problem with it, let us know."

17           Crickets. No response from the government.  
18 "What you're doing is risky, risky." Not "What you're doing is  
19 illegal, stop it. What you're doing has some risk."

20           Ladies and gentlemen, again, it's like the  
21 driving analogy. Many trials are held in this courtroom. A  
22 lot of them, I'm sure, are wreck cases. And the question in  
23 those cases, who ran the red light? Who ran the red light?

24           Tonya Mallory never ran a red light. She went  
25 through yellow lights. It was risky. You can drive through a

1 yellow light all day long. You can take that risk. You can  
2 take that risk. Nobody told Tonya Mallory, "Tonya, you're  
3 running a red light. You are breaking the law."

4 That's what you have to do in this case. You  
5 have to get in Tonya Mallory's mind. What was her state of  
6 mind? What does she know? What does she not know? What did  
7 she believe? She never believed for one instance that she was  
8 breaking the law. That's what the government has got to prove  
9 to you, that she knew -- she intended to break the law.

10 And we'll lay that out for you. And Judge  
11 Gergel in particular at the end of this case will lay out for  
12 you exactly the law and the standards. But I think it's been  
13 made clear today that that's what they have to prove. Did she  
14 intend to break the law?

15 She never did. She acted reasonably. She did  
16 what any reasonable person would do. She followed the advice  
17 of the best lawyers in America that she could find. And,  
18 ladies and gentlemen, Tonya Mallory does not owe the government  
19 a dime.

20 **THE COURT:** Okay. Government's case. Do you have a  
21 motion you wish to make regarding exhibits?

22 **MR. SHAHEEN:** Yes, Your Honor. Before our first  
23 witness takes the stand, we'd like to move the following  
24 exhibits into evidence.

25 **THE COURT:** Yes.



1           **MR. SHAHEEN:** Exhibit 2008, 2009, 2626, 1052, 2434,  
2 1297, 2919, 2099, 2685, 2971, and 2006.

3           **THE COURT:** Give me the last two again, please, sir,  
4 Mr. Shaheen.

5           **MR. SHAHEEN:** I'm sorry, Your Honor. 2971.

6           **THE COURT:** Yes.

7           **MR. SHAHEEN:** And 2006.

8           **THE COURT:** Very good.

9           Any objections from the defense, from BlueWave?

10          **MR. GRIFFITH:** No objection, Your Honor.

11          **THE COURT:** From Mallory?

12          **MR. ASHMORE:** No objection, Your Honor.

13          **THE COURT:** Very good.

14               The Court admits without objection Government  
15 Exhibits 2008, 2009, 2626, 1052, 2434, 1297, 2919, 2099, 2685,  
16 2971, and 2006.

17               Very good. Please proceed.

18          **MR. SHAHEEN:** Thank you, Your Honor. The United  
19 States would like to call as our first witness Mr. Eric Hines,  
20 please.

21          **THE DEPUTY CLERK:** Please come forward to be sworn,  
22 sir. Please place your left hand on the Bible and raise your  
23 right. State your full name for the record, please.

24          **THE WITNESS:** Eric Allen Hines.

25          **THE DEPUTY CLERK:** Thank you.

1 (Witness sworn.)

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

3 ERIC HINES,

4 a witness called on behalf of the plaintiff, being first duly  
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHAHEEN:

8 BY MR. SHAHEEN:

9 Q. Good afternoon, Mr. Hines.

10 A. Good afternoon.

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

12 A. Eric Allen Hines.

13 Q. And what do you do for a living, Mr. Hines?

14 A. I'm a forensic accountant.

15 Q. And did you have to go to school to do that kind of work?

16 A. Yes, I did.

17 Q. And where did you go to school?

18 A. I went to the University of Massachusetts at Amherst.

19 Q. And did you graduate from the University of Massachusetts  
20 at Amherst?

21 A. Yes, I did.

22 Q. And what was your degree in?

23 A. I have a degree, a bachelor's degree, in accounting.

24 Q. And --

25 THE COURT: Can you pull the mic to him?

1 12:29 PM BY MR. SHAHEEN:

2 Q. Just direct your mic to --

3 A. Do I need to push it?

4 THE COURT: No, you're good.

5 BY MR. SHAHEEN:

6 Q. Okay. Thank you.

7 Besides that degree in accounting, do you have any  
8 other degrees and certifications?

9 A. I have a CPA.

10 Q. And what is a CPA?

11 A. I am a certified public accountant licensed in the  
12 commonwealth of Massachusetts.

13 Q. And do you have to do any testing or education in order to  
14 receive that license?

15 A. Yes, you do.

16 Q. And what testing and -- what testing did you undergo?

17 A. You have to pass a four-part exam which covers a variety  
18 of accounting, auditing, and business law topics. You have to  
19 qualify for a certain number of professional experience hours  
20 and some education hours as well.

21 Q. And after taking that testing, did you pass?

22 A. I did, yes.

23 Q. And, as you said before, you are certified in the state  
24 of -- or the commonwealth of Massachusetts?

25 A. Yes, I am.

1 12:30 PM Q. Do you have any other certifications or licenses that we  
2 should know about?

3 12:30 PM A. Yes, I do. I'm also certified in financial forensics,  
4 which is a designation by the American Institute of Certified  
5 Public Accountants.

6 12:30 PM Q. And what do you have to do to be certified by the -- in  
7 financial forensics?

8 12:30 PM A. Similar to the CPA, I have to pass an exam and qualify for  
9 specific professional experience in forensic accounting.

10 12:30 PM Q. And for both the CPA and the certification in financial  
11 forensics, do you have to do continuing legal -- continuing  
12 education?

13 12:30 PM A. Yes, you do.

14 12:30 PM Q. And can you describe some of that for us?

15 12:30 PM A. Continuing professional education credits are training in  
16 a variety of topics related to the accounting profession and  
17 forensic accounting for the CFF credential. That would include  
18 topics on generally accepted accounting principles, auditing,  
19 investigative techniques in financial investigations, and a  
20 variety of related topics.

21 12:31 PM Q. And have you completed all the continuing education that  
22 you're required to complete?

23 12:31 PM A. Yes, I have.

24 12:31 PM Q. After graduating from college, did you go to work in the  
25 field of accounting?

1 A. Yes, I did.

2 Q. And where did you go to work?

3 A. I went to work for Arthur Andersen.

4 Q. And what is Arthur Andersen?

5 A. It was one of the large public accounting firms,  
6 international firm. And I worked in the Boston office.

7 Q. And roughly how many accountants did Arthur Andersen have  
8 when you joined in 2000 -- yes, when you joined?

9 A. I think in the U.S., it was about 30,000, probably 100,000  
10 globally at the time.

11 Q. And what types of clients did Arthur Andersen work with?

12 A. All sorts of clients, public company clients, private  
13 clients, all different sorts of industries doing audit work,  
14 tax work, and consultant work primarily.

15 Q. And what did you specifically do for Arthur Andersen?

16 A. I was an auditor in the audit practice.

17 Q. And how long did you work at Arthur Andersen?

18 A. I was there for approximately two years.

19 Q. And where did you go after that?

20 A. Subsequent to Arthur Andersen, I joined Deloitte & Touche,  
21 which is another of the large public accounting firms. And I  
22 worked in the forensic accounting practice at Deloitte.

23 Q. What year did you join Deloitte?

24 A. I think it was 2002.

25 Q. And how many clients does Deloitte have -- or did Deloitte

1 1 2 : 3 2 P M have at the time?

2 A. I wouldn't even be able to guess. Thousands of clients.  
3 It was another large firm with tens of thousands of employees  
4 in the U.S. and hundreds of thousands globally.

5 Q. And what did you do for Deloitte?

6 A. I was in the forensic accounting practice. And that work  
7 focused on forensic investigations and litigation consulting  
8 work primarily.

9 Q. Can you sort of elaborate on that a little bit. What does  
10 it mean to do forensic accounting?

11 A. Sure. Forensic accounting is a specialty subset of the  
12 accounting world that focuses on applying both investigative  
13 techniques as well as accounting knowledge and skill to either  
14 investigations involving financial or accounting topics. Often  
15 it involves consulting with -- in litigation-related matters or  
16 disputes involving financial topics. And it is often focused  
17 on analyzing financial records in a detailed way and performing  
18 interviews and using data analysis in those procedures.

19 Q. And while you were at Deloitte, did you perform forensic  
20 accounting analyses for health care matters?

21 A. I did, yes.

22 Q. And did you perform any damages analyses while you were at  
23 Deloitte?

24 A. I did, yes.

25 Q. And can you describe for us what that means?

1 A. Damages analyses involve making a determination and a  
2 calculation of financial damages suffered by one party or  
3 another in a litigation matter or dispute.

4 Q. And did you have any -- did you conduct any damages  
5 analyses while at Deloitte regarding health care matters?

6 A. No.

7 Q. While you were at Deloitte, did you ever get promoted?

8 A. Yes, I did.

9 Q. And can you walk us through the levels that you achieved  
10 at Deloitte?

11 A. I'd be happy to.

12 So I started at Deloitte as a senior consultant and  
13 got promoted to manager after -- I think it was a couple of  
14 years. And I left Deloitte when I was a manager.

15 Q. And when did you leave Deloitte?

16 A. That was 2002 -- I'm sorry -- 2006.

17 Q. And why did you leave Deloitte?

18 A. I had an opportunity to work at another consulting firm  
19 that specialized in forensic accounting. It was started by  
20 some individuals that I had worked with at Deloitte that  
21 essentially spun off their own company, their own practice, and  
22 recruited me to join that company.

23 Q. And what was the name of that company?

24 A. StoneTurn.

25 Q. And how long had that company been operating when you left

1 Deloitte to join it?

2 A. At the time, it was probably two years old.

3 Q. What titles have you held at StoneTurn?

4 A. Since joining StoneTurn, I joined as a manager. Not long  
5 thereafter, I was promoted to senior manager, which is one step  
6 between manager and partner. And then, in 2014, I was promoted  
7 to partner in the firm.

8 Q. And can you walk us through how your responsibilities  
9 changed with those promotions?

10 A. Sure. So, as a manager, you're responsible for day-to-day  
11 oversight of accounting-related investigations, litigation  
12 support matters. And that includes developing work plans and  
13 budgets, working with clients, analyzing financial documents,  
14 overseeing staff.

15 As a senior manager, you're responsible for usually  
16 multiple clients, a little bit of a higher-level oversight, as  
17 well as working with clients directly and also overseeing  
18 analyses of a variety of sorts.

19 And then, as a partner, I'm ultimately responsible  
20 for the engagement overall, which means directing all aspects  
21 of the work conducted. There's a business development piece of  
22 it, which means working with clients and bringing in new  
23 clients for the firm. But, largely, it's overseeing the  
24 engagements in their entirety.

25 Q. Does the StoneTurn Group only consult for the federal



1 government?

2 A. No.

3 Q. What types of entities does it consult for?

4 A. StoneTurn consults for a wide variety of clients. That  
5 includes private companies, public companies in a whole variety  
6 of industries. We work for individual clients on occasion, so  
7 individuals that engage the firm. We work for government  
8 agencies, including the federal government, state government,  
9 local governments. And I think that primarily covers the  
10 population client base.

11 Q. How about you personally? Do you only consult for the  
12 federal government?

13 A. No. I have a variety of clients.

14 Q. Do you only consult for plaintiffs?

15 A. No.

16 Q. For your StoneTurn clients, do you conduct forensic  
17 accounting and damages analyses?

18 A. Yes, I do.

19 Q. And can you describe some of the forensic accounting and  
20 damages analyses that you've done in the past.

21 A. I'd be happy to. So I've worked on a variety of cases,  
22 forensic accounting investigations, numerous cases over the  
23 years involving analyzing financial records, generally accepted  
24 accounting principles, internal controls, policies and  
25 procedures at companies that pertain to financial transactions.

1 I've performed a number of analyses involving large-scale data  
2 analysis. A lot of that is -- is inherent in -- forensic  
3 accounting work is looking at large data sets.

4 Also, I've conducted analyses of financial damages  
5 including damages for our client or rebutting damages analyses  
6 that was prepared by opposing experts in other matters, and  
7 those investigations and damages-related cases are pretty wide  
8 across a variety of industries as well.

9 Q. And, all told, how many years have you been performing  
10 forensic accounting and damages analyses?

11 A. I would say probably 15 years of my 17-year career is  
12 focused on forensic accounting.

13 Q. And during that time approximately how many cases have you  
14 worked on that involve forensic accounting and damages  
15 analyses?

16 A. I would guess over a hundred.

17 Q. And did some of those cases involve the health care  
18 industry?

19 A. Yes, they did.

20 Q. Have you worked on cases that involved analyzing Medicare  
21 and TRICARE claims data?

22 A. Yes, I have.

23 Q. And can you describe some of those cases for us.

24 A. I'd be happy to, yes. I've worked on cases involving  
25 pharmaceutical pricing, which required us to analyze

1 pharmaceutical pricing information as well as claims data I  
2 received from Medicare and Medicaid programs. I've also worked  
3 on other pharmaceutical rebate programs involving analysis of  
4 claims data pertaining to certain federal rebate programs.

5 Those are the two examples that come to mind in terms  
6 of actually analyzing Medicare and Medicaid claims data, and  
7 then there's a variety of other health care-related forensic  
8 accounting matters as well that I've worked on over the years.

9 Q. And is there anything unique about analyzing Medicare and  
10 TRICARE claims data?

11 A. Any large data set, it's -- the volume is usually  
12 something unique. You need specialty equipment and software  
13 usually for that volume of information. So that aspect of it  
14 is unique, but -- and there are certain, obviously, specific  
15 fields of information and information contained in that data  
16 that are specific to health care-related matters and  
17 reimbursements from federal programs.

18 But in many ways it's similar to other large data  
19 sets that represent large transactions -- a large number of  
20 transactions in a database format.

21 Q. Have you worked on cases involving allegations of  
22 violations of the False Claims Act?

23 A. Yes, I have.

24 Q. Have you worked on cases involving allegations of the  
25 Anti-Kickback Statute?

1 12:40 PM A. Yes, I have.

2 12:40 PM Q. And can you describe for us how some of those cases went.

3 12:40 PM A. So those cases have involved investigations of allegations  
4 involving False Claims Act violations -- excuse me. Some of  
5 those involved analysis of damages, as we spoke about before,  
6 looking at prices that were reported to the government for use  
7 in reimbursement formulas.

8 I've also worked on multiple matters for corporations  
9 and their counsel when issues have arisen involving potential  
10 issues with the way certain products were marketed, also  
11 involving cases that have a kind of a parallel path of a  
12 financial reporting issue, so whether something was accounted  
13 for correctly as well as another kind of parallel part of the  
14 investigation that dealt with sales and marketing practices  
15 that may have run afoul of the Anti-Kickback Statute and the  
16 False Claims Act.

17 12:41 PM Q. Have you been engaged as an expert before?

18 12:41 PM A. I have, yes.

19 12:41 PM Q. And can you describe some of those cases for us?

20 12:41 PM A. I've been engaged as a -- an expert on multiple cases that  
21 involve investor loss matters. Those would be typically  
22 analyzing -- doing a forensic accounting analysis of a large  
23 number of financial records and bank statements and investment  
24 statements in order to understand the nature of transactions  
25 and how those transactions were reflected over time. And those

1 cases have been -- also involved a calculation of potential  
2 damages to the investors involved in those matters.

3 I've also been engaged as an expert in damages for a  
4 lost earnings case which had to do with -- it was actually a  
5 wrongful death suit, and I was the expert for calculating  
6 damages due to the wrongful death of an individual.

7 And those are -- those are the primary cases. I also  
8 have matters where I've been engaged as the expert that have  
9 not gone to trial but engaged as the expert in another  
10 anti-kickback matter as well.

11 Q. And in any of those cases, did the Court qualify you to  
12 testify as an expert?

13 A. Yes, two of those cases.

14 MR. SHAHEEN: Your Honor, based on Mr. Hines'  
15 education and experience in the accounting field, the United  
16 States would ask that the Court qualify Mr. Hines as an expert  
17 in the field of forensic accounting and damages analyses and  
18 that he be allowed to testify regarding his opinions in this  
19 matter.

20 THE COURT: Forensic accounting and damages?

21 MR. SHAHEEN: Analyses.

22 THE COURT: Analyses.

23 Any objection?

24 MR. GRIFFITH: No, Your Honor.

25 MR. ASHMORE: No, sir.

1           **THE COURT:** Very good. The witness is recognized as  
2 an expert in the areas of forensic accounting and damages  
3 analysis.

4           Please proceed.

5           **MR. SHAHEEN:** Thank you, Your Honor.

6           **BY MR. SHAHEEN:**

7           **Q.** Who retained you in this case, Mr. Hines?

8           **A.** I was retained by the United States Department of Justice.

9           **Q.** And how was StoneTurn Group compensated for the work you  
10 and your team performed in this matter?

11          **A.** My firm is compensated based on our hourly billing rates,  
12 so per hour.

13          **Q.** Is your compensation in any way tied to the outcome of  
14 this case?

15          **A.** No, it's not.

16          **Q.** What did the Department of Justice ask you to do in this  
17 case?

18          **A.** I was asked to perform a forensic accounting analysis of  
19 processing and handling payments and commission payments and  
20 cash flows between the various parties in those particular  
21 schemes as well as calculate damages related to those schemes.

22          **Q.** And, very generally, what were your conclusions after  
23 conducting those analyses?

24          **A.** Specific to damages, my conclusions related to the  
25 processing and handling scheme was that the United States

1 suffered damages totaling \$181,144,994. Particular to the  
2 commission and P&H scheme, the United States suffered damages  
3 totaling \$176,543,901.

4 I've also concluded, based on my analysis of  
5 financial and banking records, that the process and handling  
6 payments made by the labs HDL and Singulex to individual  
7 physicians and practices total \$52.6 million. I also concluded  
8 that the HDL and Singulex payments made to Bluewave for  
9 commissions total \$244.9 million.

10 Q. And in performing those analyses, what information did you  
11 consider that led to those conclusions?

12 A. I considered the -- a variety of sources, including  
13 Medicare and TRICARE claims data, so the data supporting claims  
14 paid by the federal government. I also considered reports  
15 showing processing and handling payments made to physicians. I  
16 considered a variety of contract documents, including the  
17 agreements between Bluewave and HDL and Singulex laboratories  
18 respectively, individual agreements between doctors and the  
19 labs, as well as a variety of other documentation sources.

20 Q. And who provided those documents to you?

21 A. The Department of Justice.

22 Q. I want to focus now on the first scheme you mentioned, the  
23 process and handling scheme.

24 Can you tell us generally what you found regarding  
25 the process and handling scheme?

1 A. Related to the process and handling scheme, I observed in  
2 reports that laid out the payments made to physicians and  
3 physician practices. As I said before, there was \$52.6 million  
4 payments over the periods that we had information available  
5 for. I also observed that there were contracts between the  
6 individual physician and physician practices as -- and the  
7 blood labs, HDL and Singulex.

8 And also -- I think those are the primary items we --  
9 that I observed in my analysis related to the process and  
10 handling scheme.

11 Q. As part of that analysis, did you have to figure out how  
12 the scheme actually worked?

13 A. Yes. I had to develop an understanding of the nature of  
14 the flows between -- both the cash flows between the relevant  
15 parties involved in the scheme, the paperwork, and how certain  
16 documents were prepared in the course of conducting those  
17 processing and handling payments.

18 Q. And did you create a demonstrative illustrating how  
19 this -- the P&H scheme worked in preparation for today's  
20 testimony?

21 A. Yes, I did.

22 Q. Appearing on the screen right now or momentarily should be  
23 Plaintiff's Demonstrative 001.

24 Is this the demonstrative that you created in  
25 preparation for today's testimony?



1 A. Yes, it is.

2 Q. And I apologize. Mine is a little off-center. I just  
3 want to make sure you have the entirety of the demonstrative in  
4 front of you.

5 A. It's a bit off-center, but I have a couple other screens  
6 that I think I can see the bulk of it.

7 Q. Fair enough. And why don't we start, as all things should  
8 start, at the beginning. Can you walk us through what you  
9 found happening in the first step here.

10 A. Sure. The first step on the flow chart that's up on the  
11 screen would be the marketing and sales of blood tests by  
12 Bluewave and its contractors to physicians and physician  
13 practices.

14 Q. And what kinds of documents did you review that led you to  
15 the opinion that Bluewave was in the field selling HDL and  
16 Singulex tests to physicians?

17 A. The primary document was sales agreements between HDL and  
18 Bluewave and Singulex and Bluewave respectively.

19 Q. And appearing on the screen momentarily should be  
20 Plaintiff's Exhibit Number 2008 and also Plaintiff's Exhibit  
21 Number 2009.

22 Do you recognize these two documents, when they  
23 appear?

24 A. Yes, I do.

25 Q. And if you need to consult, there's a witness binder in

1 front of you as well. I recognize that this is a little  
2 blurry.

3 Did you review these two documents as part of your  
4 analysis?

5 A. Yes, I did.

6 Q. And what are the titles of these agreements?

7 A. They're both titled "Sales Agreement."

8 Q. And who specifically are the parties to these agreements?

9 A. One is between BlueWave Healthcare Consultants and  
10 Singulex, and the other is between BlueWave Healthcare  
11 Consultants and Health Diagnostic Laboratory, Inc.

12 Q. And if we could focus on Exhibit 2008 for just a moment,  
13 which is the Singulex sales agreement.

14 Can you tell me who the signatories were for this  
15 contract?

16 A. For BlueWave, it appears to be Brad Johnson and F. Calhoun  
17 Dent, III. And for Singulex, it looks to be the CEO.

18 Q. And now turning to the signatory page for Exhibit 2009,  
19 can you tell me who the signatories were for that contract?

20 A. Similar for BlueWave, Brad Johnson and F. Calhoun Dent as  
21 well as the CEO for HDL, Tonya Mallory.

22 Q. And if we could flip back to the first page, can you tell  
23 me what the effective dates were for these two agreements?

24 A. You're on the first page of 2009?

25 Q. We can start with 2009.

1 A. The effective date is January 4th of 2010.

2 Q. And what is the effective date for the Singulex sales  
3 agreement, Exhibit 2008?

4 A. That would be June 1st of 2010.

5 Q. And were these dates significant to you?

6 A. Yes, they were.

7 Q. And what was the significance to you?

8 A. These dates were used as the beginning point for our  
9 damages period.

10 Q. And let's focus on Exhibit 2009 for the moment.

11 Can you go to Paragraph 10 of Exhibit 2009 and read  
12 aloud what it says there?

13 A. Paragraph 10 states, "Independent contractor relationship.  
14 Contractor shall act as and be deemed to be an independent  
15 contractor for all purposes of this agreement and shall not act  
16 nor shall contractor be deemed to be an agent, employee, or  
17 servant of the company. This agreement is not intended to be  
18 one of hiring under the provisions of any worker's compensation  
19 or any other law and shall not be so construed. Contractor has  
20 sole responsibility for making any payment for local, state,  
21 federal, or international tax purposes."

22 Q. And now can you turn to Clause 1 in Exhibit 2009 and read  
23 the first two sentences.

24 A. Paragraph 1 under "Appointment" reads, "Company hereby  
25 appoints contractor as its independent contractor to perform

1 certain sales services for company as requested by company  
2 including the sale of various laboratory tests and services of  
3 company to physicians and medical groups specializing in  
4 cardiology and other disease management specialties, the  
5 services."

6 Q. And can you -- I'm sorry.

7 A. Stop there or --

8 Q. Yeah, that works. And can you look at Section Number 2 of  
9 this contract and summarize what you see there regarding what  
10 the duties of the contractor were.

11 A. Sure. Under "Duties of Contractor," it states, "The  
12 contractor shall provide a sufficient number of sales personnel  
13 in the territory who will diligently and loyally apply their  
14 skills and best efforts to performance of the contractor's  
15 duties; B, perform the services in accordance with the highest  
16 standards of skill and care in contractor's business and sales  
17 profession; C, provide sales training to other agents of the  
18 company outside the territory as reasonably requested by the  
19 company but not to exceed four days per year and at the option  
20 of contractor to include classroom training in Birmingham,  
21 Alabama, or riding with employees of contractor in the  
22 territory; and, D, use its best efforts to maximize the sales  
23 goals listed on Schedule 2 hereto."

24 Q. And based on your analysis, did you find similar  
25 provisions in Exhibit 2008, the Singulex sales agreement?

1 A. Yes.

2 Q. And what did these provisions tell you about the  
3 relationship between Bluewave and the labs that signed these  
4 agreements?

5 A. I'm sorry. Can you repeat the question?

6 Q. Sure. What did these provisions tell you about the  
7 relationship between Bluewave and the labs that signed these  
8 agreements?

9 A. These provisions tell me that there -- it was an  
10 independent contractor relationship for selling HDL services  
11 between BlueWave and HDL.

12 Q. I'm sorry. I slightly jumped the gun here a bit. Can you  
13 turn to Paragraph 4?

14 A. Sure.

15 Q. And just read the first three sentences of that one.

16 A. Under the Paragraph 4, "Compensation," under "Fees," it  
17 states, "Contractor shall be paid a commission equal to  
18 13 8/10 percent of the revenue collected by the company from  
19 sales in the territory for the 18-month period beginning  
20 April 1st, 2010, through September 30th, 2011, the commission  
21 period. For the next 18-month period after the reduced  
22 commission period, the contractor shall be paid a commission  
23 equal to 19 8/10 percent of the revenue collected by the  
24 company from sales in the territory, the increased commission  
25 period. For all other periods under this agreement other than

1 the reduced commission period or the increased commission  
2 period, contractor shall be paid a commission equal to  
3 16 8/10 percent of the revenue collected by the company from  
4 sales in the territory.

5 Q. Actually, can you read one more sentence there.

6 A. Sure.

7 Q. The next one.

8 A. "For purposes of this agreement, a sale shall mean an  
9 order for services and accepted by company, obliging company,  
10 to deliver its services."

11 Q. And I think you described before how your analysis -- what  
12 your analysis revealed about the previous provisions that you  
13 read in terms of what BlueWave was expected to do.

14 what did this particular provision tell you?

15 A. This provision tells me that the -- in exchange for the  
16 services rendered, that the independent contractors, in this  
17 case BlueWave, would be receiving a commission for services  
18 based on total revenue.

19 Q. And beyond these two sales agreements, what other kinds of  
20 documents did you look at regarding Bluewave's marketing of HDL  
21 and Singulex testing?

22 A. I looked at documents that included individual account  
23 setup forms. I looked at agreements between individual  
24 physician practices and HDL and Singulex and financial  
25 documents related to those particular processes.

1 12:55 PM Q. And appearing on your screen now is Plaintiff's Exhibit  
2 Number 2626. And if you turn to -- if you can look at your  
3 binder, can you sort of briefly describe for us what this  
4 document is.

5 12:55 PM A. Yes. So this document, if you go a page or two in, it's a  
6 12:55 PM fax header from an individual, Jerry Carroll, who is a Bluewave  
7 12:55 PM sales representative, to Tabitha Henley at HDL.

8 12:55 PM Q. How did you know that Mr. Carroll was a Bluewave sales  
9 12:56 PM representative?

10 12:56 PM A. There are rosters of the sales representatives from  
11 12:56 PM Bluewave that were provided to us.

12 12:56 PM Q. Okay. And so we've talked about the fax submission page.  
13 what's on page 4 of this exhibit?

14 12:56 PM A. Page 4 is an account information form. It's a new account  
15 12:56 PM setup form.

16 12:56 PM Q. And if you look at the bottom left-hand corner of this  
17 12:56 PM document, what do you see?

18 12:56 PM A. There are -- a special request section, which says, "Send  
19 12:56 PM to Jerry W. Carroll," and an address in Greenville, North  
20 12:56 PM Carolina. And then also it's a check box which says, "Send  
21 12:56 PM supplies to sales rep."

22 12:56 PM Q. And did the new account submission forms that you reviewed  
23 12:56 PM as part of your analysis have similar boxes for all of them?

24 12:56 PM A. Yes.

25 12:56 PM Q. If we turn to page 5 of Exhibit 2626, can you tell me what

12:56 PM 1 you see there?

12:56 PM 2 A. Page 5 is a copy of an HDL process and handling agreement.

12:57 PM 3 Q. Did you look at other processing and handling agreements  
12:57 PM 4 like this one as part of your analysis?

12:57 PM 5 A. Yes, I did.

12:57 PM 6 Q. Roughly how many did you look at?

12:57 PM 7 A. Approximately 60.

12:57 PM 8 Q. And were they all similar?

12:57 PM 9 A. Yes, they were.

12:57 PM 10 Q. Who were the parties to these agreements?

12:57 PM 11 A. The parties were typically physicians and the blood labs.  
12:57 PM 12 So in this case, it would be HDL and the corresponding  
12:57 PM 13 physician that signed the agreement.

12:57 PM 14 Q. And can you look at paragraph 1 of this P&H agreement and  
12:57 PM 15 summarize what it says?

12:57 PM 16 A. Yes. So paragraph 1 describes that, in consideration for  
12:57 PM 17 processing and handling services provided by the physician,  
12:57 PM 18 which are laid out in some detailed sentences beyond that, that  
12:57 PM 19 HDL shall pay the physician a \$17 per-specimen fee for each  
12:57 PM 20 specimen collected.

12:57 PM 21 Q. And if you look at paragraph 2 of this P&H agreement, can  
12:57 PM 22 you summarize what it says?

12:57 PM 23 A. It says that, in consideration for phlebotomist services,  
12:58 PM 24 HDL will pay the physician a \$3 per-specimen fee.

12:58 PM 25 Q. And if you look at paragraph 3 of this P&H agreement, can



1 12:58 PM 1 you tell us what it says?

2 12:58 PM 2 A. Paragraph 3 summarizes the total reimbursement for  
3 12:58 PM 3 collection services and processing and handling of \$20 per  
4 12:58 PM 4 specimen.

5 12:58 PM 5 Q. And then finally if you could look at paragraph 4 and tell  
6 12:58 PM 6 us what that says or summarize for us what that says.

7 12:58 PM 7 A. Paragraph 4 summarizes that HDL should pay physicians and  
8 12:58 PM 8 describes the information needed to pay a physician, which is  
9 12:58 PM 9 primarily to provide HDL -- each physician office would have to  
10 12:58 PM 10 provide HDL with the name of a patient and a date of collection  
11 12:58 PM 11 in order to receive the process and handling payment.

12 12:58 PM 12 Q. And we'll get to this in a little bit, but is that  
13 12:58 PM 13 generally what you saw that that's what doctors provided, the  
14 12:58 PM 14 name and the patient -- the patient name and the date of  
15 12:58 PM 15 service?

16 12:58 PM 16 A. Yes, it is.

17 12:58 PM 17 Q. And did they do it on a monthly basis as prescribed here?

18 12:58 PM 18 A. Generally, yes.

19 12:59 PM 19 Q. In the HDL P&H agreements that you reviewed, did HDL agree  
20 12:59 PM 20 to pay physicians \$20 for every specimen they referred?

21 12:59 PM 21 A. Yes, with limitation.

22 12:59 PM 22 Q. And what were the limitations?

23 12:59 PM 23 A. The one primary limitation, which is actually paragraph 1,  
24 12:59 PM 24 is the fee is not applicable where a single sample type is  
25 12:59 PM 25 collected or a single test is ordered. So the fee would be

1 received if there's multiple samples and multiple tests.

2 Q. As part of your analysis, did you also review Singulex P&H  
3 agreements?

4 A. Yes, I did.

5 Q. And appearing shortly on your screen should be Exhibit --  
6 Plaintiff's Exhibit Number 1052.

7 Do you recognize this document?

8 A. Yes, I do.

9 Q. And what is this document?

10 A. This is a Singulex processing and handling agreement.

11 Q. And did you review this particular document as part of  
12 your analysis?

13 A. Yes, I did.

14 Q. And did you review others like it?

15 A. Yes, I did.

16 Q. Approximately how many did you review?

17 A. I believe it was approximately 20.

18 Q. And were they all similar?

19 A. They were.

20 Q. And who were the parties to these agreements, the Singulex  
21 P&H agreements?

22 A. It would be Singulex and the physician signing the  
23 agreement.

24 Q. And if you could summarize for us what you see in  
25 paragraph A, please.

1 A. Paragraph A states that Singulex will reimburse the  
2 physician office for processing and handling fees of \$17 per  
3 specimen to process Singulex testing.

4 Q. And then if you move down to paragraph D, could you  
5 summarize for us what it says there.

6 A. Paragraph D states the total fee payable at \$17 per  
7 specimen, which is the processing and handling fee and  
8 phlebotomy draw fee.

9 Q. And looking at paragraph E, can you summarize for us what  
10 you see there.

11 A. Paragraph E?

12 Q. I'm sorry. Paragraph F. I apologize.

13 A. Paragraph F states that Singulex would pay the physician  
14 \$17 per specimen on a monthly basis and, similar to HDL,  
15 describes the physicians' offices should provide Singulex with  
16 a list of patients and the draw date, so the date that the  
17 specimen was collected.

18 Q. And, again, we will get to this momentarily.

19 But generally speaking, is that how Singulex  
20 physicians submitted the -- or is that the information that  
21 Singulex physicians submitted in order to get the draw fees?

22 A. Yes, it is.

23 Q. I apologize. I should be specific. Is that the  
24 information that the physicians provided to Singulex in order  
25 to get processing and handling fees?

1 : 01 PM 1 A. Yes.

1 : 01 PM 2 Q. In the Singulex P&H agreements that you reviewed, did  
1 : 01 PM 3 Singulex always agree to pay physicians \$17 for every specimen  
1 : 01 PM 4 they referred?

1 : 01 PM 5 A. Singulex fees varied a bit.

1 : 01 PM 6 Q. And what was the range of variance there?

1 : 01 PM 7 A. I think a large number of them were \$13. It kind of  
1 : 01 PM 8 ranged from 13, 17, some of it below.

1 : 01 PM 9 Q. And if we could go back to the demonstrative that we were  
1 : 01 PM 10 looking at before outlining how the scheme worked. We've  
1 : 02 PM 11 talked about what happened when BlueWave marketed this test.

1 : 02 PM 12 Can you tell us what the next step was in the  
1 : 02 PM 13 process.

1 : 02 PM 14 A. The next step, 2, would be physicians referring blood  
1 : 02 PM 15 tests to HDL and Singulex for processing.

1 : 02 PM 16 Q. And how did you determine whether physicians referred  
1 : 02 PM 17 tests to HDL and Singulex?

1 : 02 PM 18 A. There's a couple sources. There are processing and  
1 : 02 PM 19 handling reports which show the payments made for blood tests  
1 : 02 PM 20 referred by those laboratories. And there are also the  
1 : 02 PM 21 processing and handling agreements which describe that referral  
1 : 02 PM 22 process. And then there are also the Medicare and TRICARE  
1 : 02 PM 23 claims data sources, which show the actual claims that were  
1 : 02 PM 24 paid by Medicare and TRICARE for those services.

1 : 02 PM 25 Q. And I want to sort of walk through the categories of

1 documents you just listed there. And I believe one of the  
2 documents you listed was reports on P&H payments.

3 A. Correct.

4 Q. How did those reports come to you? Or what did you see in  
5 those reports?

6 A. We saw a couple different types of processing and handling  
7 reports. There are some -- what we -- I refer to as detailed  
8 reports, which have itemized information on the individual  
9 sample collected, the referring physician, the patient, the  
10 date, and sometimes information on the procedures ordered.

11 There are also what I've referred to as summary-level  
12 process and handling reports, which have information that  
13 summarizes by physician and by year the number of processing  
14 and handling payments and the amount received by that physician  
15 in that year.

16 Q. And I want to focus for the time being on the more  
17 detailed reports. Appearing on your screen momentarily should  
18 be Plaintiff's Exhibit Number 2434.

19 Can you tell us what this -- first, do you recognize  
20 this document?

21 A. Yes.

22 Q. And what is this document?

23 A. This looks to be a report -- a detailed report for HDL  
24 processing and handling.

25 Q. And there's a portion of this screen that's blacked out.

1 : 0 4 P M 1 Did the document that you received have this portion blacked  
1 : 0 4 P M 2 out?

1 : 0 4 P M 3 A. No, it did not.

1 : 0 4 P M 4 Q. And do you have any idea why this portion is blacked out  
1 : 0 4 P M 5 right now?

1 : 0 4 P M 6 A. I believe that includes patient information. So privacy  
1 : 0 4 P M 7 reasons would be the -- why we're blacking it out.

1 : 0 4 P M 8 Q. But, again, you were able to see the entirety of the  
1 : 0 4 P M 9 documents; correct?

1 : 0 4 P M 10 A. Yes, I was.

1 : 0 4 P M 11 Q. What does each row of data in this file represent?

1 : 0 4 P M 12 A. Each row represents a sample or a specimen collected for  
1 : 0 4 P M 13 which processing and handling was paid.

1 : 0 4 P M 14 Q. And how did you know that?

1 : 0 4 P M 15 A. This was represented from HDL to be details on processing  
1 : 0 4 P M 16 and handling payment. And you can see the tab being labeled  
1 : 0 4 P M 17 "P&H."

1 : 0 4 P M 18 Q. And there are several columns on this spreadsheet. Can  
1 : 0 4 P M 19 you tell me which ones you focused on and why.

1 : 0 4 P M 20 A. The columns focused on primarily -- we looked at all of  
1 : 0 5 P M 21 the columns and the information -- but they would be the  
1 : 0 5 P M 22 collection date, the referring physician -- which is under the  
1 : 0 5 P M 23 columns for provider -- provider NPI. NPI is a unique  
1 : 0 5 P M 24 identifier for each individual physician. And then it would be  
1 : 0 5 P M 25 patient information as well.

1 : 0 5 P M 1 Q. And why did you focus on those particular columns?

1 : 0 5 P M 2 A. We used these processing and handling reports to identify  
1 : 0 5 P M 3 corresponding claims paid by Medicare and TRICARE. And that  
1 : 0 5 P M 4 was done based on matching the name of the patient, the  
1 : 0 5 P M 5 referring physician who had recommended the procedure, and the  
1 : 0 5 P M 6 date.

1 : 0 5 P M 7 Q. Did you have similarly detailed data for Singulex's P&H  
1 : 0 5 P M 8 payments?

1 : 0 5 P M 9 A. Yes.

1 : 0 5 P M 10 Q. And did you rely on that data as part of your analysis?

1 : 0 5 P M 11 A. Yes, I did.

1 : 0 5 P M 12 Q. Can you turn to the tab for Exhibit Number 2356 in your  
1 : 0 5 P M 13 exhibit binder.

1 : 0 6 P M 14 Are you there?

1 : 0 6 P M 15 A. I am, yes.

1 : 0 6 P M 16 Q. Is this an example of the P&H detailed data for Singulex  
1 : 0 6 P M 17 that you relied upon for your analysis?

1 : 0 6 P M 18 A. It looks to be, yes.

1 : 0 6 P M 19 MR. SHAHEEN: And, Your Honor, I would ask that this  
1 : 0 6 P M 20 document be entered into evidence. This is Plaintiff's Exhibit  
1 : 0 6 P M 21 Number 2356.

1 : 0 6 P M 22 THE COURT: Very good.

1 : 0 6 P M 23 Is there an objection?

1 : 0 6 P M 24 MR. GRIFFITH: No objection, Your Honor.

1 : 0 6 P M 25 MR. ASHMORE: No, sir.

1           **THE COURT:** Government's Exhibit 2356 is admitted  
2 without objection.

3           **MR. SHAHEEN:** Thank you, Your Honor.

4           **BY MR. SHAHEEN:**

5           **Q.** Shortly now -- there it is -- appearing on your screen is  
6 Exhibit Number 2356. And I'd like to focus on the second tab  
7 there -- or at least of this particular spreadsheet. Thank  
8 you.

9                       In looking at this, what does each row of data in  
10 this file represent?

11          **A.** Each row represents a sample or a specimen that was  
12 collected and paid for processing and handling payments.

13          **Q.** And how did you come to that conclusion?

14          **A.** Again, at the bottom, it's labeled "P&H detail." And  
15 these were provided by Singulex with the understanding they  
16 were processing and handling payment details.

17          **Q.** And there's several columns on the spreadsheet. Can you  
18 tell me which ones you focused on and why?

19          **A.** Similar to HDL, it would be the date. So the collection  
20 date, date of service. It would also be the referring  
21 physician information, and then it would also be the patient.

22          **Q.** And I've noticed that this particular document also has a  
23 blacked-out column. Do you see that?

24          **A.** I do.

25          **Q.** And did the document that you looked at as part of your



1 analysis have that column illustrated?

2 A. It did. We can see that column.

3 Q. And do you understand -- or do you have a sense as to why  
4 it was redacted for today?

5 A. I believe that is also patient information which is  
6 blacked out for privacy reasons.

7 Q. We've talked about the P&H data from both Singulex and  
8 HDL. What did you do with this data?

9 A. As I described a bit before, we used the data to match a  
10 processing and handling payment with a claim in the Medicare or  
11 TRICARE data. So essentially to cross-reference those two data  
12 sets to find a claim paid by Medicare that corresponded to a  
13 processing and handling payment.

14 Q. And previously you've mentioned that you also had more  
15 summary-level reports that you looked at; is that correct?

16 A. That's correct, yes.

17 Q. What did you mean when you were speaking of the summary  
18 reports?

19 A. There are summary-level processing and handling reports  
20 that describe by physician, by year, the number and amount of  
21 processing and handling payments received by those physicians  
22 and physician practices.

23 Q. And appearing on your screen momentarily should be  
24 Plaintiff's Exhibit Number 1297. Do you recognize this  
25 document?

1 A. Yes. This looks like a Singulex summary P&H report.

2 Q. And did you rely on this document as part of your  
3 analysis?

4 A. Yes, I did.

5 Q. And I want to switch now to Plaintiff's Exhibit Number  
6 2919, which should appear on your screen momentarily.

7 Do you recognize this document?

8 A. Yes, I do.

9 Q. And what is this document?

10 A. That is an HDL summary processing and handling report.

11 Q. And for what time periods did you have the summary reports  
12 for HDL and Singulex?

13 A. For HDL, I believe it was the beginning of 2010 through  
14 the end of 2014. Singulex, I believe it was the second quarter  
15 of 2010 through the end of 2013.

16 Q. Focusing now on Plaintiff's Exhibit Number 2919, what does  
17 each row of data in this file represent?

18 A. I'm sorry. You're on 2919?

19 Q. Yes.

20 A. Each row would correspond to an individual physician or  
21 practice and include information on that physician practice  
22 name, address, zip code, and the totals by year for processing  
23 and handling payments received.

24 Q. And I notice there are no blacked-out portions of this  
25 document. Does this document contain any patient information?

1 A. No, it does not.

2 Q. There's several columns on this spreadsheet. Can you tell  
3 me which ones you focused on and why.

4 A. We would focus -- my analysis was focused on all the  
5 columns but primarily on the physician practice name and the ID  
6 of the practice as well as the totals for amounts of processing  
7 and handling amounts paid.

8 Q. And did this data show you how many referrals the  
9 physicians made to HDL and Singulex?

10 A. Yes, it did.

11 Q. And can you explain how you came to that conclusion from  
12 this data?

13 A. You can see in Column H, those are dollar values for  
14 practices in -- this tab we're on here is 2013. And those  
15 dollar values correspond to the amount of processing and  
16 handling payments received by those practices in that year.

17 Q. Were you able to tell from the summary data how many  
18 physicians received P&H?

19 A. Yes.

20 Q. And how many physicians received P&H from HDL and  
21 Singulex?

22 A. Approximately 3500.

23 Q. And just in order to get a general sense of how you sort  
24 of navigated through this document, I want to walk through a  
25 couple of examples. If we could go down to row 24, can you

1 walk me through what you learned from the data in row 24?

2 A. Certainly. Row 24, the physician practice is Keowee  
3 Primary Care in Anderson, South Carolina. And the total of the  
4 processing and handling dollars received in 2013 was \$107,740.

5 Q. And from that figure, that \$107,740 figure, were you able  
6 to determine how many referrals Keowee referred to HDL that  
7 year?

8 A. Yes.

9 Q. And how would you do that?

10 A. For HDL, the referrals were \$20 per referral, so you would  
11 divide that number by 20.

12 Q. Can we do one more example? Can we go down to row 376,  
13 please.

14 And what do you see in this row of data, Mr. Hines?

15 A. I see it is -- Family Physicians of Spartanburg is the  
16 physician practice in Spartanburg, South Carolina.

17 Q. And how much did the Family Physicians of Spartanburg in  
18 South Carolina make in P&H in the year 2013?

19 A. \$201,420.

20 Q. Were there other documents that you relied upon to  
21 determine how physicians were ordering tests from HDL and  
22 Singulex?

23 A. It would be the processing and handling documents  
24 themselves, the contracts. It would also be these schedules as  
25 well as the claims data to corroborate that information

1 primarily.

2 Q. Was there any other data you looked at to corroborate this  
3 information?

4 A. We also looked at financial information, including new  
5 patient setup forms. And there would also be other supporting  
6 documents that we saw, including things like draw logs, which  
7 would be another population.

8 Q. And appearing on your screen now are Exhibits Numbers 2099  
9 and 2685.

10 Do you recognize these particular documents?

11 A. Yes, I do.

12 Q. And what are we looking at here?

13 A. So this looks to be a few pages in on the exhibit, which  
14 is a copy of a draw log from -- for HDL from an individual  
15 physician practice.

16 Q. And what types of information did you find in these draw  
17 log documents?

18 A. The draw logs are typically handwritten documents that  
19 would itemize the name of the patient, date of the collection  
20 of the specimen or sample, and then sometimes would have the  
21 patient's date of birth on those documents as well. So these  
22 are the listings of individual patients and collection dates on  
23 which processing and handling was based.

24 Q. And what did you do with these particular documents?

25 A. We used this documentation to understand how the paperwork

1 flow in the overall scheme of processing and handling worked  
2 and to compare and contrast to a documentation we had  
3 elsewhere, claims data, in order to understand the nature of  
4 the way they used these forms.

5 Q. If we could go back to the demonstrative you have  
6 outlining how the P&H scheme worked. We've talked about how  
7 the Bluewave reps marketed the test to physicians, and now  
8 we've talked about how the physicians referred the tests.

9 Can you outline for us what the next step in the  
10 process was?

11 A. The next step, 3, on the flow chart would be submitting  
12 those claims for reimbursement from insurers. Here, we're  
13 focused on Medicare and TRICARE, and that would be Step 3.

14 Q. And how did you know that HDL and Singulex referred claims  
15 for reimbursement to Medicare and TRICARE?

16 A. We received Medicare and TRICARE claims data in -- and  
17 that information included all the specific information on  
18 claims submitted by HDL and Singulex to those particular  
19 agencies.

20 Q. And did you rely on the data provided by Medicare and  
21 TRICARE?

22 A. Yes, I did.

23 Q. And how did the data come to you?

24 A. It was on a hard drive.

25 Q. And why would it be transmitted in a hard drive?

1 : 1 5 P M 1 A. It's extremely voluminous. It's a lot of data.

1 : 1 6 P M 2 Q. And if one were to open up the documents on that hard  
1 : 1 6 P M 3 drive, what kind of files would they be looking at?

1 : 1 6 P M 4 A. Typically it would be a type of file -- I'll refer to it  
1 : 1 6 P M 5 as -- it's just, like, a text file used to transport large  
1 : 1 6 P M 6 amounts of data. Without loading it into a database program,  
1 : 1 6 P M 7 it wouldn't look like much. But it would be a variety of text  
1 : 1 6 P M 8 files.

1 : 1 6 P M 9 Q. And if you could turn to the 2011 exhibit tab of the  
1 : 1 6 P M 10 binder. You should see a screenshot of the CMS claims data.  
1 : 1 6 P M 11 Again, it was too voluminous to include in the binder.

1 : 1 6 P M 12 Are you there with me?

1 : 1 6 P M 13 A. Yes, I am.

1 : 1 6 P M 14 Q. And is this what the CMS claims data looked like when you  
1 : 1 6 P M 15 opened it?

1 : 1 6 P M 16 A. Yes, it does.

1 : 1 6 P M 17 MR. SHAHEEN: Your Honor, I would request that  
1 : 1 6 P M 18 Plaintiff's Exhibit Number 2011 be received into evidence.  
1 : 1 6 P M 19 This is the CMS claims data.

1 : 1 6 P M 20 THE COURT: Any objection?

1 : 1 6 P M 21 MR. COOKE: No objection.

1 : 1 6 P M 22 MR. ASHMORE: No, sir.

1 : 1 6 P M 23 THE COURT: Government's Exhibit 2011 is admitted  
1 : 1 7 P M 24 without objection.

1 : 1 7 P M 25 MR. SHAHEEN: Thank you, Your Honor.

1 BY MR. SHAHEEN:

2 Q. Appearing now on the screen is the same screenshot that I  
3 think appears in your binder. Can you tell us what we're  
4 looking at here?

5 A. This would be the Medicare claims data which would have --  
6 the text for those columns usually delineate where columns  
7 would exist, where it's loaded into the database in a column  
8 fashion like a spreadsheet. And when you transmit data like  
9 this in a text format, those comments are just kind of blended  
10 in with the overall text. And you need a program to read it.

11 Q. So you didn't read the data like this; is that correct?

12 A. No.

13 Q. What did you do with the data so that you could put into a  
14 readable format?

15 A. This data was loaded to a database program used to analyze  
16 large data sets.

17 Q. And did you create a demonstrative showing us what it  
18 looks like after it's loaded into your database?

19 A. Yes.

20 Q. If we could pull up Plaintiff's Demonstrative Number 08.

21 Is this the demonstrative that you created showing us  
22 what it looks like when it's converted into something more  
23 readable?

24 A. Yes, it is.

25 Q. When you're looking at the data itself, how do you know



1 whether the claim was from HDL or Singulex?

2 A. There's fields in the claims data that identifies the  
3 provider.

4 Q. And what information is contained in each row of data  
5 there?

6 A. Each row would correspond to an individual procedure. So  
7 in one particular patient visit or patient referral, patient  
8 encounter would have multiple lines for every procedure  
9 performed.

10 Q. Does each row represent a single patient encounter?

11 A. No.

12 Q. So roughly how many rows were contained in the Medicare  
13 claims data that you reviewed?

14 A. The Medicare data had approximately 21.5 million rows.

15 Q. And when you analyzed those 21.5 million rows, how many  
16 individual patient referrals or encounters did you identify?

17 A. There's approximately 1.2 million.

18 Q. Does a row have any more specific information that you  
19 looked at?

20 A. A row has more specific information, including details on  
21 the individual patient, on the referring physician, on the  
22 dates of service. It will have other information on the  
23 particular procedures as well, as well as there's approximately  
24 120 columns of information that deals in the Medicare data. So  
25 it would be those primary sources plus a whole variety of

1 others.

2 Q. And did you look at all 120 columns of data in the file,  
3 or did you focus on specific ones?

4 A. We observed all of them and looked at all of them in the  
5 analysis but focused on certain columns.

6 Q. And can you describe for us which columns you looked at  
7 and why.

8 A. It would primarily be the service dates, so the dates of  
9 the procedures. It would also be the referring physician  
10 identifiers, which, in the Medicare/TRICARE data, would  
11 typically be a physician NPI number. So it's a unique  
12 identifier for that particular physician. It would also be the  
13 patient information.

14 Q. And so what did you do with the data from those columns?

15 A. Those particular data sources would be used to identify a  
16 unique patient encounter where a doctor would serve a patient  
17 on a particular date, and then they would be matched up with  
18 the reports for processing and handling where we have that  
19 detailed information to correspond with those two data sets.

20 Q. Did you have similar data from TRICARE?

21 A. Yes, we did.

22 Q. And appearing on your screen is Plaintiff's Exhibit Number  
23 2971.7.

24 Do you recognize this exhibit?

25 A. Yes, I do.

1 : 2 1 P M 1 Q. And what did you do with the data -- or what is this  
1 : 2 1 P M 2 exhibit?

1 : 2 1 P M 3 A. This looks to be TRICARE claims data.

1 : 2 1 P M 4 Q. And did you do something similar with the TRICARE claims  
1 : 2 1 P M 5 data in that you incorporated it into your SQL database?

1 : 2 1 P M 6 A. Yes.

1 : 2 1 P M 7 Q. Roughly how many rows of data were contained in the  
1 : 2 1 P M 8 TRICARE claims data that you reviewed?

1 : 2 1 P M 9 A. Approximately 1.4 million rows.

1 : 2 1 P M 10 Q. And when you analyzed those 1.4 million rows, how many  
1 : 2 1 P M 11 individual patient referrals did you identify?

1 : 2 1 P M 12 A. I believe it was about 66,000.

1 : 2 1 P M 13 Q. And what specific information is contained in each row of  
1 : 2 1 P M 14 the TRICARE claims data?

1 : 2 1 P M 15 A. It would be similar to Medicare, which would include  
1 : 2 1 P M 16 information on the patient, the referring physician -- although  
1 : 2 1 P M 17 in the TRICARE data, that field wasn't often populated -- as  
1 : 2 1 P M 18 well as the procedures, the amounts paid by TRICARE, and a  
1 : 2 2 P M 19 variety of other fields. It was about 182 fields in the  
1 : 2 2 P M 20 TRICARE information.

1 : 2 2 P M 21 Q. Were you focused on the fields you just ran through?

1 : 2 2 P M 22 A. I was, yes.

1 : 2 2 P M 23 Q. So moving back to the demonstrative that you created for  
1 : 2 2 P M 24 the P&H scheme and how it worked, were you able to use these  
1 : 2 2 P M 25 data sets to determine how much Medicare and TRICARE paid to

1 HDL and Singulex?

2 A. Yes.

3 Q. And how much did Medicare and TRICARE pay to HDL and  
4 Singulex?

5 A. Approximately 500 and -- let me refer to my -- something  
6 here.

7 It was 585.7 million.

8 Q. And how did you reach that determination based on the data  
9 sets?

10 A. So I, with assistance from my team, analyzed the TRICARE  
11 and Medicare data and would summarize the amounts paid per that  
12 data set.

13 Q. And can you -- how much money did Medicare pay to HDL for  
14 the claims it submitted?

15 A. Medicare paid HDL \$514.1 million.

16 Q. And how much money did TRICARE pay to HDL for the claims  
17 it submitted?

18 A. Approximately \$24.2 million.

19 Q. And how much money did Medicare pay to Singulex for the  
20 claims it submitted?

21 A. \$46.0.

22 Q. And how much money did TRICARE pay to Singulex for the  
23 claims it submitted?

24 A. Approximately \$1.4 million.

25 Q. And in total can you repeat for us how much Medicare and

1 TRICARE paid in claims submitted to HDL and Singulex?

2 A. 585.7 million.

3 Q. And so is that the damages that the government suffered in  
4 this case related to the defendants' P&H schemes?

5 A. No, it's not.

6 Q. And why not?

7 A. That's the total claims by the government, and the damages  
8 calculated in my analysis are a subset of that based on some  
9 procedures that we underwent.

10 Q. And what is the subset trying to isolate?

11 A. The subset isolates claims related to processing and  
12 handling payments specifically.

13 MR. SHAHEEN: Your Honor, I'm at a somewhat decent  
14 breaking point.

15 THE COURT: Good. I was about to ask you about that.  
16 I don't want to wear my jury out.

17 MR. SHAHEEN: Yes, Your Honor.

18 THE COURT: Ladies and gentlemen, we're going to have  
19 our lunch break. Sometimes it's a little tricky around the  
20 courthouse to get lunch done within an hour. I'm going to ask  
21 you to try to do that. I'll have the lawyers back here, but  
22 sometimes it's just outside your control. So come back as soon  
23 as you complete it. And if we can do it within the hour, if  
24 everybody is back, we'll start. But, obviously, if we can save  
25 a little time every day, it'll shorten the time I keep you here

1 in the courthouse.

2 with that, let's go have our lunch. Please  
3 don't discuss the case.

4 (Whereupon the jury was excused from the courtroom.)

5 **THE COURT:** Please be seated. Any matters to address  
6 with the Court before the lunch break from the government?

7 **MR. LEVENTIS:** No, Your Honor.

8 **THE COURT:** From the defense?

9 **MR. GRIFFITH:** No, Your Honor.

10 **MR. ASHMORE:** No, sir.

11 **THE COURT:** Very good. Folks, be back by 2:30.  
12 Hopefully, we'll get them back here by then.

13 (Recess.)

14 **THE COURT:** Please be seated. Are there any matters  
15 we need to address before we bring in the jury?

16 **MR. LEVENTIS:** Your Honor, I just wanted to -- just  
17 in case we get through this witness, I just wanted to preview  
18 for the witness following.

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

20 **MR. LEVENTIS:** It's Mr. Leonard Blasko. He will be  
21 the first witness that we believe is going to be pleading the  
22 Fifth Amendment.

23 **THE COURT:** Okay.

24 **MR. LEVENTIS:** My understanding is he does not have  
25 counsel present.

2 : 4 6 P M 1 THE COURT: Okay.

2 : 4 6 P M 2 MR. LEVENTIS: You wanted to let us -- wanted me  
2 : 4 6 P M 3 to --

2 : 4 6 P M 4 THE COURT: I do. I want to address with him -- and,  
2 : 4 6 P M 5 you know --

2 : 4 6 P M 6 MR. LEVENTIS: The other thing is -- I'm sorry, Your  
2 : 4 6 P M 7 Honor.

2 : 4 6 P M 8 THE COURT: Go right ahead.

2 : 4 6 P M 9 MR. LEVENTIS: The other thing is there are a number  
2 : 4 6 P M 10 of exhibits we're going to bring in through Mr. Blasko. I've  
2 : 4 6 P M 11 talked to Mr. Cooke about those, and I was going to just tell  
2 : 4 6 P M 12 you there's one that Mr. Cooke wanted to -- we talked about it  
2 : 4 6 P M 13 last week. It's a -- it's Exhibit 1130. It has -- I believe  
2 : 4 6 P M 14 Mr. Cooke was saying, because you can't share that Dent or  
2 : 4 6 P M 15 Johnson was on the email -- this has the Bluewave.com email  
2 : 4 6 P M 16 address. It's an email from HDL, Elizabeth Clark, to Charles  
2 : 4 6 P M 17 Maimone at BluewaveHealth.com.

2 : 4 6 P M 18 THE COURT: Okay.

2 : 4 6 P M 19 MR. LEVENTIS: And it was produced by Bluewave.  
2 : 4 6 P M 20 That's the BWDJ.

2 : 4 6 P M 21 THE COURT: Okay.

2 : 4 6 P M 22 MR. LEVENTIS: And so we dealt with that last week,  
2 : 4 6 P M 23 and you -- you ruled that it was coming in, that it was  
2 : 4 7 P M 24 admitted.

2 : 4 7 P M 25 THE COURT: Okay. Now, what do you plan to do if you

2 : 4 7 P M 1 present something to him and he says, "I take the Fifth on that  
2 : 4 7 P M 2 question"? I mean, he may take the Fifth -- I mean, we'll have  
2 : 4 7 P M 3 to explore that. I'm just saying I've seen witnesses like --  
2 : 4 7 P M 4 you know, they think anything that reasonably -- that that  
2 : 4 7 P M 5 answer may make -- subject them to potential prosecution.

2 : 4 7 P M 6 MR. LEVENTIS: Correct. And he may, Your Honor.

2 : 4 7 P M 7 THE COURT: You know, I mean, I'm just saying you  
2 : 4 7 P M 8 know that's -- that's the issue.

2 : 4 7 P M 9 Let me say this. I didn't want to make much of  
2 : 4 7 P M 10 this. But, you know, Mr. Cooke, I don't think you kind of  
2 : 4 7 P M 11 quite meant it this way, but you sort of said in the opening  
2 : 4 7 P M 12 statement that these people didn't think they broke the law.

2 : 4 7 P M 13 And the essence of the Fifth Amendment is  
2 : 4 7 P M 14 they're not testifying and you shouldn't testify. You hear  
2 : 4 7 P M 15 what I'm saying about that? You shouldn't suggest what they  
2 : 4 7 P M 16 think because the jury -- you can't testify -- they can't  
2 : 4 7 P M 17 testify that they'd waive the Fifth if they said that. So you  
2 : 4 7 P M 18 shouldn't do that.

2 : 4 7 P M 19 And I didn't think you meant it that way, but I  
2 : 4 7 P M 20 just wanted to alert that that's a -- you know, let's not do  
2 : 4 8 P M 21 that again.

2 : 4 8 P M 22 You understand what I'm saying there, sir?

2 : 4 8 P M 23 MR. COOKE: I do, but I think you're also leading  
2 : 4 8 P M 24 into maybe the issue that needs to be addressed here, and that  
25 is --



2 : 4 8 P M 1 THE COURT: Good.

2 : 4 8 P M 2 MR. COOKE: And we brought this up earlier. I mean,  
2 : 4 8 P M 3 I don't want -- I would rather he be questioned out of the  
2 : 4 8 P M 4 presence --

2 : 4 8 P M 5 THE COURT: Oh, he's going to be -- I am not going to  
2 : 4 8 P M 6 put him up. He doesn't have a counsel here.

2 : 4 8 P M 7 As soon as this witness is finished, I intend to  
2 : 4 8 P M 8 question him and explain to him the law. Because I need to  
2 : 4 8 P M 9 protect him; right? There's nobody here to protect him.

2 : 4 8 P M 10 MR. COOKE: Right.

2 : 4 8 P M 11 THE COURT: You guys have your own loyalty to your  
2 : 4 8 P M 12 clients, not to him, both of you. You know, everybody here has  
2 : 4 8 P M 13 that. That's what your duty is.

2 : 4 8 P M 14 So I need to explain to him the circumstances  
2 : 4 8 P M 15 under which he can plead the Fifth and -- and that he's got to  
2 : 4 8 P M 16 have, you know, a reasonable belief that he -- this could lead  
2 : 4 8 P M 17 to his prosecution -- his criminal prosecution. And it's got  
2 : 4 8 P M 18 to be relevant to that.

2 : 4 8 P M 19 You know, I've seen -- some people think you can  
2 : 4 8 P M 20 say, "What's your name?"

2 : 4 8 P M 21 "I plead the Fifth."

2 : 4 8 P M 22 No, no, you can't do that; right? I mean, so I  
2 : 4 9 P M 23 will -- as you say, I intend to take it up outside the jury's  
2 : 4 9 P M 24 presence.

2 : 4 9 P M 25 How long -- how much longer do you think the

2 : 4 9 P M 1 damages witness will go, Mr. Shaheen?

2 : 4 9 P M 2 MR. SHAHEEN: Your Honor, I believe we have another  
2 : 4 9 P M 3 roughly hour or so.

2 : 4 9 P M 4 THE COURT: I just don't know how long the  
2 : 4 9 P M 5 cross-examination is going to be.

2 : 4 9 P M 6 MR. COOKE: Could I bring up another --

2 : 4 9 P M 7 THE COURT: Yes, sir.

2 : 4 9 P M 8 MR. COOKE: I'm sorry. I'm interrupting you.

2 : 4 9 P M 9 THE COURT: No, you're not interrupting me. Go right  
2 : 4 9 P M 10 ahead.

2 : 4 9 P M 11 MR. COOKE: The one document that we're  
2 : 4 9 P M 12 challenging -- and you're right. If he pleads the Fifth to  
2 : 4 9 P M 13 everything, he's not going to be able to be cross-examined  
2 : 4 9 P M 14 about these documents. But the one in particular they want to  
2 : 4 9 P M 15 put in, it is an email that shows that a hotel room was paid  
2 : 4 9 P M 16 for him by HDL.

2 : 4 9 P M 17 THE COURT: Okay.

2 : 4 9 P M 18 MR. COOKE: And copied on the email is Mr. Maimone,  
2 : 4 9 P M 19 who has a BlueWave email address.

2 : 4 9 P M 20 THE COURT: Yes.

2 : 4 9 P M 21 MR. COOKE: But Mr. Maimone is an independent  
2 : 5 0 P M 22 contractor. And so when we argued about this earlier, you  
2 : 5 0 P M 23 indicated, you know, if this is notice to that particular  
2 : 5 0 P M 24 BlueWave person, I'm going to -- it's sufficient to let it in  
2 : 5 0 P M 25 against BlueWave. But I don't think that's true as to

2 : 5 0 P M 1 everything.

2 : 5 0 P M 2 This is not a warning about P&H fees being  
2 : 5 0 P M 3 illegal or anything like that. It's just a hotel reservation,  
2 : 5 0 P M 4 and they want to -- what does it show?

2 : 5 0 P M 5 THE COURT: Somebody help me. What is this document  
2 : 5 0 P M 6 supposed to show?

2 : 5 0 P M 7 MR. COOKE: It shows they knew who he was,  
2 : 5 0 P M 8 supposedly. I mean, that's basically it.

2 : 5 0 P M 9 MR. LEVENTIS: Well, what we're going to show you,  
2 : 5 0 P M 10 Your Honor, is that this is an example -- this is after the  
2 : 5 0 P M 11 recording was out. This is later in April. It shows that he,  
2 : 5 0 P M 12 at least on here, was a -- they still had a reservation for him  
2 : 5 0 P M 13 at Bally's and that we were going to ask him if HDL had him  
2 : 5 0 P M 14 represent HDL at a function at this Bally's at this point.

2 : 5 0 P M 15 MR. COOKE: But one of the other exhibits is his  
2 : 5 0 P M 16 business card, which doesn't even have Bluewave on it, let  
2 : 5 0 P M 17 alone HDL. He's got a --

2 : 5 0 P M 18 THE COURT: But the fact that HDL -- are you trying  
2 : 5 0 P M 19 to show that this gentleman was an agent of HDL? What are you  
2 : 5 1 P M 20 trying to show?

2 : 5 1 P M 21 MR. LEVENTIS: For this purposes, yes, that he was  
2 : 5 1 P M 22 not just out there on his own.

2 : 5 1 P M 23 THE COURT: That he was -- he was -- and how did  
2 : 5 1 P M 24 Bluewave come to possess this document since he's so-called  
2 : 5 1 P M 25 independent contractor.

2 : 5 1 P M 1           **MR. COOKE:** I'm assuming that it's because we  
2 : 5 1 P M 2 produced everything that was on the Bluewave email server, and  
2 : 5 1 P M 3 Mr. Maimone had an email -- had a Bluewave email address.  
2 : 5 1 P M 4 Mr. Maimone was one --

2 : 5 1 P M 5           **THE COURT:** Is there any evidence that the  
2 : 5 1 P M 6 individually named Bluewave defendants ever saw this?

2 : 5 1 P M 7           **MR. COOKE:** No.

2 : 5 1 P M 8           **THE COURT:** And this raises the question,  
2 : 5 1 P M 9 Mr. Leventis, that's been in my mind. Are you trying -- there  
2 : 5 1 P M 10 are different ways to attribute corporate liability. One of  
2 : 5 1 P M 11 them is to the extent that defendants Dent and Johnson  
2 : 5 1 P M 12 knowingly violated the AKS -- knowing and willingly violated  
2 : 5 1 P M 13 the AKS, then that would be vicariously imputed to the entity  
2 : 5 2 P M 14 because they're officers of the corporation.

2 : 5 2 P M 15           There are instances where the salesmen could  
2 : 5 2 P M 16 be -- though labeled an independent contractor, could actually  
2 : 5 2 P M 17 impose liability on the corporation by effectively -- there's a  
2 : 5 2 P M 18 case that talks about an agent independent contractor which  
2 : 5 2 P M 19 talked -- you know, under the False Claims Act in which the  
2 : 5 2 P M 20 person is actually operating for the benefit of the corporation  
2 : 5 2 P M 21 with the knowledge of the corporation, et cetera.

2 : 5 2 P M 22           Are you attempting to hold Bluewave corporate  
2 : 5 2 P M 23 entity liable for the acts of the salesmen or only for the acts  
2 : 5 2 P M 24 of Dent and Johnson?

2 : 5 2 P M 25           **MR. LEVENTIS:** For both, Your Honor. Maybe I'm not

2 : 5 2 P M 1 following you exactly. But, yeah, for both the actions of  
2 : 5 2 P M 2 Mr. Blasko and for the actions of the other Bluewave  
2 : 5 2 P M 3 defendants.

2 : 5 2 P M 4 THE COURT: well, BlueWave is the defendant here. So  
2 : 5 2 P M 5 to the extent that these are individuals -- I don't know. Are  
2 : 5 2 P M 6 you intending to show that they were operating within the scope  
2 : 5 2 P M 7 of their duties and for the benefit of Bluewave?

2 : 5 2 P M 8 MR. LEVENTIS: Yes, Your Honor.

2 : 5 2 P M 9 THE COURT: I mean, that's a potential way to get  
2 : 5 2 P M 10 corporate liability in their cases -- Mr. Cooke, you probably  
2 : 5 3 P M 11 know better than me -- which involve salesmen. I mean, this  
2 : 5 3 P M 12 has been an issue about -- just because you call them an  
2 : 5 3 P M 13 independent contractor doesn't mean they can't impose liability  
2 : 5 3 P M 14 if they're acting through the direction of the corporation with  
2 : 5 3 P M 15 the knowledge of the corporation with -- for the benefit of the  
2 : 5 3 P M 16 corporation. They can be liable even though you call them  
2 : 5 3 P M 17 something like independent contractor.

2 : 5 3 P M 18 MR. COOKE: Right. Except -- and I agree, but the  
2 : 5 3 P M 19 testimony will be -- and there are separate layers here. I'm  
2 : 5 3 P M 20 sorry to take this time, but it's going to be important.

2 : 5 3 P M 21 You've got Bluewave. Bluewave then contracts  
2 : 5 3 P M 22 with its first-level contractors, and they all have separate  
2 : 5 3 P M 23 businesses or corporations. They pay their own expenses.  
2 : 5 3 P M 24 They --

2 : 5 3 P M 25 THE COURT: I understand that.

2 : 5 3 P M 1 MR. COOKE: -- own cell phones.

2 : 5 3 P M 2 THE COURT: But there's at least -- you know, that  
2 : 5 3 P M 3 can be a device to try to avoid liability. And to the extent  
2 : 5 3 P M 4 the corporation is aware, is directing it, is encouraging it --

2 : 5 4 P M 5 MR. COOKE: Exactly.

2 : 5 4 P M 6 THE COURT: -- it can be liable. And I have the  
2 : 5 4 P M 7 impression the government is trying to prove that.

2 : 5 4 P M 8 MR. COOKE: Well, but they're begging the question.  
2 : 5 4 P M 9 They're saying this all comes in because we're going to assume  
2 : 5 4 P M 10 that to be the case because the testimony -- our side of the  
2 : 5 4 P M 11 case is that a guy like Blasko -- who, by the way, is an  
2 : 5 4 P M 12 independent contractor of the independent contractor -- does  
2 : 5 4 P M 13 not even hold himself out -- his card does not even say  
2 : 5 4 P M 14 "Bluewave" on it. It says his own private company. And so  
2 : 5 4 P M 15 there's no privy between him and BlueWave. But to the extent  
2 : 5 4 P M 16 that he's thrown out there promoting P&H fees right off the bat  
2 : 5 4 P M 17 as a sales thing, that's contrary to the published policies of  
2 : 5 4 P M 18 BlueWave. It's contrary to what they were --

2 : 5 4 P M 19 THE COURT: I understand that, but that's the issue  
2 : 5 4 P M 20 in this case is -- you know, those are some of the core issues  
2 : 5 4 P M 21 of whether these individuals are acting contrary to the  
2 : 5 4 P M 22 instructions, contrary to the expectations of these defendants.  
2 : 5 5 P M 23 Or is this just a wink-wink situation where it would be wrong,  
2 : 5 5 P M 24 but everybody knows what's going on?

2 : 5 5 P M 25 That's one of the issues in contest here, and

2 : 5 5 P M 1 we're -- the government gets to put up its evidence. Defense  
2 : 5 5 P M 2 gets to put up its evidence. And the jury, it looks like  
2 : 5 5 P M 3 they're pretty smart people, they're paying attention to all of  
2 : 5 5 P M 4 y'all. They listened to all those arguments. I didn't see one  
2 : 5 5 P M 5 of them wander during all of y'all's arguments. They'll get  
2 : 5 5 P M 6 it. They'll make the right decision, hearing all of the  
2 : 5 5 P M 7 evidence.

2 : 5 5 P M 8 MR. COOKE: My problem again is it begs the question.  
2 : 5 5 P M 9 The government is saying, well, we intend to claim --

2 : 5 5 P M 10 THE COURT: I think they've made a sufficient showing  
2 : 5 5 P M 11 to get it in. Now, the question is whether -- the jury's got  
2 : 5 5 P M 12 to give it its appropriate weight.

2 : 5 5 P M 13 Let me get -- let's get the jury in here. Let's  
2 : 5 5 P M 14 keep the trial moving. Hold it just one second, sir.

2 : 5 5 P M 15 MR. ASHMORE: Can you inform the jury that we can't  
2 : 5 5 P M 16 talk with them? It's close quarters as we're coming in and out  
2 : 5 5 P M 17 of that scanner. And there was no contact, but you could tell  
2 : 5 5 P M 18 that the jurors looked like they wanted to engage us in  
2 : 5 5 P M 19 conversation.

2 : 5 6 P M 20 THE COURT: Good. Thank you very much. I'll do  
2 : 5 6 P M 21 that. I'll do it at the end of the day, Mr. Ashmore. Thank  
2 : 5 6 P M 22 you.

2 : 5 7 P M 23 (Whereupon the jury entered the courtroom.)

2 : 5 7 P M 24 THE COURT: Please be seated.

2 : 5 7 P M 25 Mr. Shaheen, please continue direct examination.

2 : 5 7 P M 1 MR. SHAHEEN: Yes, Your Honor. Thank you.

2 : 5 7 P M 2 BY MR. SHAHEEN:

2 : 5 7 P M 3 Q. Mr. Hines, when we -- before we broke, you were talking  
2 : 5 7 P M 4 about your analysis of Medicare and TRICARE claims data.

2 : 5 7 P M 5 Can you tell us again how much Medicare and TRICARE  
2 : 5 7 P M 6 paid to HDL and Singulex during the time in question?

2 : 5 7 P M 7 A. It was approximately \$585.7 million.

2 : 5 7 P M 8 Q. And did you incorporate that figure into one of the  
2 : 5 7 P M 9 demonstratives you created?

2 : 5 8 P M 10 A. Yes, I did.

2 : 5 8 P M 11 MR. SHAHEEN: And can we pull up Plaintiff's  
2 : 5 8 P M 12 Demonstrative Number 04.

2 : 5 8 P M 13 BY MR. SHAHEEN:

2 : 5 8 P M 14 Q. And I want to break down this \$585.7 million.

2 : 5 8 P M 15 How much money did Medicare pay to HDL for the claims  
2 : 5 8 P M 16 it submitted?

2 : 5 8 P M 17 A. I'll have to consult my schedule.

2 : 5 8 P M 18 Medicare paid HDL 514.1 million.

2 : 5 8 P M 19 Q. And how much money did TRICARE pay HDL for the claims it  
2 : 5 8 P M 20 submitted?

2 : 5 8 P M 21 A. TRICARE paid approximately \$24.2 million.

2 : 5 8 P M 22 Q. And how much money did Medicare pay to Singulex for the  
2 : 5 8 P M 23 claims it submitted?

2 : 5 8 P M 24 A. Approximately \$46.0 million dollars.

2 : 5 8 P M 25 Q. And how much money did TRICARE pay to Singulex for the



2 : 5 8 P M 1 claims it submitted?

2 : 5 8 P M 2 A. Approximately \$1.4 million.

2 : 5 8 P M 3 Q. And I asked you this before the break, but on the screen  
2 : 5 8 P M 4 here it's \$585.7 million.

2 : 5 8 P M 5 why isn't that the damages that the United States  
2 : 5 8 P M 6 suffered in this case?

2 : 5 8 P M 7 A. That number represents the total claims population paid by  
2 : 5 9 P M 8 the government. My damages calculated represent a subset which  
2 : 5 9 P M 9 correspond to claims linked to processing and handling  
2 : 5 9 P M 10 payments.

2 : 5 9 P M 11 Q. And can you sort of elaborate on that distinction there.

2 : 5 9 P M 12 why was it important to isolate out claims -- the  
2 : 5 9 P M 13 overall claims universe from the claims that you were referring  
2 : 5 9 P M 14 to there?

2 : 5 9 P M 15 A. So the analysis I was tasked with was to look at the  
2 : 5 9 P M 16 processing and handling as a scheme and identify the claims  
2 : 5 9 P M 17 paid by the government related to those particular processing  
2 : 5 9 P M 18 and handling payments, and that is the calculation of damages.

2 : 5 9 P M 19 It links those two -- those two actions, paying of  
2 : 5 9 P M 20 the claim by Medicare and the labs, HDL and Singulex, paying  
2 : 5 9 P M 21 individual physician and physician practices for processing and  
2 : 5 9 P M 22 handling.

2 : 5 9 P M 23 Similar for the commission scheme damages, those  
2 : 5 9 P M 24 individual claims paid for by Medicare and TRICARE are linked  
2 : 5 9 P M 25 to processing and handling payments in territories covered by

3 : 0 0 P M 1 the commission scheme as well.

3 : 0 0 P M 2 Q. And still just focusing on the P&H scheme, how were you  
3 : 0 0 P M 3 able to take that larger universe of \$585 million claims and  
3 : 0 0 P M 4 isolate out the ones that were specific to the P&H payments?

3 : 0 0 P M 5 A. So we used a couple of different data sources to do that.  
3 : 0 0 P M 6 And the overall analysis to link processing and handling  
3 : 0 0 P M 7 payments to Medicare and TRICARE claims used processing and  
3 : 0 0 P M 8 handling detailed reports as one particular source of  
3 : 0 0 P M 9 information.

3 : 0 0 P M 10 As we talked about a bit before, we were able to  
3 : 0 0 P M 11 identify doctors, patients, and dates of services in the  
3 : 0 0 P M 12 processing and handling payment details and link those directly  
3 : 0 0 P M 13 with doctors, patients, and dates of services for claims paid  
3 : 0 0 P M 14 for by Medicare. So essentially finding the claim paid for  
3 : 0 0 P M 15 that corresponded to a processing and handling payment made by  
3 : 0 0 P M 16 HDL or Singulex.

3 : 0 0 P M 17 And then we also did a similar exercise for using  
3 : 0 1 P M 18 summary-level detail -- or summary-level processing and  
3 : 0 1 P M 19 handling reports, and that is part of the damages calculation.

3 : 0 1 P M 20 Q. And was there a way to -- were you able to link up  
3 : 0 1 P M 21 specific claims from the lab's reports and data sources to the  
3 : 0 1 P M 22 claims data that you had?

3 : 0 1 P M 23 A. We were able to link specific claims where we had HDL and  
3 : 0 1 P M 24 Singulex specific processing and handling reports, so detailed  
3 : 0 1 P M 25 reports that itemized those. And where we had summary-level

3 : 0 1 P M 1 reports, we were able to identify by year the claims related to  
3 : 0 1 P M 2 doctors that did receive processing and handling payments and  
3 : 0 1 P M 3 employed a methodology to identify the related claims for  
3 : 0 1 P M 4 Medicare and TRICARE.

3 : 0 1 P M 5 Q. And I'd like to sort of break down that methodology.

3 : 0 1 P M 6 Did you create a demonstrative in order to sort of  
3 : 0 1 P M 7 illustrate that methodology that you employed?

3 : 0 1 P M 8 A. Yes, I did.

3 : 0 1 P M 9 MR. SHAHEEN: And can we pull up Plaintiff's  
3 : 0 1 P M 10 Demonstrative Number 011.1, please?

3 : 0 2 P M 11 BY MR. SHAHEEN:

3 : 0 2 P M 12 Q. All right. So what do we see here, Mr. Hines?

3 : 0 2 P M 13 A. So this demonstrative lays out the starting point, which  
3 : 0 2 P M 14 is the total population of Medicare and TRICARE claims paid by  
3 : 0 2 P M 15 the government for HDL and Singulex services and the -- what  
3 : 0 2 P M 16 we'll walk through in a moment here are some steps that we  
3 : 0 2 P M 17 undertook to arrive at the ultimate damages numbers.

3 : 0 2 P M 18 And, you know, doing the calculations that we did, we  
3 : 0 2 P M 19 tried to be cautious and minimize damages and make decisions  
3 : 0 2 P M 20 that were essentially conservative in nature. And we'll walk  
3 : 0 2 P M 21 through some of that here in the -- I think the chart will show  
3 : 0 2 P M 22 how the total claims paid by Medicare and TRICARE ultimately  
3 : 0 2 P M 23 arrived at the numbers that we calculated.

3 : 0 2 P M 24 Q. And sort of before we get into the meat of the  
3 : 0 2 P M 25 demonstrative, can you give us really sort of a high-level

1 summary of the steps you took to filter down this universe of  
2 \$585 million worth of claims to the claims that were linked to  
3 P&H payments?

4 A. Sure. So high-level steps would be, where we had detailed  
5 processing and handling reports, we'd link those processing and  
6 handling samples to the actual procedures in TRICARE and  
7 Medicare. Where we had detail-level reports, we linked the  
8 patient -- the doctors that were receiving processing and  
9 handling per those reports to the Medicare data and included  
10 only certain patient-doctor relationships.

11 We also restricted for a particular damages period.  
12 So we date-restricted the entire population based on certain  
13 criteria. We also ensured, for periods where we had  
14 summary-level information, that we didn't include claims above  
15 and beyond the number of instances of processing and handling  
16 payments received by doctors.

17 And one of the bigger adjustments we made was we only  
18 included certain doctor-patient combinations where we had  
19 observed those specific doctors and patients receiving --  
20 specific instances of doctor-patient encounters, and we only  
21 included claims in the damages related to those particular ones  
22 that we observed in the detailed processing and handling  
23 reports.

24 Q. All right. And I think now let's walk through the  
25 demonstrative. And we can move one slide deeper.

3 : 0 4 P M 1 Right here, I'll let you explain what's being  
3 : 0 4 P M 2 excluded here, Mr. Hines.

3 : 0 4 P M 3 A. Sure. So from the total population of \$585.7 million of  
3 : 0 4 P M 4 claims, we've excluded 99.3 million based on a time period. So  
3 : 0 4 P M 5 the damages -- we have claims data that covers a period bigger  
3 : 0 4 P M 6 than what we've defined as the damage period.

3 : 0 4 P M 7 So the damages period for HDL would be from the  
3 : 0 4 P M 8 date -- the effective date of the agreement between HDL and  
3 : 0 5 P M 9 Bluewave through -- which is -- in the HDL instance is  
3 : 0 5 P M 10 January 4th of 2010. And the damages period ends in --  
3 : 0 5 P M 11 June 24th, 2014. And that date is -- after that point, I  
3 : 0 5 P M 12 understand that the processing and handling payments subsided  
3 : 0 5 P M 13 or dwindled.

3 : 0 5 P M 14 For Singulex, the date restriction was the effective  
3 : 0 5 P M 15 date of the Singulex agreement, which is June 1st, 2010. And  
3 : 0 5 P M 16 the end date would be June 24th, 2014, similar to HDL.

3 : 0 5 P M 17 Q. And why did you pick the effective -- starting with the  
3 : 0 5 P M 18 sort of front end of the time period, why did you pick the  
3 : 0 5 P M 19 effective dates of the agreements as your starting point?

3 : 0 5 P M 20 A. Those were the dates of the agreements between HDL and  
3 : 0 5 P M 21 Bluewave and Singulex and Bluewave respectively to perform  
3 : 0 5 P M 22 sales and marketing services, and those agreements outline that  
3 : 0 5 P M 23 processing and handling would be paid.

3 : 0 6 P M 24 Q. And I think you said this moments ago, but what was the  
3 : 0 6 P M 25 sort of end date that you applied?

3 : 0 6 P M 1 A. It's an end point -- it's a point in time in which I  
3 : 0 6 P M 2 understand after that the processing and handling payments  
3 : 0 6 P M 3 subsided.

3 : 0 6 P M 4 Q. And when you did that analysis, when you excluded the  
3 : 0 6 P M 5 claims outside of the time period, how much in damages -- or  
3 : 0 6 P M 6 how much -- what was the value of the claims that you excluded  
3 : 0 6 P M 7 from the universe there?

3 : 0 6 P M 8 A. It would be the 99.3 million shown on the graphic here.

3 : 0 6 P M 9 Q. And why don't we move to the next step of the process.

3 : 0 6 P M 10 A. Sure.

3 : 0 6 P M 11 Q. So why don't you explain for us what's going on in the  
3 : 0 6 P M 12 second box here.

3 : 0 6 P M 13 A. So the second box relates to excluding any physicians that  
3 : 0 6 P M 14 didn't show up on a processing and handling report. So in the  
3 : 0 6 P M 15 Medicare and TRICARE claims data, there are -- as we talked  
3 : 0 6 P M 16 about before, there's millions of records and millions of  
3 : 0 6 P M 17 instances of patient referrals. And the only ones that we've  
3 : 0 6 P M 18 considered for damages are those where physicians actually show  
3 : 0 7 P M 19 up on a processing and handling report, so those individual  
3 : 0 7 P M 20 physicians and practices that are listed as receiving  
3 : 0 7 P M 21 processing and handling payments.

3 : 0 7 P M 22 And that \$108.1 million figure on the chart shows  
3 : 0 7 P M 23 where we have essentially excluded any physicians that, in a  
3 : 0 7 P M 24 particular period, did not show up as receiving processing and  
3 : 0 7 P M 25 handling.

3 : 0 7 P M 1 Q. When you say "did not show up as receiving processing and  
3 : 0 7 P M 2 handling," what documents were you relying on to identify  
3 : 0 7 P M 3 doctors that did receive P&H versus those who did not?

3 : 0 7 P M 4 A. It would be the processing and handling reports we  
3 : 0 7 P M 5 discussed previously, the detailed reports and the  
3 : 0 7 P M 6 summary-level reports.

3 : 0 7 P M 7 Q. And can you say again how much did you exclude from the  
3 : 0 7 P M 8 \$585 million universe in taking this step?

3 : 0 7 P M 9 A. That would be \$108.1 million.

3 : 0 7 P M 10 Q. Why don't we move on to the next step. Can you explain  
11 for the jury what this third step was.

3 : 0 7 P M 12 A. Sure. I'd be happy to.

3 : 0 7 P M 13 So the third step where I think I described before  
3 : 0 8 P M 14 how, for certain periods, the processing and handling reports  
3 : 0 8 P M 15 are at a summary level, they have a line which would show the  
3 : 0 8 P M 16 physician or practice. And then for a particular year, it will  
3 : 0 8 P M 17 show the amount of processing and handling payment paid to that  
3 : 0 8 P M 18 doctor. So we know the amount and the number of instances of  
3 : 0 8 P M 19 processing and handling that physician received.

3 : 0 8 P M 20 So for those periods where we're identifying in the  
3 : 0 8 P M 21 Medicare and TRICARE claims data the particular claims paid by  
3 : 0 8 P M 22 the government that correspond to those processing and handling  
3 : 0 8 P M 23 payments, we -- if -- in a limited number of instances, we  
3 : 0 8 P M 24 observed that there were certain instances where the processing  
3 : 0 8 P M 25 and -- number of processing and handling payments were lower

3 : 0 8 P M 1 than the number of claims that were in Medicare data.

3 : 0 8 P M 2 So what we've done is only include up to a -- the  
3 : 0 8 P M 3 number of claims that is eligible for damages up to the amount  
3 : 0 8 P M 4 of processing and handling payments that a particular doctor  
3 : 0 9 P M 5 received.

3 : 0 9 P M 6 So, for example, if a doctor in a particular year has  
3 : 0 9 P M 7 received 10 processing and handling payments for patient  
3 : 0 9 P M 8 referrals and we see 11 claims in the Medicare claims data for  
3 : 0 9 P M 9 patient referrals, we would only look at 10 instances of  
3 : 0 9 P M 10 Medicare claims for potential damages. And the 10 that we  
3 : 0 9 P M 11 would look at would be those with the lowest dollar value for  
3 : 0 9 P M 12 that doctor.

3 : 0 9 P M 13 So, again, trying to be a bit conservative, we've  
3 : 0 9 P M 14 restricted it to the number of processing and handling claims  
3 : 0 9 P M 15 the doctor received in that year and used the lower dollar  
3 : 0 9 P M 16 value claims.

3 : 0 9 P M 17 Q. And just to be clear, let's take an example of a doctor  
3 : 0 9 P M 18 who received one P&H payment in 2013 and there were two claims  
3 : 0 9 P M 19 in the claims database. One claim was for \$5,000, and one  
3 : 0 9 P M 20 claim was for zero.

3 : 1 0 P M 21 How would you incorporate that into this step of the  
3 : 1 0 P M 22 analysis?

3 : 1 0 P M 23 A. So if the doctor had received one processing and handling  
3 : 1 0 P M 24 payment but there was two patient referrals in the claims data,  
3 : 1 0 P M 25 just so I understand?



3 : 1 0 P M 1 Q. Mm-hmm.

3 : 1 0 P M 2 A. If there was two claims, we would only include one up to  
3 : 1 0 P M 3 the limit of the processing and handling payments even if the  
3 : 1 0 P M 4 claim was zero dollars. And there are some claims in the data  
3 : 1 0 P M 5 that are -- the paid amount is zero. We would include that  
3 : 1 0 P M 6 zero dollar amount as the damages.

3 : 1 0 P M 7 Q. So, in other words, you would exclude that \$5,000 one but  
3 : 1 0 P M 8 include the zero dollar one?

3 : 1 0 P M 9 A. That's correct.

3 : 1 0 P M 10 Q. Why don't we move on to the fourth step here. Can you  
3 : 1 0 P M 11 explain to the jury what happened in the fourth step.

3 : 1 0 P M 12 A. So in the fourth step, to further reduce the population  
3 : 1 0 P M 13 that are the remaining Medicare and TRICARE claims paid that  
3 : 1 0 P M 14 are -- end up as part of the damages figure, we excluded any  
3 : 1 0 P M 15 physician patient records that do not relate to a  
3 : 1 1 P M 16 physician-patient combination that we observed in a P&H detail  
3 : 1 1 P M 17 report.

3 : 1 1 P M 18 And what that essentially means is, where we have  
3 : 1 1 P M 19 used the processing and handling summary reports where it lists  
3 : 1 1 P M 20 a doctor in a particular year with the number of processing and  
3 : 1 1 P M 21 handling payments made, we know that doctor got processing and  
3 : 1 1 P M 22 handling and we know how many times it happened in a particular  
3 : 1 1 P M 23 year. We just don't have the details of the exact claims or  
3 : 1 1 P M 24 the exact Medicare claims that relate to that particular  
3 : 1 1 P M 25 processing and handling.

3 : 1 1 P M 1 So after restricting for the number of claims, as we  
3 : 1 1 P M 2 described in the last step, we took an additional step which  
3 : 1 1 P M 3 was to only include any claims that were related to a  
3 : 1 1 P M 4 doctor-patient combination that we had observed in the -- for  
3 : 1 1 P M 5 the periods where we had detailed processing and handling  
3 : 1 1 P M 6 reports.

3 : 1 1 P M 7 And what that means is there was processing and  
3 : 1 1 P M 8 handling reports in certain earlier periods where we had seen a  
3 : 1 1 P M 9 doctor observed a patient and received P&H for that particular  
3 : 1 2 P M 10 referral to HDL or Singulex.

3 : 1 2 P M 11 So in the periods where we've used summary-level  
3 : 1 2 P M 12 information for that particular doctor, it's only those  
3 : 1 2 P M 13 particular patients because we've established that there's a  
3 : 1 2 P M 14 pattern of that doctor receiving P&H fees for that particular  
3 : 1 2 P M 15 referral.

3 : 1 2 P M 16 Q. And maybe -- if we can use an example, what would happen  
3 : 1 2 P M 17 if, in the P&H detail data, you saw a Physician X interacting  
3 : 1 2 P M 18 with Patient Y? How would that sort of -- and that appeared in  
3 : 1 2 P M 19 the detail data. How would you employ that throughout the  
3 : 1 2 P M 20 other data you had? How would you use that?

3 : 1 2 P M 21 A. So in the year -- where we have the detailed information,  
3 : 1 2 P M 22 we would link that record directly. We would say Doctor X  
3 : 1 2 P M 23 serves Patient Y on this date. If we found the same thing in  
3 : 1 2 P M 24 the Medicare data, then we would link those. And that would  
3 : 1 2 P M 25 essentially be flagged for an item to include in our damages

3 : 1 3 P M 1 figures.

3 : 1 3 P M 2 If, in a future period, we see the same doctor show  
3 : 1 3 P M 3 up and that same doctor is receiving P&H but we don't have the  
3 : 1 3 P M 4 itemized list of exactly which claims, the only instances we've  
3 : 1 3 P M 5 included in the damages are ones where it's that same patient.  
3 : 1 3 P M 6 So the doctor would be referring the same patient for-- to the  
3 : 1 3 P M 7 same laboratories, to HDL and Singulex, and the doctor also  
3 : 1 3 P M 8 receives P&H in that particular year. That's the only instance  
3 : 1 3 P M 9 where we would include that in the damages.

3 : 1 3 P M 10 Q. And so if the Physician X interacted with Patient Y and  
3 : 1 3 P M 11 you saw that interaction in the detail data and that same  
3 : 1 3 P M 12 interaction -- or Physician X and Patient Y appear in the  
3 : 1 3 P M 13 claims data at a future time, what would you do with that  
3 : 1 3 P M 14 information?

3 : 1 3 P M 15 A. It would be included in our damages.

3 : 1 3 P M 16 Q. And what about the same physician, Physician X, but now  
3 : 1 3 P M 17 he's got a patient encounter with Patient A? And that  
3 : 1 4 P M 18 interaction -- or that combination does not appear in the  
3 : 1 4 P M 19 detail data. What do you do with that information?

3 : 1 4 P M 20 A. It's excluded from damages.

3 : 1 4 P M 21 Q. And, similarly, what happens if now we have Physician Z,  
3 : 1 4 P M 22 who doesn't appear in the detailed data. What do you do with  
3 : 1 4 P M 23 him?

3 : 1 4 P M 24 A. It's excluded from damages.

3 : 1 4 P M 25 Q. So even if he received large amounts of P&H in the summary

1 reports, what would you do with that information?

2 A. It would not be included in damages because we only  
3 included those particular physician-patient relationships that  
4 we had seen as being established in the P&H detailed reports.

5 So your -- both of your questions address the fact  
6 that we have a -- the methodology that I've employed excludes  
7 new doctors that join the processing and handling program --  
8 for lack of a better way to describe it -- and if a doctor took  
9 on new patients and was receiving P&H for those patients in the  
10 future, we have not included those in damages either.

11 Q. And if you can remind us again, when did you have the P&H  
12 detail data?

13 A. That data for HDL, the detail reports, were from October  
14 of 2011 through approximately December of 2012. And for  
15 Singulex, it would have been March 2010 through July of 2012.

16 Q. So if a physician received massive amounts of P&H in 2013  
17 and 2014, would they be included at all in your analysis for  
18 HDL?

19 A. Say that one more time.

20 Q. So for HDL, a physician receives a large amount of P&H  
21 from 2013 and 2014 but not previous to that from HDL, how would  
22 that have been incorporated into your analysis?

23 A. That physician would not be included in our damages  
24 figures. So there may be claims for that physician paid by  
25 Medicare, and there may be records on the processing and

3 : 1 5 P M 1 handling reports showing that physician received processing and  
3 : 1 5 P M 2 handling, but they would not be included in the damages figures  
3 : 1 5 P M 3 here.

3 : 1 6 P M 4 Q. And why not?

3 : 1 6 P M 5 A. As I said before, the only thing that we have included in  
3 : 1 6 P M 6 damages for my analysis would be those individual  
3 : 1 6 P M 7 physician-patient relationships that we'd seen in the detail  
3 : 1 6 P M 8 reports.

3 : 1 6 P M 9 Q. And why did you feel it was important to isolate the  
3 : 1 6 P M 10 universe just to those claims?

3 : 1 6 P M 11 A. In my analysis, I felt it was appropriate to try to  
3 : 1 6 P M 12 establish a direct connection between processing and handling  
3 : 1 6 P M 13 payments and the Medicare and TRICARE claims data as I could to  
3 : 1 6 P M 14 have a reasonable basis for my conclusions.

3 : 1 6 P M 15 Q. And so what are we left with after you've taken these four  
3 : 1 6 P M 16 steps?

3 : 1 6 P M 17 A. So after the steps I've just described, the resulting  
3 : 1 6 P M 18 amount of claims from Medicare and TRICARE that are included in  
3 : 1 6 P M 19 my damages figures is \$181.1 million.

3 : 1 6 P M 20 Q. And this may seem somewhat tedious, but I'd like to sort  
3 : 1 7 P M 21 of break that down by quarter, if you're able to do that.

3 : 1 7 P M 22 So what was the first quarter you looked at for your  
3 : 1 7 P M 23 damages analysis?

3 : 1 7 P M 24 A. The first quarter was the first quarter of 2010.

3 : 1 7 P M 25 Q. And that seems like an appropriate place to start.

3 : 1 7 P M 1 Can you tell us how many claims you were able to link  
3 : 1 7 P M 2 to P&H payments in the first quarter of 2010?

3 : 1 7 P M 3 A. Just to clarify, we're talking about the P&H scheme?

3 : 1 7 P M 4 Q. Yes.

3 : 1 7 P M 5 A. Okay. So the number of patient -- I refer to them as  
3 : 1 7 P M 6 patient referrals. So the number of claims -- or patient  
3 : 1 7 P M 7 referrals -- in the first quarter that were linked in our  
3 : 1 7 P M 8 damages was 301.

3 : 1 7 P M 9 Q. And what were the damages associated with those claims?

3 : 1 7 P M 10 A. \$155,801.

3 : 1 7 P M 11 Q. And now moving on to the second quarter of 2010, can you  
3 : 1 7 P M 12 tell us how many claims you were able to link to P&H payments  
3 : 1 7 P M 13 in that quarter?

3 : 1 7 P M 14 A. 597.

3 : 1 7 P M 15 Q. And what were the damages associated with those claims?

3 : 1 8 P M 16 A. \$292,919.

3 : 1 8 P M 17 Q. And if we could just compare and contrast the damages from  
3 : 1 8 P M 18 the second quarter of 2010, how much larger were they than the  
3 : 1 8 P M 19 first quarter of 2010?

3 : 1 8 P M 20 A. It's approximately double.

3 : 1 8 P M 21 Q. And can you tell us how many claims you were able to link  
3 : 1 8 P M 22 to P&H payments in the third quarter of 2010?

3 : 1 8 P M 23 A. The third quarter was 1320 claims.

3 : 1 8 P M 24 Q. And what were the damages associated with those claims?

3 : 1 8 P M 25 A. \$459,524.

3 : 1 8 P M 1 Q. And can you compare that to the previous quarter?

3 : 1 8 P M 2 A. It's a little bit less than double.

3 : 1 8 P M 3 Q. How many claims were you able to link to P&H payments in  
4 the fourth quarter of 2010?

3 : 1 8 P M 5 A. 1832 claims.

3 : 1 8 P M 6 Q. And what were the damages associated with those claims?

3 : 1 8 P M 7 A. \$476,434.

3 : 1 8 P M 8 Q. And how does that relate to the previous quarter in terms  
9 of size?

3 : 1 8 P M 10 A. It's relatively flat.

3 : 1 9 P M 11 Q. And did you find that that trend sort of leveled off?

3 : 1 9 P M 12 A. No.

3 : 1 9 P M 13 Q. Why don't we move to the first quarter of 2011. What were  
14 the number of claims that you were able to link to P&H in the  
15 first quarter of 2011?

3 : 1 9 P M 16 A. 3,304.

3 : 1 9 P M 17 Q. And what were the damages associated with those claims?

3 : 1 9 P M 18 A. \$1,084,576.

3 : 1 9 P M 19 Q. And how did that relate to the previous quarter?

3 : 1 9 P M 20 A. It's over double.

3 : 1 9 P M 21 Q. How many claims were you able to tie to P&H in the second  
22 quarter of 2011?

3 : 1 9 P M 23 A. 8,517.

3 : 1 9 P M 24 Q. And what were the damages associated with those claims?

3 : 1 9 P M 25 A. \$3,318,548.

3 : 1 9 P M 1 Q. And can you describe for us how that relates back to the  
3 : 1 9 P M 2 previous quarter?

3 : 1 9 P M 3 A. It's roughly triple the previous quarter.

3 : 1 9 P M 4 Q. And how many claims were you able to tie to P&H in the  
3 : 1 9 P M 5 third quarter of 2011?

3 : 1 9 P M 6 A. 15,186.

3 : 1 9 P M 7 Q. And what were the damages associated with those claims?

3 : 2 0 P M 8 A. \$6,004,210.

3 : 2 0 P M 9 Q. And how did that relate to the previous quarter?

3 : 2 0 P M 10 A. A little bit less than double.

3 : 2 0 P M 11 Q. How many claims were there tied to P&H in the fourth  
3 : 2 0 P M 12 quarter of 2011?

3 : 2 0 P M 13 A. 28,965.

3 : 2 0 P M 14 Q. And what were the damages associated with those claims?

3 : 2 0 P M 15 A. \$14,925,834.

3 : 2 0 P M 16 Q. And how does that relate back to the previous quarter?

3 : 2 0 P M 17 A. It's a little bit less than triple.

3 : 2 0 P M 18 Q. How many claims were you able to tie to P&H in the first  
3 : 2 0 P M 19 quarter of 2012?

3 : 2 0 P M 20 A. 35,265.

3 : 2 0 P M 21 Q. And what were the damages associated with those claims?

3 : 2 0 P M 22 A. \$21,502,148.

3 : 2 0 P M 23 Q. And how many claims were you able to tie to P&H in the  
3 : 2 0 P M 24 third quarter of 2012?

3 : 2 0 P M 25 A. 46,500.



3 : 2 0 P M 1 Q. And what were the damages associated with those claims?

3 : 2 0 P M 2 A. 27,973,463.

3 : 2 1 P M 3 Q. And how many claims were you able to tie to P&H in the  
3 : 2 1 P M 4 fourth quarter of 2012?

3 : 2 1 P M 5 A. 48,267.

3 : 2 1 P M 6 Q. And what were the damages associated with those claims?

3 : 2 1 P M 7 A. \$28,024,562.

3 : 2 1 P M 8 Q. And how many claims were you able to tie to P&H in the  
3 : 2 1 P M 9 first quarter of 2013?

3 : 2 1 P M 10 A. 27,160.

3 : 2 1 P M 11 Q. And what were the damages associated with those claims?

3 : 2 1 P M 12 A. 10,585,230.

3 : 2 1 P M 13 Q. And how many claims were you able to tie to P&H in the  
3 : 2 1 P M 14 second quarter of 2013?

3 : 2 1 P M 15 A. 25,493 claims.

3 : 2 1 P M 16 Q. And what were the damages associated with those claims?

3 : 2 1 P M 17 A. \$10,319,367.

3 : 2 1 P M 18 Q. And how many claims were you able to tie to P&H in the  
3 : 2 1 P M 19 third quarter of 2013?

3 : 2 1 P M 20 A. 22,514.

3 : 2 1 P M 21 Q. And what were the damages associated with those claims?

3 : 2 1 P M 22 A. \$9,398,443.

3 : 2 2 P M 23 Q. And how many claims were you able to tie to P&H in the  
3 : 2 2 P M 24 fourth quarter of 2013?

3 : 2 2 P M 25 A. 20,660.

3 : 2 2 P M 1 Q. And what were the damages associated with those claims?

3 : 2 2 P M 2 A. 8,722,954.

3 : 2 2 P M 3 Q. And how many claims were tied to P&H in the first quarter  
3 : 2 2 P M 4 of 2014?

3 : 2 2 P M 5 A. 14,105.

3 : 2 2 P M 6 Q. And what were the damages associated with those claims?

3 : 2 2 P M 7 A. \$6,698,519.

3 : 2 2 P M 8 Q. And how many claims were tied to P&H in the second quarter  
3 : 2 2 P M 9 of 2014?

3 : 2 2 P M 10 A. 12,309.

3 : 2 2 P M 11 Q. And what were the damages associated with those claims?

3 : 2 2 P M 12 A. \$5,823,644.

3 : 2 2 P M 13 Q. And do you want to take this all the way up through 2018?  
3 : 2 2 P M 14 No? Fair enough.

3 : 2 2 P M 15 Is that when your analysis stops, Mr. Hines?

3 : 2 2 P M 16 A. Yes, it does. It stops at the second quarter of 2014.

3 : 2 2 P M 17 Q. All right. In total, how many Medicare claims were you  
3 : 2 3 P M 18 able to directly link to HDL and Singulex P&H payments?

3 : 2 3 P M 19 A. Medicare, 352,986.

3 : 2 3 P M 20 Q. And how many TRICARE claims were you able to directly link  
3 : 2 3 P M 21 to HDL and Singulex P&H payments?

3 : 2 3 P M 22 A. 16.

3 : 2 3 P M 23 Q. Why is that number so small?

3 : 2 3 P M 24 A. As I mentioned a bit earlier, TRICARE, the claims data, it  
3 : 2 3 P M 25 did not include information on the referring physician, so that

3 : 2 3 P M 1 field for NPI number was not populated the majority of the  
3 : 2 3 P M 2 time. So just lacked the information to identify the physician  
3 : 2 3 P M 3 relating to those particular claims.

3 : 2 3 P M 4 Q. Did HDL and Singulex submit more than 16 claims for  
3 : 2 3 P M 5 reimbursement to TRICARE?

3 : 2 3 P M 6 A. Yes.

3 : 2 3 P M 7 Q. But, again, why did you just limit it to 16 here?

3 : 2 3 P M 8 A. It's only those where we could identify a physician and a  
3 : 2 3 P M 9 patient that we saw in a detailed report.

3 : 2 3 P M 10 Q. And so what was the total value of claims that you linked  
3 : 2 3 P M 11 directly to P&H payments?

3 : 2 4 P M 12 A. The total claims were 354,002.

3 : 2 4 P M 13 Q. All right. If we could go back to the Demonstrative  
3 : 2 4 P M 14 PDX-004. We've talked about the first four steps here. Can  
3 : 2 4 P M 15 you walk us through what happened in the fifth step?

3 : 2 4 P M 16 A. The fifth step would represent the payments by HDL and  
3 : 2 4 P M 17 Singulex to physicians of processing and handling payments.

3 : 2 4 P M 18 Q. And how did you conduct this part of your analysis?

3 : 2 4 P M 19 A. That analysis was based on a review and examination of  
3 : 2 4 P M 20 processing and handling reports from HDL and Singulex.

3 : 2 4 P M 21 Q. And how much in total did -- in P&H did the labs pay to  
3 : 2 4 P M 22 physicians?

3 : 2 4 P M 23 A. Approximately 52.6 million.

3 : 2 5 P M 24 Q. And specifically which documents did you rely on to make  
3 : 2 5 P M 25 that determination?

3 : 2 5 P M 1 A. Those documents primarily are the processing and handling  
3 : 2 5 P M 2 summary reports.

3 : 2 5 P M 3 Q. And what did you look at in those summary reports that  
3 : 2 5 P M 4 resulted in your conclusion that the labs paid 52.6 million in  
3 : 2 5 P M 5 P&H fees?

3 : 2 5 P M 6 A. It would be the dollar values listed in the corresponding  
3 : 2 5 P M 7 columns in the processing and handling summary reports.

3 : 2 5 P M 8 Q. And did you do any analysis to see which physicians and  
3 : 2 5 P M 9 physicians groups received the most from HDL and Singulex?

3 : 2 5 P M 10 A. Yes, I did.

3 : 2 5 P M 11 Q. And did you create a demonstrative illustrating that?

3 : 2 5 P M 12 A. Yes, I did.

3 : 2 5 P M 13 Q. Can we pull up Plaintiff's Demonstrative Number 13.

3 : 2 5 P M 14 Are you able to see the entirety -- does that appear  
3 : 2 5 P M 15 on your scene in its entirety?

3 : 2 5 P M 16 A. It gets a bit cut off, but I think I can see most of it.

3 : 2 5 P M 17 Q. Okay. What are we looking at here, Mr. Hines?

3 : 2 5 P M 18 A. So this graphic shows for both HDL and Singulex a summary  
3 : 2 6 P M 19 of the amounts of P&H paid to those particular physicians and  
3 : 2 6 P M 20 physician practices. So it shows, on the left-hand side, the  
3 : 2 6 P M 21 top 20 physicians and practices that received P&H for HDL. On  
3 : 2 6 P M 22 the right-hand side, it's the top 20 for Singulex. And that is  
3 : 2 6 P M 23 expressed in terms of dollars of processing and handling that  
3 : 2 6 P M 24 was paid.

3 : 2 6 P M 25 Q. And can you remind us again what the time frames are that

3 : 2 6 P M 1 would be reflected or covered by this analysis?

3 : 2 6 P M 2 A. For HDL, it's first quarter of 2010 to the fourth quarter  
3 : 2 6 P M 3 of 2014.

3 : 2 6 P M 4 Q. So in that time frame, there were at least -- there were  
3 : 2 6 P M 5 three practices that received more than \$400,000 in P&H from  
3 : 2 6 P M 6 HDL?

3 : 2 6 P M 7 A. Yes, there were.

3 : 2 6 P M 8 Q. And how many practices in that same time frame received  
3 : 2 6 P M 9 more than \$300,000 from HDL?

3 : 2 6 P M 10 A. Two.

3 : 2 6 P M 11 Q. And how many received between 200 and \$300,000 in P&H from  
3 : 2 7 P M 12 HDL in that time frame?

3 : 2 7 P M 13 A. I believe it's nine.

3 : 2 7 P M 14 Q. And how about Singulex? what was the relevant time period  
3 : 2 7 P M 15 for your analysis regarding Singulex?

3 : 2 7 P M 16 A. That would be the second quarter of 2010 through, I  
3 : 2 7 P M 17 believe, fourth quarter of 2014.

3 : 2 7 P M 18 Q. And --

3 : 2 7 P M 19 A. Or '13. I'm sorry.

3 : 2 7 P M 20 Q. How many physicians received more than \$100,000 in that  
3 : 2 7 P M 21 time frame?

3 : 2 7 P M 22 A. Seven.

3 : 2 7 P M 23 Q. And I noticed that there are a few listings here that are  
3 : 2 7 P M 24 color-coded. Did you do that?

3 : 2 7 P M 25 A. Yes.

3 : 2 7 P M 1 Q. And what do those color codings reflect?

3 : 2 7 P M 2 A. Those color codings reflect physician practices that occur  
3 : 2 7 P M 3 on both the HDL and Singulex top 20 lists in terms of  
3 : 2 7 P M 4 processing and handling payments received.

3 : 2 7 P M 5 Q. So just doing some ballpark math, during the course --  
3 : 2 7 P M 6 during the relevant time periods, how much did the Family  
3 : 2 7 P M 7 Physicians of Spartanburg receive from HDL and Singulex  
3 : 2 8 P M 8 combined?

3 : 2 8 P M 9 A. It's about \$590,000.

3 : 2 8 P M 10 Q. And how much did Keowee Primary Care and Internal Medicine  
3 : 2 8 P M 11 receive during the relevant time frame from both labs?

3 : 2 8 P M 12 A. About \$521,000.

3 : 2 8 P M 13 Q. Did you, as part of your analysis, focus on specific  
3 : 2 8 P M 14 physicians and physicians groups?

3 : 2 8 P M 15 A. Yes, I did.

3 : 2 8 P M 16 Q. And did you do -- did you create a demonstrative  
3 : 2 8 P M 17 reflecting that part of your analysis?

3 : 2 8 P M 18 A. Yes.

3 : 2 8 P M 19 Q. Can we pull up Plaintiff's Demonstrative Number 14,  
3 : 2 8 P M 20 please.

3 : 2 8 P M 21 So looking at Plaintiff's Demonstrative Number 14, is  
3 : 2 8 P M 22 this the demonstrative you created to illustrate your analyses  
3 : 2 8 P M 23 on specific physicians and physicians groups?

3 : 2 8 P M 24 A. Yes, it is.

3 : 2 8 P M 25 Q. And what are we looking at here?

3 : 2 8 P M 1 A. So this chart shows for -- there's five individual  
3 : 2 8 P M 2 physicians. And it will show, for both Singulex on the top  
3 : 2 9 P M 3 area and then HDL on the bottom area, by year how much they  
3 : 2 9 P M 4 received in processing and handling payments.

3 : 2 9 P M 5 Q. And why were you focused on these particular doctors?

3 : 2 9 P M 6 A. These were doctors that the DOJ specifically requested we  
3 : 2 9 P M 7 look at.

3 : 2 9 P M 8 Q. During the relevant time period, how much did Dr. Alam's  
3 : 2 9 P M 9 practice make in P&H from HDL?

3 : 2 9 P M 10 A. It was approximately \$409,000.

3 : 2 9 P M 11 Q. During the relevant time period in regards to Singulex,  
3 : 2 9 P M 12 how many money did Dr. Alam's practice make from Singulex  
3 : 2 9 P M 13 during that time frame?

3 : 2 9 P M 14 A. Approximately \$123,000.

3 : 2 9 P M 15 Q. How about Dr. Butler? How much did Dr. Butler make in P&H  
3 : 2 9 P M 16 from HDL?

3 : 2 9 P M 17 A. Approximately \$195,000.

3 : 2 9 P M 18 Q. And what was the time period for that?

3 : 2 9 P M 19 A. That was from 2010 through 2013.

3 : 3 0 P M 20 Q. And how much did Dr. Butler's practice make in P&H from  
3 : 3 0 P M 21 Singulex?

3 : 3 0 P M 22 A. From 2010 through 2013, approximately \$161,000.

3 : 3 0 P M 23 Q. And now looking at Dr. Fillingane's practice. How much  
3 : 3 0 P M 24 did Dr. Fillingane make in P&H during the relevant time frames  
3 : 3 0 P M 25 from HDL?

3 : 3 0 P M 1 A. From 2010 through 2012, approximately \$65,000.

3 : 3 0 P M 2 Q. And during the relevant time frame as regards to Singulex,  
3 : 3 0 P M 3 how much P&H did Dr. Fillingane receive from Singulex?

3 : 3 0 P M 4 A. During the period 2010 through 2013, approximately  
3 : 3 0 P M 5 \$95,000.

3 : 3 0 P M 6 Q. And then with Dr. Hollins, how much did Dr. Hollins make  
3 : 3 0 P M 7 in P&H derived from HDL during the relevant time frame?

3 : 3 0 P M 8 A. From 2012 through 2014, it was \$54,000 approximately.

3 : 3 0 P M 9 Q. And how much did he receive from Singulex during that time  
3 : 3 0 P M 10 frame?

3 : 3 0 P M 11 A. It was \$70.

3 : 3 0 P M 12 Q. Sort of more holistically, did you look at how HDL's  
3 : 3 1 P M 13 billing evolved over time?

3 : 3 1 P M 14 A. Yes, I did.

3 : 3 1 P M 15 Q. And did you create a demonstrative illustrating that?

3 : 3 1 P M 16 A. Yes.

3 : 3 1 P M 17 Q. Can we pull up Plaintiff's Demonstrative Number 15.

3 : 3 1 P M 18 And is this that demonstrative, Mr. Hines?

3 : 3 1 P M 19 A. Yes, it is.

3 : 3 1 P M 20 Q. And can you explain to us what we're looking at here,  
3 : 3 1 P M 21 Mr. Hines.

3 : 3 1 P M 22 A. Sure. This is a line graph that charts out the trend in  
3 : 3 1 P M 23 claims paid by Medicare and TRICARE to HDL from the period 2010  
3 : 3 1 P M 24 through 2015 approximately.

3 : 3 1 P M 25 Q. And so what do we see in the first -- let's say -- third



3 : 3 1 P M 1 of this chart, Mr. Hines?

3 : 3 1 P M 2 A. It is a pretty steep ramp-up from the early 2010 period  
3 : 3 1 P M 3 until you get to roughly middle -- early middle of 2012.

3 : 3 1 P M 4 Q. And then what happens after that?

3 : 3 2 P M 5 A. It stays -- it jumps around a bit, but it stays relatively  
3 : 3 2 P M 6 steady until approximately 2000 and -- early 2014.

3 : 3 2 P M 7 Q. And then what starts happening in that -- after that 2014  
3 : 3 2 P M 8 period?

3 : 3 2 P M 9 A. Based on the claims data, there was a pretty precipitous  
3 : 3 2 P M 10 drop after that point in time.

3 : 3 2 P M 11 Q. And I see here that you've highlighted a couple points in  
3 : 3 2 P M 12 time here. Can you explain to us why and what those are  
3 : 3 2 P M 13 reflecting?

3 : 3 2 P M 14 A. Yes. So I thought it would be helpful to illustrate a  
3 : 3 2 P M 15 couple of monthly examples. So there are -- or the top line  
3 : 3 2 P M 16 represents Medicare, and so those are Medicare claims paid to  
3 : 3 2 P M 17 HDL.

3 : 3 2 P M 18 The first box, the top says "CMS." That's Medicare.  
3 : 3 2 P M 19 December 2013, the total claims paid was 10.3 million. And I  
3 : 3 2 P M 20 thought it was useful to compare and contrast that to a year  
3 : 3 2 P M 21 later, after the P&H payments subsided a bit and -- to see what  
3 : 3 3 P M 22 the claims population looked like. And it's 6.7 million in  
3 : 3 3 P M 23 December of 2014.

3 : 3 3 P M 24 So it's just comparing two monthly snapshots a year  
3 : 3 3 P M 25 apart.

3 : 3 3 P M 1 Q. And when you compare those monthly snapshots, what do you  
3 : 3 3 P M 2 find?

3 : 3 3 P M 3 A. That there is approximately -- close to a \$4 million drop  
3 : 3 3 P M 4 from year to year in terms of the total claims paid by  
3 : 3 3 P M 5 Medicare.

3 : 3 3 P M 6 Q. Just in terms of sort of a ballpark percentage, what is  
3 : 3 3 P M 7 that?

3 : 3 3 P M 8 A. It's approximately 40 percent.

3 : 3 3 P M 9 Q. And there's a red line down below. What does that red  
3 : 3 3 P M 10 line show?

3 : 3 3 P M 11 A. The red line -- it's a little tough to scale -- but those  
3 : 3 3 P M 12 are TRICARE paid claims. And same concept. We compared the  
3 : 3 3 P M 13 December of 2013 claims paid to HDL by TRICARE to December  
3 : 3 3 P M 14 2014. And the difference is -- it goes from \$422,000,  
3 : 3 3 P M 15 approximately, down to 275, roughly.

3 : 3 4 P M 16 Q. And just in terms of ballpark percentages, what kind of  
3 : 3 4 P M 17 drop is that?

3 : 3 4 P M 18 A. It's probably around the same, you know, 40 percent drop.

3 : 3 4 P M 19 Q. Previously you testified about how you performed an  
3 : 3 4 P M 20 analysis on the physicians -- the top -- physicians and  
3 : 3 4 P M 21 physicians practices who received the most P&H.

3 : 3 4 P M 22 Do you recall that?

3 : 3 4 P M 23 A. Yes.

3 : 3 4 P M 24 Q. Did you perform a similar analysis to what we see here  
3 : 3 4 P M 25 regarding the claims data for the providing physicians' groups?

3 : 3 4 P M 1 A. Yes, I did.

3 : 3 4 P M 2 Q. And can we pull up Plaintiff's Demonstrative Number 16,  
3 : 3 4 P M 3 please?

3 : 3 4 P M 4 And can you describe for us what we see here,  
3 : 3 4 P M 5 Mr. Hines?

3 : 3 4 P M 6 A. Yes, I can.

3 : 3 4 P M 7 So this -- it's a similar chart to the one I just  
3 : 3 4 P M 8 walked through, which is -- it shows over time the paid  
3 : 3 4 P M 9 claims -- the claims paid, rather, by Medicare and TRICARE to  
3 : 3 4 P M 10 HDL. The primary difference with this chart is it reflects  
3 : 3 4 P M 11 only those claims paid to the physicians that were the top 20  
3 : 3 5 P M 12 physicians that received processing and handling payments.

3 : 3 5 P M 13 Q. And how did this chart compare to the chart we were just  
3 : 3 5 P M 14 looking at?

3 : 3 5 P M 15 A. It's similar in terms of the overall data, where it's a  
3 : 3 5 P M 16 pretty steep incline from 2010 until 2012. Then it's  
3 : 3 5 P M 17 relatively flat. And then it decreases pretty sharply towards  
3 : 3 5 P M 18 the 2014 and beyond time period.

3 : 3 5 P M 19 Q. And can you tell us again -- or tell us anew in terms of  
3 : 3 5 P M 20 this chart what happened between December of 2013 and 2014 as  
3 : 3 5 P M 21 it relates to the number of claims being submitted.

3 : 3 5 P M 22 A. From December 2013, comparing those two monthly snapshots,  
3 : 3 5 P M 23 it goes from 799,000 in 2013 down to approximately 375,000 the  
3 : 3 5 P M 24 following December of 2014. And for TRICARE, the claims  
3 : 3 5 P M 25 amounts are relatively flat, although I challenge with the

3 : 3 6 P M 1 TRICARE data. Obviously, we didn't have the physician  
3 : 3 6 P M 2 identifier for all claim records. So we were missing some for  
3 : 3 6 P M 3 that particular number.

3 : 3 6 P M 4 Q. And just in terms of the percentage drop, can you sort of  
3 : 3 6 P M 5 ballpark for us the percentage drop between December 2013 and  
3 : 3 6 P M 6 December 2014.

3 : 3 6 P M 7 A. It's probably a little over 50 percent.

3 : 3 6 P M 8 Q. We've spent a fair amount of time talking about the P&H  
3 : 3 6 P M 9 scheme, but there were other things that you looked at; is that  
3 : 3 6 P M 10 correct, Mr. Hines?

3 : 3 6 P M 11 A. Yes, that's correct.

3 : 3 6 P M 12 Q. And can you just sort of briefly tell us what else you  
3 : 3 6 P M 13 looked at?

3 : 3 6 P M 14 A. So we looked at bank records and did a pretty  
3 : 3 6 P M 15 comprehensive analysis of banking records related to BlueWave,  
3 : 3 6 P M 16 and -- including -- analyzing the inflows and outflows and also  
3 : 3 6 P M 17 did a calculation of damages related to the commission scheme.

3 : 3 6 P M 18 Q. And did you put together a demonstrative illustrating how  
3 : 3 6 P M 19 the commission scheme worked in your opinion?

3 : 3 6 P M 20 A. I did.

3 : 3 6 P M 21 Q. And can we pull up Plaintiff's Demonstrative Number 6,  
3 : 3 7 P M 22 please.

3 : 3 7 P M 23 Now, this does look pretty similar to what we were  
3 : 3 7 P M 24 looking at in regards to the P&H scheme, but can you relate to  
3 : 3 7 P M 25 us what's going on in this chart, Mr. Hines.

3 : 3 7 P M 1 A. Sure.

3 : 3 7 P M 2 So this is describing several of the steps which are  
3 : 3 7 P M 3 the same for the commission scheme, being, the first step,  
3 : 3 7 P M 4 blood tests, marketing.

3 : 3 7 P M 5 Second step would be the referral to blood tests by  
3 : 3 7 P M 6 physician practices to HDL and Singulex.

3 : 3 7 P M 7 The third step would be submission of claims for  
3 : 3 7 P M 8 reimbursement to Medicare and TRICARE.

3 : 3 7 P M 9 The fourth step would be Medicare and TRICARE paying  
3 : 3 7 P M 10 those claims, the \$585.7 million that I referred to before, to  
3 : 3 7 P M 11 HDL and Singulex.

3 : 3 7 P M 12 The primary difference with this chart related to the  
3 : 3 7 P M 13 commission scheme would be it is illustrating in Step 5 the  
3 : 3 7 P M 14 payment of commissions from HDL and Singulex to Bluewave.

3 : 3 7 P M 15 Q. And how much in commissions did HDL and Singulex pay to  
3 : 3 8 P M 16 Bluewave?

3 : 3 8 P M 17 A. Approximately \$244.9 million.

3 : 3 8 P M 18 Q. And what are the time frames that we're talking about for  
3 : 3 8 P M 19 that, for this particular scheme?

3 : 3 8 P M 20 A. That would be 2010 through roughly 2014.

3 : 3 8 P M 21 Q. So less than five years?

3 : 3 8 P M 22 A. Approximately.

3 : 3 8 P M 23 Q. And how did you identify that the labs paid Bluewave  
3 : 3 8 P M 24 approximately \$244 million in the relevant time frame?

3 : 3 8 P M 25 A. So that would have been based on a detailed analysis of

3 : 3 8 P M 1 the Bluewave bank account records.

3 : 3 8 P M 2 Q. And if you could turn to the tab in your binder titled  
3 : 3 8 P M 3 Exhibit Number 2972, Mr. Hines.

3 : 3 8 P M 4 Just let me know when you get there.

3 : 3 8 P M 5 A. I'm here.

3 : 3 8 P M 6 Q. You're there. Do you recognize the document that's there,  
7 Mr. Hines?

3 : 3 8 P M 8 A. Yes, I do.

3 : 3 8 P M 9 Q. And what is that document?

3 : 3 8 P M 10 A. This is a summary exhibit I created for -- relevant to the  
3 : 3 8 P M 11 bank account analysis that was performed including details on  
3 : 3 9 P M 12 the inflows and the outflows.

3 : 3 9 P M 13 Q. And why did you feel like it was necessary or helpful to  
3 : 3 9 P M 14 create a summary exhibit?

3 : 3 9 P M 15 A. The bank records are fairly voluminous. I think there's  
3 : 3 9 P M 16 something in excess of 10,000 pages of documents that we looked  
3 : 3 9 P M 17 at. And they're fairly dense financial documents, and we  
3 : 3 9 P M 18 thought it would be helpful to summarize the information here.

3 : 3 9 P M 19 Q. And what kinds of documents did you see in Bluewave's  
3 : 3 9 P M 20 banking records?

3 : 3 9 P M 21 A. I saw bank statements including summaries -- summary bank  
3 : 3 9 P M 22 statements as well as all the detailed schedules that accompany  
3 : 3 9 P M 23 those bank statements; copies of checks that Bluewave wrote out  
3 : 3 9 P M 24 of its accounts, so disbursements; canceled check copies; a  
3 : 3 9 P M 25 certain number of deposit slips with the accompanying paperwork

3 : 3 9 P M 1 and support for those deposits; wire transfer forms, including  
3 : 3 9 P M 2 wires in and out of the accounts; as well as some other general  
3 : 3 9 P M 3 supporting documents that were included with the bank records.

3 : 4 0 P M 4 Q. And from how many institutions do you have this  
3 : 4 0 P M 5 information?

3 : 4 0 P M 6 A. Primarily one.

3 : 4 0 P M 7 Q. And what was that institution?

3 : 4 0 P M 8 A. Cadence Bank.

3 : 4 0 P M 9 Q. And can you tell us the significance of that -- that  
3 : 4 0 P M 10 particular bank, Mr. Hines?

3 : 4 0 P M 11 A. That is the bank where BlueWave had its operating account.

3 : 4 0 P M 12 Q. And you have these 10,000 documents that you've distilled  
3 : 4 0 P M 13 into this summary exhibit.

3 : 4 0 P M 14 what did you do with these documents?

3 : 4 0 P M 15 A. We conducted a pretty exhaustive analysis of the financial  
3 : 4 0 P M 16 records, including reviewing every bank statement, every  
3 : 4 0 P M 17 supporting transaction document, every wire transfer, every  
3 : 4 0 P M 18 deposit slip, and summarized that information and captured  
3 : 4 0 P M 19 relevant details in a quite large Excel spreadsheet that  
3 : 4 0 P M 20 included the information on the dates of the transactions, the  
3 : 4 0 P M 21 amounts of the transactions, the payees, the payers, whether it  
3 : 4 0 P M 22 was a wire transfer, whether it was a disbursement via check.  
3 : 4 1 P M 23 A pretty comprehensive summary of all of that information.

3 : 4 1 P M 24 Q. And why was that information relevant to this commission  
3 : 4 1 P M 25 scheme, Mr. Hines?

3 : 4 1 P M 1 A. It's relevant because the Bluewave bank accounts  
3 : 4 1 P M 2 demonstrated the receipt of incoming cash flow from HDL and  
3 : 4 1 P M 3 Singulex.

3 : 4 1 P M 4 Q. And did they do anything besides record the inflow from  
3 : 4 1 P M 5 HDL and Singulex?

3 : 4 1 P M 6 A. Yes. It also was relevant to describe the outflows and  
3 : 4 1 P M 7 where the funds went from Bluewave's account on an outbound  
3 : 4 1 P M 8 basis.

3 : 4 1 P M 9 Q. And so you did rely on these documents as part of your  
3 : 4 1 P M 10 analysis, Mr. Hines?

3 : 4 1 P M 11 A. Yes, I did.

3 : 4 1 P M 12 MR. SHAHEEN: Your Honor, I would like to request  
3 : 4 1 P M 13 that Plaintiff's Exhibit Number 2972 be received into evidence.

3 : 4 1 P M 14 THE COURT: Any objection?

3 : 4 1 P M 15 MR. GRIFFITH: No objection.

3 : 4 1 P M 16 MR. ASHMORE: No, sir.

3 : 4 1 P M 17 MR. SHAHEEN: Thank you, Your Honor.

3 : 4 1 P M 18 THE COURT: Government's Exhibit 2972 is admitted  
3 : 4 1 P M 19 without objection.

3 : 4 1 P M 20 MR. SHAHEEN: Thank you, Your Honor.

3 : 4 1 P M 21 BY MR. SHAHEEN:

3 : 4 1 P M 22 Q. Appearing on the screen now is Plaintiff's Exhibit  
3 : 4 1 P M 23 Number 2972.

3 : 4 2 P M 24 what did you see when you looked through Mr. -- when  
3 : 4 2 P M 25 you looked through Bluewave's banking records, Mr. Hines?



3 : 4 2 P M 1 A. I'm sorry. Can you repeat the question?

3 : 4 2 P M 2 Q. Yeah, sure. So now on your screen is Plaintiff's Exhibit  
3 : 4 2 P M 3 Number 2972.

3 : 4 2 P M 4 And my question to you is what did you see when you  
3 : 4 2 P M 5 looked through Bluewave's banking records?

3 : 4 2 P M 6 A. So I'll kind of -- we've broken it up on the exhibit here,  
3 : 4 2 P M 7 the demonstrative, into the inflow activity and the outflow  
3 : 4 2 P M 8 activity. So I'll kind of describe it that way.

3 : 4 2 P M 9 And so this information -- we saw 218 incoming  
3 : 4 2 P M 10 transactions to Bluewave's bank accounts totaling  
3 : 4 2 P M 11 \$256.3 million. And a large portion of that came from direct  
3 : 4 2 P M 12 transfers from HDL into the Bluewave bank accounts. That's  
3 : 4 2 P M 13 about \$180 million.

3 : 4 2 P M 14 We also see 5 million in direct transfers from  
3 : 4 2 P M 15 Singulex. The 32 check deposits and 125 wire receipts also  
3 : 4 3 P M 16 included wires in and checks in directly from HDL and Singulex.  
3 : 4 3 P M 17 All told, I believe HDL transferred approximately 220 million  
3 : 4 3 P M 18 to -- to Bluewave. And Singulex, it was in the area of  
3 : 4 3 P M 19 24 million.

3 : 4 3 P M 20 And the outbound section of the demonstrative, it  
3 : 4 3 P M 21 describes the 1,980 outgoing transactions that we analyzed and  
3 : 4 3 P M 22 itemized for the schedules that we created. And that included  
3 : 4 3 P M 23 \$255.9 million that were sent out of the account either through  
3 : 4 3 P M 24 a check or a wire transfer out of Bluewave's accounts. About  
3 : 4 3 P M 25 16 -- exactly 1,671 of those were from checks totaling

3 : 4 3 P M 1 243.4 million. And another 10 million or so was from wire  
3 : 4 3 P M 2 transfer activity out of the account.

3 : 4 3 P M 3 Q. And did you create a flowchart to illustrate how the money  
3 : 4 4 P M 4 came in and out of Bluewave's bank account, Mr. Hines?

3 : 4 4 P M 5 A. Yes.

3 : 4 4 P M 6 MR. SHAHEEN: Can we pull up Plaintiff's  
3 : 4 4 P M 7 Demonstrative Number 9, please?

3 : 4 4 P M 8 BY MR. SHAHEEN:

3 : 4 4 P M 9 Q. And, Mr. Hines, can you explain what we're looking at in  
3 : 4 4 P M 10 this demonstrative?

3 : 4 4 P M 11 A. This would be a -- where am I? Just lost the -- the  
3 : 4 4 P M 12 demonstrative is a chart showing the outflows broken down by --

3 : 4 4 P M 13 Q. Why don't you wait just a moment, Mr. Hines, so we have it  
3 : 4 4 P M 14 all.

3 : 4 4 P M 15 A. There you go.

3 : 4 4 P M 16 Q. There we go. All right, Mr. Hines. Can you tell us  
3 : 4 4 P M 17 what's happening in the flowchart in Plaintiff's Demonstrative  
3 : 4 4 P M 18 Number 9?

3 : 4 4 P M 19 A. So the bottom section of the chart shows the HDL and  
3 : 4 4 P M 20 Singulex payments into BlueWave, so 244.9 million received from  
3 : 4 4 P M 21 HDL and Singulex. And then the other arrows pointing north on  
3 : 4 4 P M 22 the graphs show the individual buckets of where that money went  
3 : 4 5 P M 23 out of BlueWave's accounts.

3 : 4 5 P M 24 So starting from kind of the bottom row first,  
3 : 4 5 P M 25 61.7 million of the cash flows into Bluewave's account were

3 : 4 5 P M 1 then disbursed out to sales representatives. Approximately  
3 : 4 5 P M 2 76.7 million went to other entities including -- I think there  
3 : 4 5 P M 3 was consultants, law firms. The bulk of that, about 50 million  
3 : 4 5 P M 4 or so, was actually to tax authorities, tax payments.

3 : 4 5 P M 5 Approximately 12.1 million went to certain entities  
3 : 4 5 P M 6 that are affiliated with Mr. Johnson and Mr. Dent. And then  
3 : 4 5 P M 7 there were 53.2 million in disbursements directly to Mr. Dent,  
3 : 4 5 P M 8 52.2 million in disbursements directly to Mr. Johnson.

3 : 4 5 P M 9 Q. And how did you determine that Bluewave paid 53 million to  
3 : 4 5 P M 10 the defendant Dent and 52 million to defendant Johnson  
3 : 4 6 P M 11 respectively?

3 : 4 6 P M 12 A. They were the recipient of checks. The checks and wires  
3 : 4 6 P M 13 were made out directly to them.

3 : 4 6 P M 14 Q. And how did you know that Bluewave paid its sales reps  
3 : 4 6 P M 15 \$61 million?

3 : 4 6 P M 16 A. So we took the sales roster from Bluewave and matched it  
3 : 4 6 P M 17 against the outflows and disbursements that were included in  
3 : 4 6 P M 18 the Bluewave bank accounts, so looking at check copies and wire  
3 : 4 6 P M 19 transfers, and categorized it -- the ones that were related to  
3 : 4 6 P M 20 sales representatives. And that's the total.

3 : 4 6 P M 21 MR. SHAHEEN: And can we pull up Exhibit Number 2006.

3 : 4 6 P M 22 BY MR. SHAHEEN:

3 : 4 6 P M 23 Q. Appearing on your screen now is Plaintiff's Exhibit  
3 : 4 6 P M 24 Number 2006.

3 : 4 6 P M 25 Do you recognize this document, Mr. Hines?

3 : 4 6 P M 1 A. Yes, I do.

3 : 4 6 P M 2 Q. What is this document?

3 : 4 6 P M 3 A. That looks like the BlueWave sales roster.

3 : 4 6 P M 4 Q. And did you create a demonstrative, Mr. Hines,  
3 : 4 6 P M 5 illustrating how the 61 million was split up amongst BlueWave  
3 : 4 7 P M 6 sales representatives?

3 : 4 7 P M 7 A. Yes, I did.

3 : 4 7 P M 8 MR. SHAHEEN: And can we pull up Plaintiff's  
3 : 4 7 P M 9 Demonstrative Number 10, please.

3 : 4 7 P M 10 BY MR. SHAHEEN:

3 : 4 7 P M 11 Q. And can you read into the record how much BlueWave paid to  
3 : 4 7 P M 12 each of its sales reps during the relevant time frame?

3 : 4 7 P M 13 A. Sure. So this schedule breaks down the amounts paid to  
3 : 4 7 P M 14 each sales rep. I'll just point out there are a few that show  
3 : 4 7 P M 15 names twice because they were under slightly different business  
3 : 4 7 P M 16 names in the records.

3 : 4 7 P M 17 But the first was The Med Group of Georgia, related  
3 : 4 7 P M 18 to Richard E. Younger, which is \$6,038,940.

3 : 4 7 P M 19 Disease Testing & Management, related to Kyle Martel,  
3 : 4 7 P M 20 \$5,759,310.

3 : 4 7 P M 21 RBLIV Consulting, Burt Lively, \$5,460,803.

3 : 4 7 P M 22 Quasi Maturi, LLC, Charles Maimone, \$4,619,920.

3 : 4 8 P M 23 Ocean Diagnostics & Consulting, Emily Barron,  
3 : 4 8 P M 24 \$4,472,248.

3 : 4 8 P M 25 JP Cornwell, Inc., with Jeff P. Cornwell and Boomer

3 : 4 8 P M 1 Cornwell, \$3,671,800.

3 : 4 8 P M 2 Lockhardt Consulting, Inc., Heather R. Lockhardt,  
3 : 4 8 P M 3 \$3,649,301.

3 : 4 8 P M 4 Beyond Medicine, LLC, Chad Sloat, \$2,979,507.

3 : 4 8 P M 5 Meade Medical Group, LLC, Jason Dupin, \$2,463,747.

3 : 4 8 P M 6 Coffman Enterprises, LLC, John M. Coffman,  
3 : 4 8 P M 7 \$2,313,832.

3 : 4 9 P M 8 WCBLUE Lab, LLC, Michael Samadani, \$2,252,272.

3 : 4 9 P M 9 Southern Coast Consultants, Lee M. Roberts,  
3 : 4 9 P M 10 \$1,721,814.

3 : 4 9 P M 11 Labyrinth, LLC, Shane Marquess, \$1,664,953.

3 : 4 9 P M 12 Med-Con-EC, LLC, Jerry W. Carroll, \$1,635,317.

3 : 4 9 P M 13 Medcentric LLC, Nicole Tice, \$1,352,609.

3 : 4 9 P M 14 MRT Health Consultants, Inc., Kevin Carrier,  
3 : 4 9 P M 15 \$1,301,902.

3 : 4 9 P M 16 Christo Consulting Corp., Bill Colander, \$1,283,514.

3 : 5 0 P M 17 Nibar Healthcare Consultants, Inc., Gilbert Rabin,  
3 : 5 0 P M 18 \$1,266,697.

3 : 5 0 P M 19 Paramount Medical Consultants, Inc., Jeffrey  
3 : 5 0 P M 20 Steadman, \$1,227,212.

3 : 5 0 P M 21 El Medical Consulting, Inc., Erika Guest, \$1,158,415.

3 : 5 0 P M 22 Dx Sales, LLC, Darrin Thomas, \$849,603.

3 : 5 0 P M 23 Infinity Medical Consulting Group, LLC, Stephen Kash,  
3 : 5 0 P M 24 \$793,410.

3 : 5 0 P M 25 Metta Consulting, Inc., Davinder Khunkhun, \$787,498.

3 : 5 0 P M 1 MML Equipment Inc., Matt Little, \$692,152.

3 : 5 1 P M 2 M. Looney Consulting Inc., Mark Looney, \$354,866.

3 : 5 1 P M 3 Advanced Medical Sales, LLC, Jennifer Speer,

3 : 5 1 P M 4 \$311,138.

3 : 5 1 P M 5 JBH Marketing, Inc., Julie Harding, \$294,651.

3 : 5 1 P M 6 Thomas Carnaggio, \$283,322.

3 : 5 1 P M 7 Remember Pember, Inc., David Pember, \$233,790.

3 : 5 1 P M 8 Engleby, LLC, Chauntelle Engleby, \$190,185.

3 : 5 1 P M 9 Advanced Medical Consulting, LLC, Bruce Short,

3 : 5 1 P M 10 \$162,596.

3 : 5 1 P M 11 R and D Ranch, Inc., \$141,576.

3 : 5 1 P M 12 Eberhardt Medical LLC, Ryan Eberhardt, \$107,596.

3 : 5 2 P M 13 Sandra S. Tankersley, \$67,493.

3 : 5 2 P M 14 Tony Carnaggio, \$67,353.

3 : 5 2 P M 15 Charles Maimone, 41,529.

3 : 5 2 P M 16 Bio-Matrix Healthcare Consultants, Keith Lucas,

3 : 5 2 P M 17 \$27,875.

3 : 5 2 P M 18 Keith Lucas, \$9,261.

3 : 5 2 P M 19 Q. Thank you for that.

3 : 5 2 P M 20 Did you calculate damages related to these commission  
3 : 5 2 P M 21 payments, Mr. Hines?

3 : 5 2 P M 22 A. Yes, I did.

3 : 5 2 P M 23 Q. And how did you do that?

3 : 5 2 P M 24 A. The calculation of damages related to the commission  
3 : 5 2 P M 25 scheme was the same beginning four, five processes as for the

3 : 5 2 P M 1 P&H scheme with an added reduction in the number of claims  
3 : 5 2 P M 2 related to certain territories that the commissions were  
3 : 5 2 P M 3 related to.

3 : 5 2 P M 4 Q. And why did you eliminate those claims?

3 : 5 2 P M 5 A. As I understand it, the commission scheme was specific to  
3 : 5 3 P M 6 certain territories, and there was certain regions that were  
3 : 5 3 P M 7 excluded from the commission.

3 : 5 3 P M 8 Q. And what were you left with after you did this filtering  
3 : 5 3 P M 9 process?

3 : 5 3 P M 10 A. After doing that filtering, the remaining damages figure  
3 : 5 3 P M 11 was \$176,543,901.

3 : 5 3 P M 12 Q. And what does that damages universe represent? what  
3 : 5 3 P M 13 taints those claims?

3 : 5 3 P M 14 A. Those are claims that are --it's a -- they do overlap with  
3 : 5 3 P M 15 the processing and handling operation. It is those claims that  
3 : 5 3 P M 16 are linked to processing and handling payments and also in  
3 : 5 3 P M 17 relevant territories for the commission scheme.

3 : 5 3 P M 18 Q. And why did you feel it necessary to intertwine those two?

3 : 5 3 P M 19 A. That -- those two schemes are essentially -- "intertwined"  
3 : 5 3 P M 20 is a good word. They're almost inextricably intertwined. The  
3 : 5 3 P M 21 sales and marketing in the commission scheme is directly  
3 : 5 4 P M 22 related to payment and processing and handling, having doctors  
3 : 5 4 P M 23 sign the processing and handling payments.

3 : 5 4 P M 24 Q. Did you create a demonstrative showing the filtering steps  
3 : 5 4 P M 25 you took in regards to isolating only those claims that were

1 tainted by both the P&H payments and the commission payments?

2 A. Yes, I did.

3 MR. SHAHEEN: And can we pull up Plaintiff's  
4 Exhibit -- it's 12.1.

5 BY MR. SHAHEEN:

6 Q. And why don't you quickly walk us through the first four  
7 steps because I think you just testified that they overlapped  
8 with what we saw before.

9 A. Sure. So same starting population of 585.7 Medicare and  
10 TRICARE claims paid. 99.3 million is reduced for the same  
11 damages period. So the effective date of the HDL contract  
12 through June 24th, 2014. And Singulex, June 1st, 2010, through  
13 June 24th, 2014.

14 The next step similarly shrinks the population to  
15 include only those claims that relate to physicians that  
16 receive P&H in the particular years that they're present on  
17 processing and handling reports.

18 \$24.2 million is reduced for periods where we've used  
19 summary reports and only included up to the number of  
20 processing and handling payments that a particular physician  
21 received.

22 \$173 million in claims are excluded from the analysis  
23 to reflect the fact that we only included those  
24 physician-patient relationships that we observed in the  
25 detailed processing and handling reports.



3 : 5 5 P M 1 And 4.6 million relates to the additional amount  
3 : 5 5 P M 2 reduced for territories where the commissions were -- the  
3 : 5 5 P M 3 commission scheme was applicable.

3 : 5 5 P M 4 Q. I'm sorry. I didn't hear that last part.

3 : 5 5 P M 5 A. It reduces the population of damages by -- to only include  
3 : 5 6 P M 6 those territories where the commission scheme is applicable.

3 : 5 6 P M 7 Q. And what are we left with after that final slice of the  
3 : 5 6 P M 8 pie is taken out?

3 : 5 6 P M 9 A. \$176.5 million.

3 : 5 6 P M 10 Q. And so these claims are tainted by both the P&H payments  
3 : 5 6 P M 11 and the commission payments; is that correct?

3 : 5 6 P M 12 A. Correct.

3 : 5 6 P M 13 Q. And similar to what we did with the damages associated for  
3 : 5 6 P M 14 just the P&H payments, can you walk us through financial  
3 : 5 6 P M 15 quarter by quarter and tell us the number of claims you were  
3 : 5 6 P M 16 able to link to both P&H payments and commission payments?

3 : 5 6 P M 17 A. Sure.

3 : 5 6 P M 18 Q. So for the first quarter of 2010, how many times were you  
3 : 5 6 P M 19 able to link to both P&H payments and commission payments?

3 : 5 6 P M 20 A. That would be 295.

3 : 5 6 P M 21 Q. And what were the damages associated with those claims?

3 : 5 6 P M 22 A. \$154,166.

3 : 5 6 P M 23 Q. And how about the second quarter of 2010? How many claims  
3 : 5 6 P M 24 were you able to link to both P&H payment and commission  
3 : 5 6 P M 25 payments?

3 : 5 6 P M 1 A. 582.

3 : 5 6 P M 2 Q. And what were the damages associated with those claims?

3 : 5 7 P M 3 A. \$289,425.

3 : 5 7 P M 4 Q. And how many claims were you able to link to both P&H  
3 : 5 7 P M 5 payments and commission payments in the third quarter of 2010?

3 : 5 7 P M 6 A. \$1,232.

3 : 5 7 P M 7 Q. And what were the damages associated with those claims?

3 : 5 7 P M 8 A. \$447,028.

3 : 5 7 P M 9 Q. And how many claims were you able to link to both P&H  
3 : 5 7 P M 10 payments and commission payments in the fourth quarter of 2010?

3 : 5 7 P M 11 A. 1,611.

3 : 5 7 P M 12 Q. And what were the damages associated with those claims?

3 : 5 7 P M 13 A. \$452,788.

3 : 5 7 P M 14 Q. And how many claims were you able to link to both P&H  
3 : 5 7 P M 15 payments and commission payments in the first quarter of 2011?

3 : 5 7 P M 16 A. 2,995.

3 : 5 7 P M 17 Q. And what were the damages associated with those claims?

3 : 5 7 P M 18 A. \$1,044,641.

3 : 5 7 P M 19 Q. Moving on to the second quarter of 2011, how many claims  
3 : 5 7 P M 20 were you able to link to both P&H payments and commission  
3 : 5 7 P M 21 payments?

3 : 5 7 P M 22 A. 7,664.

3 : 5 7 P M 23 Q. And what were the damages associated with those claims?

3 : 5 7 P M 24 A. \$3,171,510.

3 : 5 8 P M 25 Q. And how many claims were you able to link to both P&H

3 : 5 8 P M 1 payments and commission payments in the third quarter of 2011?

3 : 5 8 P M 2 A. \$14,011.

3 : 5 8 P M 3 Q. And what were the damages associated with those claims?

3 : 5 8 P M 4 A. 5,793,999.

3 : 5 8 P M 5 Q. And how many claims were you able to link to both P&H  
3 : 5 8 P M 6 payments and commission payments in the fourth quarter of 2011?

3 : 5 8 P M 7 A. 26,752.

3 : 5 8 P M 8 Q. And what were the damages associated with those claims?

3 : 5 8 P M 9 A. 14,533 -- 14,533,883.

3 : 5 8 P M 10 Q. And how many claims were you able to link to both P&H  
3 : 5 8 P M 11 payments and commission payments in the first quarter of 2012?

3 : 5 8 P M 12 A. 33,803 claims.

3 : 5 8 P M 13 Q. And what were the damages associated with those claims?

3 : 5 8 P M 14 A. \$20,935,554.

3 : 5 8 P M 15 Q. And how many claims were you able to link to both P&H  
3 : 5 8 P M 16 payments and commission payments in the second quarter of 2012?

3 : 5 8 P M 17 A. 38,713.

3 : 5 8 P M 18 Q. And what were the damages associated with those claims?

3 : 5 9 P M 19 A. \$24,684,930.

3 : 5 9 P M 20 Q. And how many claims were you able to link to both P&H  
3 : 5 9 P M 21 payments and commission payments in the third quarter of 2012?

3 : 5 9 P M 22 A. 43,358.

3 : 5 9 P M 23 Q. And what were the damages associated with those claims?

3 : 5 9 P M 24 A. \$27,407,176.

3 : 5 9 P M 25 Q. And how many claims were you able to link to both P&H

3 : 5 9 P M 1 payments and commission payments in the fourth quarter of 2012?

3 : 5 9 P M 2 A. 44,331.

3 : 5 9 P M 3 Q. And what were the damages associated with those claims?

3 : 5 9 P M 4 A. \$27,361,832.

3 : 5 9 P M 5 Q. And how many claims were you able to link to both P&H  
3 : 5 9 P M 6 payments and commission payments in the first quarter of 2013?

3 : 5 9 P M 7 A. 24,829.

3 : 5 9 P M 8 Q. what were the damages associated with those claims?

3 : 5 9 P M 9 A. \$10,250,274.

3 : 5 9 P M 10 Q. And how many claims were you able to link to both P&H  
3 : 5 9 P M 11 payments and commission payments in the second quarter of 2013?

4 : 0 0 P M 12 A. 23,534.

4 : 0 0 P M 13 Q. And what were the damages associated with those claims in  
4 : 0 0 P M 14 that quarter?

4 : 0 0 P M 15 A. \$10,036,816.

4 : 0 0 P M 16 Q. And how many claims were you able to link to both P&H  
4 : 0 0 P M 17 payments and commission payments in the third quarter of 2013?

4 : 0 0 P M 18 A. 20,674.

4 : 0 0 P M 19 Q. And what were the damages associated with those claims?

4 : 0 0 P M 20 A. \$9,138,597.

4 : 0 0 P M 21 Q. And moving on to the fourth quarter of 2013, how many  
4 : 0 0 P M 22 claims were you able to link to both P&H payments and  
4 : 0 0 P M 23 commission payments?

4 : 0 0 P M 24 A. 18,996.

4 : 0 0 P M 25 Q. And what were the damages associated with those claims?

4 : 0 0 P M 1 A. \$8,479,380.

4 : 0 0 P M 2 Q. And moving on to the first quarter of 2014, how many  
4 : 0 0 P M 3 claims were you able to link to both P&H and commission  
4 : 0 0 P M 4 payments?

4 : 0 0 P M 5 A. 13,679.

4 : 0 0 P M 6 Q. And what were the damages associated with those claims?

4 : 0 0 P M 7 A. \$6,625,749.

4 : 0 1 P M 8 Q. And finally, in the second quarter of 2014, how many  
4 : 0 1 P M 9 claims were you able to link to both P&H payments and  
4 : 0 1 P M 10 commission payments?

4 : 0 1 P M 11 A. 11,897.

4 : 0 1 P M 12 Q. And what were the damages associated with those claims?

4 : 0 1 P M 13 A. 5,736,152.

4 : 0 1 P M 14 Q. In total, how many Medicare claims were you able to  
4 : 0 1 P M 15 directly link to HDL and Singulex P&H commission -- I'm sorry.  
4 : 0 1 P M 16 Start again.

4 : 0 1 P M 17 How many -- in total, how many Medicare claims were  
4 : 0 1 P M 18 you able to directly link to HDL and Singulex P&H payments and  
4 : 0 1 P M 19 commission payments overall?

4 : 0 1 P M 20 A. 327,940.

4 : 0 1 P M 21 Q. And how many TRICARE claims were you able to directly link  
4 : 0 1 P M 22 to HDL and Singulex P&H payments and commission payments?

4 : 0 1 P M 23 A. 16.

4 : 0 1 P M 24 Q. And can you explain again why that TRICARE number is so  
4 : 0 1 P M 25 small?

4 : 0 1 P M 1 A. That primarily relates to the fact that we did not have  
4 : 0 1 P M 2 the referring physician identifier in many of the data records  
4 : 0 1 P M 3 we have.

4 : 0 1 P M 4 Q. And what was the total value of the claims that you linked  
4 : 0 2 P M 5 directly to P&H payments and commission payments?

4 : 0 2 P M 6 A. 327,956.

4 : 0 2 P M 7 Q. I'm sorry. Actually, I'm looking for the dollar figure  
4 : 0 2 P M 8 for that.

4 : 0 2 P M 9 A. \$176,543,901.

4 : 0 2 P M 10 Q. In your opinion, how much was the United States damaged by  
4 : 0 2 P M 11 defendants' P&H scheme?

4 : 0 2 P M 12 A. \$181,144,994.

4 : 0 2 P M 13 Q. And how many claims were you able to link to the  
4 : 0 2 P M 14 defendants' P&H scheme?

4 : 0 2 P M 15 A. 354,002.

4 : 0 2 P M 16 Q. And in your opinion, how much was the United States  
4 : 0 2 P M 17 damaged by claims tainted by defendants' P&H kickback scheme  
4 : 0 2 P M 18 and the commission kickback scheme?

4 : 0 2 P M 19 A. \$176,543,901.

4 : 0 2 P M 20 Q. And in your opinion, how many claims were you able to link  
4 : 0 2 P M 21 to the P&H payments and commission payments the defendants  
4 : 0 3 P M 22 paid?

4 : 0 3 P M 23 A. 327,956.

4 : 0 3 P M 24 MR. SHAHEEN: Thank you, Your Honor. I have no  
4 : 0 3 P M 25 further questions.

4 : 0 3 P M 1 THE COURT: Okay. Cross-examination? Mr. Griffith,  
4 : 0 3 P M 2 I saw you look at the clock. would you prefer to take a  
4 : 0 3 P M 3 few-minute break before we do that?

4 : 0 3 P M 4 MR. GRIFFITH: I'd like to take a five-minute break,  
4 : 0 3 P M 5 if we could.

4 : 0 3 P M 6 THE COURT: Ladies and gentlemen, you can go to the  
4 : 0 3 P M 7 jury room. We'll give you more than five minutes. Let's take  
4 : 0 3 P M 8 about 10 minutes.

4 : 0 3 P M 9 MR. GRIFFITH: Thank you, Your Honor.

4 : 0 3 P M 10 (Whereupon the jury was excused from the courtroom.)

4 : 0 3 P M 11 THE COURT: Any matters the Court need -- the parties  
4 : 0 4 P M 12 may be seated. Any matters you need to address to the Court?

4 : 0 4 P M 13 MR. LEVENTIS: No, Your Honor. Thank you.

4 : 0 4 P M 14 THE COURT: For the defense?

4 : 0 4 P M 15 MR. GRIFFITH: No, sir.

4 : 0 4 P M 16 THE COURT: Very good. 10-minute break.

4 : 0 4 P M 17 (Recess.)

4 : 1 5 P M 18 THE COURT: Please be seated. Okay. Bring in the  
4 : 1 6 P M 19 jury, please.

4 : 1 7 P M 20 (Whereupon the jury entered the courtroom.)

4 : 1 7 P M 21 THE COURT: Please be seated.

4 : 1 7 P M 22 Mr. Griffith, cross-examination.

4 : 1 8 P M 23 MR. GRIFFITH: Thank you, Your Honor.

4 : 1 8 P M 24 CROSS-EXAMINATION

4 : 1 8 P M 25 BY MR. GRIFFITH:

4 : 1 8 P M 1 Q. Good afternoon, Mr. Hines.

4 : 1 8 P M 2 A. Good afternoon.

4 : 1 8 P M 3 Q. I promise you I will not take as long as what you did on  
4 : 1 8 P M 4 direct, mercifully.

4 : 1 8 P M 5 Can we go to the ELMO for a quick second?

4 : 1 8 P M 6 You did this chart on the claims paid that you talked  
4 : 1 8 P M 7 about earlier. Do you recall that?

4 : 1 8 P M 8 A. Yes, I do.

4 : 1 8 P M 9 Q. On the -- and you were showing the decline in the revenues  
4 : 1 8 P M 10 of the claims paid; right?

4 : 1 8 P M 11 A. Yeah, the decline in the claims paid dollars.

4 : 1 8 P M 12 Q. Okay. Well, when you look at the chart, the downward --  
4 : 1 8 P M 13 it started trending down in 2013, did it not?

4 : 1 9 P M 14 It bounced up a little bit, but the trend was  
4 : 1 9 P M 15 starting to go down in 2013; right?

4 : 1 9 P M 16 A. I can't actually read the -- is there a hard copy of this?  
4 : 1 9 P M 17 I just can't read the numbers on the bottom.

4 : 1 9 P M 18 Q. Sorry.

4 : 1 9 P M 19 MR. GRIFFITH: May I approach, Your Honor?

4 : 1 9 P M 20 THE COURT: You may.

4 : 1 9 P M 21 THE WITNESS: Thank you. Can you repeat the  
4 : 1 9 P M 22 question, please?

4 : 1 9 P M 23 BY MR. GRIFFITH:

4 : 1 9 P M 24 Q. I just want to confirm that the initial trend of the sales  
4 : 1 9 P M 25 going down started in 2013.



4 : 1 9 P M 1 A. I mean, the trend for sales is fairly spiky from 2012  
4 : 1 9 P M 2 through 2013. I mean, if you were to draw kind of a straight  
4 : 1 9 P M 3 curve around here, I would say it's probably somewhere in the  
4 : 1 9 P M 4 earlier 2014 period that it really starts to decrease.

4 : 1 9 P M 5 Q. Okay. Early in 2014 when it started to decrease. Okay.

4 : 1 9 P M 6 So that's -- that's prior to the June 25th, 2014,  
4 : 2 0 P M 7 special fraud alert; right?

4 : 2 0 P M 8 A. If it was early -- it would be prior to that.

4 : 2 0 P M 9 Q. Right. And so you're not opining on what caused the  
4 : 2 0 P M 10 decline -- the gradual decline in the business, are you?

4 : 2 0 P M 11 A. No.

4 : 2 0 P M 12 Q. Okay. Because you don't know about whether or not  
4 : 2 0 P M 13 Bluewave had a freeze on hiring? You don't know what -- when  
4 : 2 0 P M 14 that occurred, do you?

4 : 2 0 P M 15 A. Was that a question or -- I just want to make sure I  
4 : 2 0 P M 16 understand the question.

4 : 2 0 P M 17 Q. Do you know when Bluewave froze its hiring practices?

4 : 2 0 P M 18 A. I do not, no.

4 : 2 0 P M 19 Q. Okay. Do you know when Ms. Mallory got let go from ACL?

4 : 2 0 P M 20 A. No.

4 : 2 0 P M 21 Q. Do you know in September of 2014 that there was a wall  
4 : 2 0 P M 22 Street Journal article that just blasted over the universe the  
4 : 2 0 P M 23 special fraud alert?

4 : 2 0 P M 24 A. No.

4 : 2 0 P M 25 Q. And specifically named HDL as a potential target to the

4 : 2 1 P M 1 entire nation. You're not aware of that, are you?

4 : 2 1 P M 2 A. I'm generally aware that there was a fraud alert but not  
4 : 2 1 P M 3 the specifics.

4 : 2 1 P M 4 Q. Okay. And you're not aware when Medicare stopped paying  
4 : 2 1 P M 5 for genetic tests, are you?

4 : 2 1 P M 6 A. No.

4 : 2 1 P M 7 Q. Okay. So you talked about the money, the 244 million, I  
4 : 2 1 P M 8 think, that they made in commissions; right?

4 : 2 1 P M 9 A. Correct.

4 : 2 1 P M 10 Q. The 244 million?

4 : 2 1 P M 11 A. 244.9 million.

4 : 2 1 P M 12 Q. Okay. Now, they gave you every tax return for the year  
4 : 2 1 P M 13 2010, 2011, 2012, 2013, 2014; right?

4 : 2 2 P M 14 A. I'm not sure if we have every year, but we have a  
4 : 2 2 P M 15 population for Bluewave.

4 : 2 2 P M 16 Q. They paid their taxes on every bit of income, did they  
4 : 2 2 P M 17 not?

4 : 2 2 P M 18 A. I'm not in a position to opine on whether they paid taxes  
4 : 2 2 P M 19 on all income. I did see on the tax returns that the gross  
4 : 2 2 P M 20 receipts on those tax returns for Bluewave matched the inflows  
4 : 2 2 P M 21 for the bank statement analysis that we --

4 : 2 2 P M 22 Q. You don't have any information that they did not pay their  
4 : 2 2 P M 23 taxes, do you?

4 : 2 2 P M 24 A. I did not do a tax analysis, so I cannot opine on whether  
4 : 2 2 P M 25 they appropriately compensated --

4 : 2 2 P M 1 Q. Okay. Thank you. Thank you.

4 : 2 2 P M 2 Now, you'll agree with me as an expert and CPA in  
4 : 2 2 P M 3 forensic -- what did you get qualified for, as a forensic  
4 : 2 2 P M 4 accountant?

4 : 2 2 P M 5 A. Forensic accountant.

4 : 2 2 P M 6 Q. -- that you make certain assumptions in doing your damages  
4 : 2 3 P M 7 calculations in this case; right?

4 : 2 3 P M 8 A. That's correct.

4 : 2 3 P M 9 Q. And you make certain calculations -- I mean, mathematical  
4 : 2 3 P M 10 averaging calculations, those kind of formulas; right?

4 : 2 3 P M 11 A. There are calculations. I'm not sure averaging is one of  
4 : 2 3 P M 12 those, but we have calculations in our analyses.

4 : 2 3 P M 13 Q. Okay. Well, in this particular case, you did some  
4 : 2 3 P M 14 methodologies where you were grouping claims; right?

4 : 2 3 P M 15 A. Correct.

4 : 2 3 P M 16 Q. And so, as an expert, you'll agree with me that, if your  
4 : 2 3 P M 17 assumptions were wrong, then that makes your report unreliable;  
4 : 2 3 P M 18 right?

4 : 2 3 P M 19 A. Can you clarify the question a bit?

4 : 2 3 P M 20 Q. It's a simple question. If your -- if you make the wrong  
4 : 2 3 P M 21 assumptions when you do your report, your report becomes  
4 : 2 3 P M 22 unreliable; right?

4 : 2 3 P M 23 A. Probable -- an incorrect assumption could impact your  
4 : 2 4 P M 24 results, certainly.

4 : 2 4 P M 25 Q. And if you make the wrong calculations, that can impact

4 : 2 4 P M 1 your report?

4 : 2 4 P M 2 A. A calculation error could impact your report.

4 : 2 4 P M 3 Q. Okay. And your methodology, you use a wrong methodology,  
4 it can impact the reliability of your report; correct?

4 : 2 4 P M 5 A. That -- hypothetically, yes.

6 Q. So I just want to make sure I understand what you were  
4 : 2 4 P M 7 saying on direct in terms of the commission, so-called scheme;  
4 : 2 4 P M 8 right? Did you come up with the word "scheme," or did DOJ tell  
4 : 2 4 P M 9 to you use that word "scheme"?

4 : 2 4 P M 10 A. It was just the way I described it, as the grouping of  
4 : 2 4 P M 11 activities.

4 : 2 4 P M 12 Q. Okay. Well, we'll get to that, but on the commission  
4 : 2 5 P M 13 damages, I thought I heard you say that that was based on the  
4 : 2 5 P M 14 P&H damages calculations; is that right?

4 : 2 5 P M 15 A. The first several steps are the same steps in the  
4 : 2 5 P M 16 calculation.

4 : 2 5 P M 17 Q. Okay. Well, the P&H calculations included all the states.  
4 : 2 5 P M 18 Am I right?

4 : 2 5 P M 19 A. Correct.

4 : 2 5 P M 20 Q. Okay. And so you made that damages for all the states in  
4 : 2 5 P M 21 P&H and your commission; correct?

4 : 2 5 P M 22 A. I'm sorry?

4 : 2 5 P M 23 Q. Your damages calculation for P&H included all the states  
4 : 2 5 P M 24 and the -- correct?

4 : 2 5 P M 25 A. Correct, for those that were included in our damages

4 : 2 5 P M 1 figures, those claims that would be the resulting claims in  
4 : 2 5 P M 2 damages figures.

4 : 2 5 P M 3 Q. And the only difference between the P&H and the commission  
4 : 2 6 P M 4 is the commission damages excluded two states -- D.C. and  
4 : 2 6 P M 5 Virginia. Is that right?

4 : 2 6 P M 6 A. For HDL, it would be D.C. and Virginia. And for Singulex,  
4 : 2 6 P M 7 it only included the nine states that were part of the  
4 : 2 6 P M 8 territories in the agreement.

4 : 2 6 P M 9 Q. Okay. Well -- and so you included Virginia and D.C. in  
4 : 2 6 P M 10 the P&H damages analysis?

4 : 2 6 P M 11 A. Correct.

4 : 2 6 P M 12 Q. Okay. Well, you understand they were not in Virginia.  
4 : 2 6 P M 13 They did not sell P&H in Virginia. Do you understand that?

4 : 2 6 P M 14 A. I don't understand that, no.

4 : 2 6 P M 15 Q. Okay. They did not sell P&H in D.C. Do you understand  
4 : 2 6 P M 16 that?

4 : 2 6 P M 17 A. I'm not aware of that, no.

4 : 2 6 P M 18 Q. Okay. And -- but, nevertheless, you've included those P&H  
4 : 2 7 P M 19 damages from -- claims from D.C. and Virginia in your  
4 : 2 7 P M 20 calculations, correct, for P&H?

4 : 2 7 P M 21 A. If there was processing and handling payments made in  
4 : 2 7 P M 22 those regions, and they tied to a particular claim with  
4 : 2 7 P M 23 specificity, they would be included.

4 : 2 7 P M 24 Q. Okay. Now, we did our deposition last year, like, in the  
4 : 2 7 P M 25 spring; right? Do you recall that?

4 : 2 7 P M 1 A. I do recall.

4 : 2 7 P M 2 Q. Okay. And, at the time, you had three separate buckets of  
4 : 2 7 P M 3 damages. Do you recall that?

4 : 2 7 P M 4 A. I do.

4 : 2 7 P M 5 Q. Okay. And the first one was the commission bucket, the  
4 : 2 7 P M 6 second one was the P&H bucket, and the third one was the waiver  
4 : 2 7 P M 7 of co-pay bucket; right?

4 : 2 8 P M 8 A. Correct.

4 : 2 8 P M 9 Q. Okay. Because that was another blood money claim that the  
4 : 2 8 P M 10 government was making against these defendants; right?

4 : 2 8 P M 11 A. Is that a question?

4 : 2 8 P M 12 Q. Yeah, that's a question.

4 : 2 8 P M 13 A. I don't understand the term "blood money claim," and I  
4 : 2 8 P M 14 don't understand what the question is.

4 : 2 8 P M 15 Q. Okay. All right. Well, I'll explain it.

4 : 2 8 P M 16 And that's a fair point. I apologize, because you  
4 : 2 8 P M 17 probably didn't hear the government's introductions to the  
4 : 2 8 P M 18 case.

4 : 2 8 P M 19 But you were assigned to do a calculation of damages  
4 : 2 8 P M 20 for the waiver of co-pay so-called inducement by my clients;  
4 : 2 8 P M 21 correct?

4 : 2 8 P M 22 A. Initially, yes.

4 : 2 8 P M 23 Q. Okay. And you came up with this big huge number; correct?

4 : 2 8 P M 24 A. I'm not sure I agree with the characterization it's a big  
4 : 2 9 P M 25 huge number, but we calculated a figure.

4 : 2 9 P M 1 Q. Okay. So -- I just want to make sure I got this right.  
4 : 2 9 P M 2 Bear with me one second.

4 : 2 9 P M 3 Do you know what that number was?

4 : 2 9 P M 4 A. I believe it was approximately 15 million.

4 : 2 9 P M 5 Q. 15 million? Oh, okay. So 15 million. And that wasn't a  
4 : 2 9 P M 6 big number to you, but -- but you didn't testify to that today;  
4 : 2 9 P M 7 right?

4 : 2 9 P M 8 A. No.

4 : 2 9 P M 9 Q. Because you've been instructed to drop that testimony;  
10 correct?

4 : 2 9 P M 11 A. No.

4 : 2 9 P M 12 Q. Okay. There were clear errors in your analysis of that  
13 commission -- I mean that co-pay waiver analysis, wasn't it?

4 : 2 9 P M 14 A. No. Upon further analysis before -- in prepping for  
4 : 3 0 P M 15 trial, new information came to my attention that called into  
4 : 3 0 P M 16 question whether we had complete information on co-pays.

4 : 3 0 P M 17 Q. So -- so whatever it was, you abandoned that particular  
4 : 3 0 P M 18 part of your assignment; right? That whole claim for  
4 : 3 0 P M 19 \$15 million of -- in supposed inducements, you're not  
4 : 3 0 P M 20 testifying to that now because your data is unreliable; right?

4 : 3 0 P M 21 A. We made the determination not to present the analysis,  
4 : 3 0 P M 22 yes.

4 : 3 0 P M 23 Q. Okay. Well, who made -- when you say "we," who's "we"?

4 : 3 0 P M 24 A. Me and my team.

4 : 3 0 P M 25 MR. SHAHEEN: Your Honor, I have an objection. Can

4 : 3 0 P M 1 we approach?

4 : 3 0 P M 2 THE COURT: Okay.

4 : 3 0 P M 3 (whereupon the following proceedings were held at the  
4 : 3 0 P M 4 bench outside the hearing of the jury:)

4 : 3 0 P M 5 MR. SHAHEEN: First of all, he's asking on cross the  
4 : 3 1 P M 6 stuff we didn't cover on direct. Second of all -- and I did  
4 : 3 1 P M 7 nothing to open the door to this line of questioning. Second  
4 : 3 1 P M 8 of all, he's asking who made the decision to stop certain --  
4 : 3 1 P M 9 that's trial strategy. That's communication between us and  
4 : 3 1 P M 10 him.

4 : 3 1 P M 11 MR. GRIFFITH: I'll withdraw that.

4 : 3 1 P M 12 THE COURT: You want to withdraw that?

4 : 3 1 P M 13 MR. GRIFFITH: I'll withdraw the question.

4 : 3 1 P M 14 THE COURT: Very good.

4 : 3 1 P M 15 MR. SHAHEEN: What about the line of questioning --

4 : 3 1 P M 16 THE COURT: Are you going to continue?

4 : 3 1 P M 17 MR. GRIFFITH: No, I'm actually not.

4 : 3 1 P M 18 MR. SHAHEEN: Okay, Your Honor.

4 : 3 1 P M 19 (whereupon the following proceedings were held in  
4 : 3 1 P M 20 open court in the presence and hearing of the jury:)

4 : 3 1 P M 21 THE COURT: Question withdrawn. Please continue.

4 : 3 1 P M 22 BY MR. GRIFFITH:

4 : 3 1 P M 23 Q. Just to be clear, Mr. Hines, when you -- when you talk  
4 : 3 1 P M 24 about these so-called schemes or buckets, you don't have any  
4 : 3 2 P M 25 personal knowledge whether or not the government's claims are



4 : 3 2 P M 1 valid or not, do you?

4 : 3 2 P M 2 A. what do you mean by valid?

4 : 3 2 P M 3 Q. what do you mean by valid? when I ask you if it's valid,  
4 I mean you don't have any personal knowledge regarding the  
5 facts of the case to determine whether or not the claims are  
6 valid; right?

4 : 3 2 P M 7 A. Based on my analysis, I have the observations I made from  
8 reviewing the documents in the case, including contracts and  
9 supporting documents about -- do account setup fees, draw logs,  
10 extensive analysis of data, of financial records. Based on  
11 that information and analysis, that I have an awareness of the  
12 overall activities, yes.

4 : 3 2 P M 13 Q. Okay. I get it that you've got a lot of information in  
14 your expert capacity, but you don't have any personal  
15 involvement, any personal knowledge of what was going on during  
16 the four years that are in question here; right?

4 : 3 3 P M 17 A. Are you asking whether I was personally involved or --

4 : 3 3 P M 18 Q. That's what I'm asking you.

4 : 3 3 P M 19 A. I was not personally involved, no.

4 : 3 3 P M 20 Q. And DOJ asked you to assume there was wrongdoing?

4 : 3 3 P M 21 A. That is correct.

4 : 3 3 P M 22 Q. Okay. And so you did not review any physician claims data  
23 from Medicare; correct?

4 : 3 4 P M 24 A. Are you referring to -- we did review millions of records  
25 of physician claims information -- unpaid claims to Medicare.

4 : 3 4 P M 1 I'm not sure what --

4 : 3 4 P M 2 Q. Well, I guess you'll just have to educate me. I thought  
4 : 3 4 P M 3 what you said was you reviewed claims data from Medicare with  
4 : 3 4 P M 4 respect to HDL claims.

4 : 3 4 P M 5 A. HDL and Singulex.

4 : 3 4 P M 6 Q. Okay. All right. And so you -- it's my understanding --  
4 : 3 4 P M 7 and you correct me if I'm wrong -- that if a physician files a  
4 : 3 4 P M 8 claim, that that would be a separate claims database. Is that  
4 : 3 4 P M 9 generally how it works?

4 : 3 4 P M 10 A. I'm not exactly following you. Are you talking about  
4 : 3 4 P M 11 paperwork filled out by a --

4 : 3 4 P M 12 Q. No, I'm just talking about the claims data that you  
4 : 3 4 P M 13 reviewed for HDL.

4 : 3 5 P M 14 A. The claims data we reviewed for HDL and for Singulex was  
4 : 3 5 P M 15 provided from Medicare. And as I understand it, is the record  
4 : 3 5 P M 16 of the claims submitted and paid by Medicare.

4 : 3 5 P M 17 Q. By HDL and Singulex?

4 : 3 5 P M 18 A. By HDL and Singulex, correct.

4 : 3 5 P M 19 Q. And my question is, have you reviewed any Medicare or  
4 : 3 5 P M 20 TRICARE claims data that were for claims submitted by a  
4 : 3 5 P M 21 physician?

4 : 3 5 P M 22 A. No.

4 : 3 5 P M 23 Q. Thank you.

4 : 3 5 P M 24 So you have no idea what claims any physician in this  
4 : 3 5 P M 25 case, the 3500 physicians that you reviewed, have filed with

4 : 3 5 P M 1 Medicare or TRICARE in the last -- from 2010 to 2014; correct?

4 : 3 5 P M 2 A. No, we were not asked to analyze physician claims.

4 : 3 6 P M 3 Q. Thank you.

4 : 3 6 P M 4 Now, your compensation -- and this is just -- you  
4 : 3 6 P M 5 charge \$517.50 an hour?

4 : 3 6 P M 6 A. That's correct, for my time. And my team would have other  
4 : 3 6 P M 7 rates.

4 : 3 6 P M 8 Q. And how many are on your team?

4 : 3 6 P M 9 A. There was probably four core team members.

4 : 3 6 P M 10 Q. And how much money have you been paid so far for your work  
4 : 3 6 P M 11 in this case?

4 : 3 6 P M 12 A. I think it was approximately just under \$400,000 over the  
4 : 3 6 P M 13 course of the years we conducted our analysis.

4 : 3 7 P M 14 Q. Now, when we had your deposition, you referenced the fact  
4 : 3 7 P M 15 that you were working on some cases which you could not  
4 : 3 7 P M 16 disclose to me at the time. Do you recall that?

4 : 3 7 P M 17 A. I do, yes.

4 : 3 7 P M 18 Q. And so these -- these secret cases that you were working  
4 : 3 7 P M 19 on, have any of them become unsecret for any reason?

4 : 3 7 P M 20 A. No. Well, I wouldn't refer to them as secret cases, first  
4 : 3 7 P M 21 of all; I would refer to them as cases where we have  
4 : 3 7 P M 22 nondisclosure agreements for a variety of clients that we  
4 : 3 7 P M 23 cannot talk about those cases publicly.

4 : 3 7 P M 24 Q. Okay. So you have nondisclosure agreements?

4 : 3 7 P M 25 A. Correct.

4 : 3 7 P M 1 Q. Okay. Do you have attorneys review those nondisclosure  
4 : 3 7 P M 2 agreements before you enter into them?

4 : 3 7 P M 3 A. Typically we have our internal review process, yes.

4 : 3 7 P M 4 Q. And you rely on your counsel when they advise you whether  
4 : 3 7 P M 5 or not to enter into such a contract?

4 : 3 7 P M 6 A. Yes, we do.

4 : 3 8 P M 7 Q. Now -- and I'm sorry. Meant to ask you this. That \$517  
4 : 3 8 P M 8 an hour, is that a discounted rate?

4 : 3 8 P M 9 A. It is.

4 : 3 8 P M 10 Q. It is?

4 : 3 8 P M 11 A. It is.

4 : 3 8 P M 12 Q. And what is your normal rate?

4 : 3 8 P M 13 A. It would be 10 percent higher than that.

4 : 3 8 P M 14 Q. And I'm going to show you this -- I'm sorry.

4 : 3 9 P M 15 MR. GRIFFITH: May I approach?

4 : 3 9 P M 16 THE COURT: You may.

4 : 3 9 P M 17 BY MR. GRIFFITH:

4 : 3 9 P M 18 Q. I'm talking about this one. Do you have this one?

4 : 3 9 P M 19 A. I don't, but I should be able to see that one. I think  
4 : 3 9 P M 20 the other one just had some small figures at the bottom.

4 : 3 9 P M 21 Q. Can you see that commission --

4 : 3 9 P M 22 A. Yes, I can.

4 : 3 9 P M 23 Q. -- deal?

4 : 3 9 P M 24 And so the bottom line is the 585 million in claims,  
4 : 3 9 P M 25 and you're saying that there were 244 million in commissions;

4 : 3 9 P M 1 right?

4 : 3 9 P M 2 A. Yes, those payments directly from HDL and Singulex to  
4 : 3 9 P M 3 BlueWave.

4 : 3 9 P M 4 Q. Okay. And those commissions are from the 585 million in  
4 : 4 0 P M 5 claims?

4 : 4 0 P M 6 A. I'm not sure they're directly from those claims. They  
4 : 4 0 P M 7 would certainly be related. Those 585 million would fund the  
4 : 4 0 P M 8 commissions. It's cash goes into HDL and Singulex from a  
4 : 4 0 P M 9 variety of sources, and part of that would be the 585 million,  
4 : 4 0 P M 10 for sure.

4 : 4 0 P M 11 Q. Okay. Well, I guess what I'm trying to figure out is it  
4 : 4 0 P M 12 appears to me to be a little bit misleading because this is  
4 : 4 0 P M 13 not -- are you saying by this chart that the \$244 million came  
4 : 4 0 P M 14 from all or part of the 585 million?

4 : 4 0 P M 15 A. No. What we're saying is the 585 million is the cash flow  
4 : 4 0 P M 16 from Medicare and TRICARE into HDL and Singulex. And then  
4 : 4 0 P M 17 we're saying the 244.9 million is the cash flow from HDL and  
4 : 4 0 P M 18 Singulex to BlueWave.

4 : 4 1 P M 19 Q. Well, just to be clear, this 244 million is not -- you  
4 : 4 1 P M 20 understand that they had private payers as well as government  
4 : 4 1 P M 21 payers; right?

4 : 4 1 P M 22 A. I do, yes.

4 : 4 1 P M 23 Q. Okay. So -- because when I look at this, you know, it  
4 : 4 1 P M 24 looks -- it looks to me like you're trying to say that my guys  
4 : 4 1 P M 25 got 244 million out of \$585 million, almost 50 percent; right?

4 : 4 1 P M 1 A. No, it's saying -- it's describing the two discrete  
4 : 4 1 P M 2 transactions.

4 : 4 1 P M 3 Q. Okay.

4 : 4 1 P M 4 A. So one would be reimbursement by Medicare, 585.7 million.  
4 : 4 1 P M 5 And the other would be the payment of 244.9 million from HDL  
4 : 4 1 P M 6 and Singulex directly to BlueWave.

4 : 4 1 P M 7 Q. Okay. So -- but would you dispute me if I -- if I say to  
4 : 4 2 P M 8 you that my guys generated hundreds of millions of dollars for  
4 : 4 2 P M 9 HDL with private health care payers?

4 : 4 2 P M 10 A. I don't know what the exact private payer money generated  
4 : 4 2 P M 11 would have been. I don't have access to that information.

4 : 4 2 P M 12 Q. Now, you made all these charts, and you went through the  
4 : 4 2 P M 13 flow of money from the HDL to BlueWave to the independent  
4 : 4 2 P M 14 contractors. I mean, that's nothing unusual, is it?

4 : 4 2 P M 15 A. What's nothing unusual? I'm --

4 : 4 2 P M 16 Q. To flow money from one corporation to a -- to a BlueWave  
4 : 4 2 P M 17 sales company to -- which flows the money down to its separate  
4 : 4 2 P M 18 independent contractor sales representatives. There's nothing  
4 : 4 3 P M 19 unusual about that, is there?

4 : 4 3 P M 20 A. About the BlueWave relationship or about just general --

4 : 4 3 P M 21 Q. Just about the flow of money and how -- the relationship  
4 : 4 3 P M 22 of the parties and the flow of money. That, in and of itself,  
4 : 4 3 P M 23 I mean, there's nothing unusual or untoward about that, is  
4 : 4 3 P M 24 there?

4 : 4 3 P M 25 A. Can you -- I'm just still not following the question

4 : 4 3 P M 1 entirely. Can you maybe rephrase it and --

4 : 4 3 P M 2 Q. Well, if it's too confusing, I'll withdraw it, then.

4 : 4 4 P M 3 Do you have a copy of your report with you?

4 : 4 4 P M 4 A. No.

4 : 4 4 P M 5 Q. Okay. And to save time, I'm going to just read you a  
4 : 4 4 P M 6 section of it. Paragraph 43 just says "Singulex handled the  
4 : 4 4 P M 7 reimbursement process in the same manner as HDL. Specifically,  
4 : 4 4 P M 8 physicians groups provided Singulex a monthly draw log and were  
4 : 4 4 P M 9 reimbursed on a monthly basis. It's unclear whether Singulex  
10 updated this reimbursement process to stop using the draw logs.  
4 : 4 5 P M 11 However, it does appear that Singulex collected some improved  
4 : 4 5 P M 12 data, tracking the specimens received."

4 : 4 5 P M 13 So what was the difference between -- if there was  
4 : 4 5 P M 14 any, between the Singulex reimbursement process and HDL's  
4 : 4 5 P M 15 reimbursement process?

4 : 4 5 P M 16 A. I'm not sure there was much of a difference between either  
4 : 4 5 P M 17 one.

4 : 4 5 P M 18 Q. Okay. And you -- and you said you've done some work in  
4 : 4 5 P M 19 health care -- in the health care environment; correct?

4 : 4 5 P M 20 A. Correct.

4 : 4 5 P M 21 Q. And you did a little bit of work in the Anti-Kickback  
4 : 4 5 P M 22 Statute, False Claims Act area; correct?

4 : 4 5 P M 23 A. I have, yes.

4 : 4 5 P M 24 Q. And are you familiar with the definition of a referral  
4 : 4 6 P M 25 when it comes to anti-kickback or Stark laws?

4 : 4 6 P M 1 A. Not specifically, no.

4 : 4 6 P M 2 Q. Because you've defined a referral in your report; right?

4 : 4 6 P M 3 A. I defined patient referral, which is akin to a patient  
4 : 4 6 P M 4 encounter.

4 : 4 6 P M 5 Q. Is akin to what?

4 : 4 6 P M 6 A. Patient encounter. The specific way we defined it was a  
4 : 4 6 P M 7 specific patient-physician day-of-service combination for  
4 : 4 6 P M 8 Medicare and TRICARE claims.

4 : 4 6 P M 9 Q. Okay.

4 : 4 6 P M 10 A. So it's a reference to aggregating claims or lines of data  
4 : 4 6 P M 11 for a particular patient visit on a particular day.

4 : 4 6 P M 12 Q. Well, a referral generally is an order for a test from  
4 : 4 6 P M 13 a -- from a provider or the order-of-care plan. Okay? Do you  
4 : 4 7 P M 14 agree with that?

4 : 4 7 P M 15 A. I'm not specifically aware of that definition. I mean, in  
4 : 4 7 P M 16 the Medicare data, it refers to the referring physician. So  
4 : 4 7 P M 17 that's part of the reason we described it that way.

4 : 4 7 P M 18 Q. Okay. And so I just want to make clear your definition of  
4 : 4 7 P M 19 a referral has nothing to do with a referral under the  
4 : 4 7 P M 20 Anti-Kickback Statute or the Stark law; correct?

4 : 4 7 P M 21 A. Our definition of a referral is the aggregation of claim  
4 : 4 7 P M 22 records by day and patient and doctor.

4 : 4 7 P M 23 Q. Okay.

4 : 4 7 P M 24 A. Not specific to any other definition.

4 : 4 7 P M 25 Q. And so, as I understand it, your definition of a referral,



4 : 4 7 P M 1 when you had a -- a doctor, for instance, you would look at a  
4 : 4 7 P M 2 particular day, and you would aggregate all of the claims that  
4 : 4 7 P M 3 that doctor made on a particular day; is that right?

4 : 4 7 P M 4 A. No. We would aggregate for each instance of a patient --  
4 : 4 7 P M 5 essentially, a patient visit or a patient service by HDL or  
4 : 4 8 P M 6 Singulex. It would be each individual procedure for that  
4 : 4 8 P M 7 patient on that day referred by a particular physician and  
4 : 4 8 P M 8 serviced by that lab as a patient referral. So that would be  
4 : 4 8 P M 9 the aggregation. It would be if, for example, a patient had --  
4 : 4 8 P M 10 went in and had a blood test and had 10 procedures or 10 tests,  
4 : 4 8 P M 11 it would be those 10 tests for that particular day.

4 : 4 8 P M 12 Q. Okay. But would that -- the 10 tests would be one  
4 : 4 8 P M 13 referral?

4 : 4 8 P M 14 A. That would be an instance of one patient referral as I  
4 : 4 8 P M 15 defined in my initial analysis.

4 : 4 8 P M 16 Q. So in your assumption, you have -- you have multiple  
4 : 4 8 P M 17 referrals -- multiple, I guess, CPT code or claims by a doctor  
4 : 4 8 P M 18 who made one referral?

4 : 4 8 P M 19 A. It would make one patient referral.

4 : 4 8 P M 20 Q. Okay. Now, I'm -- I want to end with this because I was a  
4 : 4 9 P M 21 little bit confused by -- by your testimony. And I'll tell you  
4 : 4 9 P M 22 what I heard, and then you tell me if I'm wrong, and we will  
4 : 4 9 P M 23 talk about it briefly, and then I'll sit down.

4 : 4 9 P M 24 I understood you to say that, on a certain group of  
4 : 4 9 P M 25 claims, that you couldn't really figure out the link of the

4 : 4 9 P M 1 claims. And so let's say there were 50 claims by one doctor or  
4 : 4 9 P M 2 related to one doctor by HDL -- say it was 50.

4 : 4 9 P M 3 A. Correct.

4 : 4 9 P M 4 Q. -- and you knew the doctor was involved in these 50  
4 : 4 9 P M 5 claims, but you could not identify the claims; correct?

4 : 4 9 P M 6 A. You're referring to where we had processing and handling  
4 : 4 9 P M 7 summary reports, I believe.

4 : 4 9 P M 8 Q. Correct. Am I right so far?

4 : 4 9 P M 9 A. Your hypothetical is -- I'm following your hypothetical.

4 : 5 0 P M 10 Q. Okay. And so, as I understand it, what you did is you  
4 : 5 0 P M 11 looked at those 50 claims. You said, well, I'm going to take  
4 : 5 0 P M 12 the lowest 20 claims -- if there were -- if there were 20 P&H  
4 : 5 0 P M 13 fees that you could link it to, you were going to just take the  
4 : 5 0 P M 14 lowest 20 claims of those 50?

4 : 5 0 P M 15 A. No, that's one step in the process. So --

4 : 5 0 P M 16 Q. Okay.

4 : 5 0 P M 17 A. Let's say, for example, we have -- because we have  
4 : 5 0 P M 18 summary-level processing and handling reports, which we know  
4 : 5 0 P M 19 describe, for a particular year, how many processing and  
4 : 5 0 P M 20 handling payments a physician received. We can also go to the  
4 : 5 0 P M 21 Medicare and TRICARE claims data and see exactly how many  
4 : 5 0 P M 22 instances of patient referrals that particular doctor has in  
4 : 5 0 P M 23 the claims data.

4 : 5 0 P M 24 And if there are -- in the example you're using, if  
4 : 5 0 P M 25 there are fewer processing and handling payments than there are

4 : 5 0 P M 1 patient referrals, one of the first steps was to limit the  
4 : 5 1 P M 2 eligible claims that could be included in damages to only that  
4 : 5 1 P M 3 number of processing and handling payments. The only ones that  
4 : 5 1 P M 4 actually made it into my damages calculations were for  
4 : 5 1 P M 5 individual patient-doctor combinations that we had observed in  
4 : 5 1 P M 6 the detailed processing and handling reports as specifically  
4 : 5 1 P M 7 linked to processing and handling.

4 : 5 1 P M 8 So if we saw, in 2012, a particular doctor refer a  
4 : 5 1 P M 9 particular patient for blood testing and got paid processing  
4 : 5 1 P M 10 and handling and we see the same exact doctor continues to get  
4 : 5 1 P M 11 processing and handling payments and refers the same patient  
4 : 5 1 P M 12 for the same types of tests to HDL, those are the only  
4 : 5 1 P M 13 particular claims that would be included in damages.

4 : 5 1 P M 14 Q. Okay. But did you not say -- and does your report not  
4 : 5 1 P M 15 say -- that you took the -- in some instances, you took the  
4 : 5 1 P M 16 lowest 20 out of 50 claims if you could link 20 to a doctor?

4 : 5 2 P M 17 A. So for -- and it was all done based on discrete time  
4 : 5 2 P M 18 periods. Let's say in the example where there are 20  
4 : 5 2 P M 19 individual processing and handling payments, and there's 50  
4 : 5 2 P M 20 claims in the Medicare data, which I don't -- we didn't see  
4 : 5 2 P M 21 that frequently, but we would first look for that doctor's  
4 : 5 2 P M 22 claims in the Medicare data and find the -- if there was 50, we  
4 : 5 2 P M 23 would find those 50 claims, sort them, and then the ones that  
4 : 5 2 P M 24 would potentially be in damages would be those lowest claims  
4 : 5 2 P M 25 only if one of those 20 lowest claims was a particular

4 : 5 2 P M 1 doctor-patient relationship we had seen.

4 : 5 2 P M 2 And the reason for that is to, you know, be --  
4 : 5 2 P M 3 minimize damages essentially and be -- take a conservative  
4 : 5 2 P M 4 approach.

4 : 5 2 P M 5 Q. Well, I understand that you wanted -- that you picked the  
4 : 5 2 P M 6 lowest -- if there was 50 claims that -- that the doctor made,  
4 : 5 3 P M 7 and you could -- and you could -- had 20 P&H that you could  
4 : 5 3 P M 8 relate it to or link it to, your method was, well, we're just  
4 : 5 3 P M 9 going to go get the 20 lowest; is that right?

4 : 5 3 P M 10 A. No. The method was we'll first identify the 20 lowest as  
4 : 5 3 P M 11 those that could potentially be included in damages, and then  
4 : 5 3 P M 12 only include any one of those 20. It could be we only pick  
4 : 5 3 P M 13 five of those 20, because the only ones that we would have  
4 : 5 3 P M 14 actually let be included in the damages calculation were ones  
4 : 5 3 P M 15 for specific doctors and patients that we know were linked  
4 : 5 3 P M 16 based on the processing and handling detail report we already  
4 : 5 3 P M 17 had seen for certain earlier periods.

4 : 5 3 P M 18 Q. Okay. Thank you very much.

4 : 5 3 P M 19 A. Sure.

4 : 5 3 P M 20 THE COURT: Are you finished?

4 : 5 3 P M 21 Do you have more questions?

4 : 5 3 P M 22 MR. ASHMORE: Yes, sir.

4 : 5 3 P M 23 THE COURT: Mr. Ashmore, cross-examination?

4 : 5 3 P M 24 MR. ASHMORE: Thank you, Your Honor. May it please  
4 : 5 3 P M 25 the Court.

**CROSS-EXAMINATION****BY MR. ASHMORE:**

Q. Mr. Hines, I'm Beattie Ashmore. I represent Latonya Mallory. Your report is based on a number of assumptions; correct?

A. It does have some assumptions based into it, yes.

Q. And one of your assumptions -- correct me if I'm wrong -- is that first I have been asked to assume that defendants are liable for the actions alleged in the United States complaint and have violated the FCA and the Anti-Kickback Statute.

A. Correct.

Q. Those are your words?

A. Those are my words, yes.

Q. Okay. And so this entire report, that's -- your basic premise is based on the government telling you to assume that they violated the law?

A. So in any damages analysis, this one included, an assumption of liability is something that we frequently are asked to consider. And we were asked to consider that in this case, which I'm not offering a legal opinion as to legality of the conduct, but that was an assumption built into the --

Q. You have no legal opinion. You have no evidence that anybody violated the law; correct?

A. I have not made any analysis or been asked to opine on whether anyone violated the law.

4 : 5 5 P M 1 Q. Everything that you've done is because the government has  
4 : 5 5 P M 2 instructed you to assume they violated the law?

4 : 5 5 P M 3 A. That is an assumption built into the damages analysis,  
4 : 5 5 P M 4 yes.

4 : 5 5 P M 5 Q. And, conversely, if I change this language just a little  
4 : 5 5 P M 6 bit, it's going to change your entire report as follows:

4 : 5 5 P M 7 "First, I have been asked to assume that defendants  
4 : 5 5 P M 8 are not liable for the actions alleged in the United States  
4 : 5 5 P M 9 complaint and have not violated the FCA and Anti-Kickback  
4 : 5 5 P M 10 Statute."

4 : 5 5 P M 11 what does that do to your report?

4 : 5 5 P M 12 A. If I was asked to -- in a hypothetical situation?

4 : 5 5 P M 13 Q. Sure. Hypothetically speaking.

4 : 5 5 P M 14 A. Not liability? Then there would -- presumably, there  
4 : 5 5 P M 15 would be no damages.

4 : 5 5 P M 16 Q. Don't owe the government a dime, do they?

4 : 5 6 P M 17 A. Liability is part of the inherent assumptions there, yes.

4 : 5 6 P M 18 Q. That's my hypothetical, that there's no liability. And  
4 : 5 6 P M 19 your report is based on the government's hypothetical, that  
4 : 5 6 P M 20 there is liability; correct?

4 : 5 6 P M 21 A. My report is based on that assumption, correct.

4 : 5 6 P M 22 Q. Sure. Now, you gave numbers of claims and dollar amounts  
4 : 5 6 P M 23 to the jury that were collectively HDL and Singulex numbers; is  
4 : 5 6 P M 24 that correct?

4 : 5 6 P M 25 A. Correct.

4 : 5 6 P M 1 Q. And did anybody ever tell you that Tonya Mallory has  
4 : 5 6 P M 2 nothing to do whatsoever with Singulex?

4 : 5 6 P M 3 A. I'm aware of that, yes.

4 : 5 6 P M 4 Q. You're aware of that?

4 : 5 6 P M 5 A. I am aware of that.

4 : 5 6 P M 6 Q. Okay. And you still assigned Singulex dollars to  
4 : 5 6 P M 7 Ms. Mallory?

4 : 5 6 P M 8 A. I was also not asked to opine on individual liability. It  
4 : 5 6 P M 9 was identifying processing and handling -- or Medicare and  
4 : 5 7 P M 10 TRICARE claims related to processing and handling payments.  
4 : 5 7 P M 11 And we have provided schedules that break it down between  
4 : 5 7 P M 12 Singulex and HDL.

4 : 5 7 P M 13 Q. So in spite of the fact that you knew she's not related to  
4 : 5 7 P M 14 Singulex whatsoever, you still assigned those dollars to her in  
4 : 5 7 P M 15 this report?

4 : 5 7 P M 16 A. I was asked to calculate the damages the government  
4 : 5 7 P M 17 suffered, and that does not include an analysis of the  
4 : 5 7 P M 18 apportionment of liability to any of the defendants.

4 : 5 7 P M 19 Q. If a doctor -- you talk about individual doctors. First  
4 : 5 7 P M 20 let's talk about practices.

4 : 5 7 P M 21 Not every practice, not every doctor -- strike all of  
4 : 5 7 P M 22 that.

4 : 5 7 P M 23 Not every doctor in every practice used HDL blood  
4 : 5 7 P M 24 tests; correct?

4 : 5 7 P M 25 A. I don't have the information to be able to answer that

4 : 5 7 P M 1 question.

4 : 5 7 P M 2 Q. would it surprise you that in, say, a practice of 20  
4 : 5 7 P M 3 doctors, maybe 5 or 10 used HDL blood tests?

4 : 5 7 P M 4 A. I don't have that information available to me.

4 : 5 7 P M 5 Q. Let's talk about -- well, did you interview any of the  
4 : 5 8 P M 6 doctors?

4 : 5 8 P M 7 A. No.

4 : 5 8 P M 8 Q. Did you look in the books and records of any of the  
4 : 5 8 P M 9 doctors?

4 : 5 8 P M 10 A. No.

4 : 5 8 P M 11 Q. The 3500 doctors you referenced?

4 : 5 8 P M 12 A. I did not have access to those records of the doctors.

4 : 5 8 P M 13 Q. So you talk about the money going into those practices --  
4 : 5 8 P M 14 and I'm going talk in round numbers here -- but let's say one  
4 : 5 8 P M 15 of the doctors gets \$100,000 over four years in P&H fees;  
4 : 5 8 P M 16 right? That's roughly one of the examples or findings that you  
4 : 5 8 P M 17 gave; correct?

4 : 5 8 P M 18 A. There are physicians that received in excess of \$100,000.

4 : 5 8 P M 19 Q. Let's just make it a hypothetical. Doc gets \$100,000 over  
4 : 5 8 P M 20 four years in P&H fees. Okay? Right? That's my hypothetical.

4 : 5 8 P M 21 How much money went out?

4 : 5 8 P M 22 A. I'm not following your question.

4 : 5 8 P M 23 Q. He gets --

4 : 5 8 P M 24 A. How much went out where?

4 : 5 8 P M 25 I didn't mean to interrupt you.



4 : 5 8 P M 1 My question was, how much went out where? You need  
4 : 5 9 P M 2 to be more specific.

4 : 5 9 P M 3 Q. Right, right, because you don't know how much money went  
4 : 5 9 P M 4 out. The 100,000 comes in, but how much did he pay his nurses,  
4 : 5 9 P M 5 his staff, the materials, the vials? Everything that it takes  
4 : 5 9 P M 6 to collect those blood samples to get them to HDL, how much did  
4 : 5 9 P M 7 that cost?

4 : 5 9 P M 8 A. That's not part of my analysis.

4 : 5 9 P M 9 Q. Right. Would it have cost \$100,000?

4 : 5 9 P M 10 A. I don't have an opinion on that.

4 : 5 9 P M 11 Q. Wouldn't it be a wash? He gets \$100,000 in P&H fees, and  
4 : 5 9 P M 12 he pays out \$100,000 to his staff?

4 : 5 9 P M 13 A. In the hypothetical, that 100,000 came in and 100,000 went  
4 : 5 9 P M 14 out, that washes. But I've not been asked to conduct any  
4 : 5 9 P M 15 analysis on --

4 : 5 9 P M 16 Q. Sure. That couldn't possibly be a bribe in that scenario,  
4 : 5 9 P M 17 could it?

4 : 5 9 P M 18 A. I have no opinion on that whatsoever. I can't answer the  
4 : 5 9 P M 19 question.

4 : 5 9 P M 20 MR. ASHMORE: That's all I have, Your Honor.

4 : 5 9 P M 21 THE COURT: Thank you very much.

4 : 5 9 P M 22 Anything from the government?

4 : 5 9 P M 23 MR. SHAHEEN: Your Honor, I have just one question.

4 : 5 9 P M 24 THE COURT: Yes, sir.

4 : 5 9 P M 25 REDIRECT EXAMINATION

4 : 5 9 P M 1 **BY MR. SHAHEEN:**

5 : 0 0 P M 2 **Q.** Mr. Hines, Mr. Ashmore asked you a question about the  
5 : 0 0 P M 3 assumption you made regarding liability.

5 : 0 0 P M 4 **A.** Sure.

5 : 0 0 P M 5 **Q.** My question to you is if the government had instructed you  
5 : 0 0 P M 6 to assume that there was no liability, but it asked you to link  
5 : 0 0 P M 7 specific claims to specific P&H payments, would your analysis  
5 : 0 0 P M 8 have changed at all?

5 : 0 0 P M 9 **A.** No.

5 : 0 0 P M 10 **Q.** So you would have come -- arrived at the same numbers in  
5 : 0 0 P M 11 terms of how many claims were linked to P&H payments --

5 : 0 0 P M 12 **MR. GRIFFITH:** Objection. Leading, Your Honor.

5 : 0 0 P M 13 **THE COURT:** I think it's just sort of -- rephrase the  
5 : 0 0 P M 14 question, Mr. Shaheen.

5 : 0 0 P M 15 **MR. SHAHEEN:** Fair enough.

5 : 0 0 P M 16 **BY MR. SHAHEEN:**

5 : 0 0 P M 17 **Q.** would you have arrived at the same conclusion regarding  
5 : 0 0 P M 18 how many P&H payments -- regarding how many claims were tied to  
5 : 0 0 P M 19 P&H payments regardless of whether or not we asked you to  
5 : 0 0 P M 20 assume liability in this case?

5 : 0 0 P M 21 **A.** Yes, I would.

5 : 0 0 P M 22 **Q.** would you have arrived at the same conclusion regarding  
5 : 0 0 P M 23 the number of claims that you tied to the P&H and the  
5 : 0 0 P M 24 commission payments regardless of whether or not we asked you  
5 : 0 0 P M 25 to assume liability in this case?

5 : 0 0 P M 1 A. Yes.

5 : 0 0 P M 2 MR. SHAHEEN: Thank you, Your Honor. No further  
5 : 0 0 P M 3 questions.

5 : 0 0 P M 4 THE COURT: Thank you.

5 : 0 0 P M 5 You may step down.

5 : 0 1 P M 6 THE WITNESS: Thank you.

5 : 0 1 P M 7 (Witness excused.)

5 : 0 1 P M 8 THE COURT: Ladies and gentlemen, we've had a pretty  
5 : 0 1 P M 9 good day. It's a little after 5. A lot harder than it looks,  
5 : 0 1 P M 10 doesn't it? I want to thank you all for paying as close  
5 : 0 1 P M 11 attention as you did. This is complicated information, and you  
5 : 0 1 P M 12 paid close attention.

5 : 0 1 P M 13 I am going to excuse you for the day. Let's  
5 : 0 1 P M 14 talk about -- we had you here at 9:30 this morning. Is it too  
5 : 0 1 P M 15 much a burden to ask you to get here by 9:00 tomorrow morning?  
5 : 0 1 P M 16 Is that a problem? I'm just trying to reduce the -- if we  
5 : 0 1 P M 17 steal a few minutes here and there, we start saving days.  
5 : 0 1 P M 18 That's why I try to do it. Okay for everybody at 9:00? If you  
5 : 0 1 P M 19 would be here at 9:00, bright and early before 9, we will be  
5 : 0 1 P M 20 right at 9 we'll crank it up. Okay?

5 : 0 1 P M 21 Please do not discuss the case with anyone.  
5 : 0 1 P M 22 And, obviously, in a courthouse like this, we're all kind of  
5 : 0 1 P M 23 close to each other. You understand nobody can communicate  
5 : 0 1 P M 24 with you and you should not communicate with anyone else.

5 : 0 2 P M 25 Okay. Have a good evening. I will see you

5 : 0 2 P M 1 tomorrow. Please do no investigation, do not talk about the  
5 : 0 2 P M 2 case.

5 : 0 2 P M 3 (Whereupon the jury was excused from the courtroom.)

5 : 0 2 P M 4 **THE COURT:** Okay. Please being seated.

5 : 0 2 P M 5 Okay. Let's turn our attention back just for a  
5 : 0 2 P M 6 moment on the issue of the Fifth Amendment. Folks, let me just  
5 : 0 2 P M 7 state a reality. I have a 5:30 conference call with some  
5 : 0 3 P M 8 colleagues, and I have a limited time this afternoon. So  
5 : 0 3 P M 9 let's -- let's -- let me understand the nature of the questions  
5 : 0 3 P M 10 the government is going to propound. What's the witness's name  
5 : 0 3 P M 11 again, please?

5 : 0 3 P M 12 **MR. LEVENTIS:** Leonard Blasko, Your Honor.

5 : 0 3 P M 13 **THE COURT:** Okay. And remind me the nature -- what  
5 : 0 3 P M 14 questions provoked him to assert the Fifth.

5 : 0 3 P M 15 **MR. LEVENTIS:** Well, Your Honor, the first one I  
5 : 0 3 P M 16 asked him, I imagine, which is, "Did you sell HDL and Singulex  
5 : 0 3 P M 17 tests from 2011 through 2014?"

5 : 0 3 P M 18 **MR. COOKE:** He pleaded the Fifth as to every  
5 : 0 3 P M 19 question; right?

5 : 0 3 P M 20 **MR. LEVENTIS:** Yeah.

5 : 0 3 P M 21 **THE COURT:** I need to explain to him that it's got to  
5 : 0 3 P M 22 be a question that could potentially incriminate him. You  
5 : 0 3 P M 23 know, it doesn't need to be a -- a direct -- if it could just  
5 : 0 3 P M 24 put him in a situation that could expose him to criminal  
5 : 0 4 P M 25 liability, there's an argument that that's sufficient. You

5 : 0 4 P M 1 don't have to have the direct question, did you, you know,  
5 : 0 4 P M 2 commit the crime.

5 : 0 4 P M 3 If it could -- if it could furnish a link in the  
5 : 0 4 P M 4 chain of evidence needed to prosecute someone -- and so I think  
5 : 0 4 P M 5 if he just -- I wouldn't limit it to that question; that is, if  
5 : 0 4 P M 6 you wanted to ask additional questions. But I'm not sure I  
5 : 0 4 P M 7 would -- I'd have to hear -- I'm going to do it outside the  
5 : 0 4 P M 8 presence of the jury. I want to hear a little bit of what he's  
5 : 0 4 P M 9 going to say, but I want to explain to him what his -- since he  
5 : 0 4 P M 10 doesn't have counsel, I'll -- the -- you know, how -- it has  
5 : 0 4 P M 11 got to be related to something that could plausibly lead to  
5 : 0 4 P M 12 criminal prosecution.

5 : 0 4 P M 13 **MR. LEVENTIS:** Your Honor, I guess the other thing  
5 : 0 4 P M 14 for context, he did have an attorney at one point. And there  
5 : 0 4 P M 15 was an attorney present -- I believe at his deposition, there  
5 : 0 4 P M 16 was an attorney that was present.

5 : 0 4 P M 17 **THE COURT:** I often find that attorneys are not as  
5 : 0 4 P M 18 well informed as we might think about what is a proper  
5 : 0 5 P M 19 invocation of the Fifth Amendment.

5 : 0 5 P M 20 **MR. LEVENTIS:** I had said earlier he doesn't have one  
5 : 0 5 P M 21 here. I just wanted to make sure you knew he did at one point.

5 : 0 5 P M 22 **THE COURT:** I understand that. Well, let's get here  
5 : 0 5 P M 23 at 8:30 tomorrow morning, and let me address it with him at  
5 : 0 5 P M 24 that point.

5 : 0 5 P M 25 Because there's also the problem of waiver. You

5 : 0 5 P M 1 know, if he gets in there -- and this is what concerns me --  
5 : 0 5 P M 2 and he starts talking about it, he could potentially waive his  
5 : 0 5 P M 3 Fifth Amendment and not mean to. And, you know, that's another  
5 : 0 5 P M 4 whole potential problem.

5 : 0 5 P M 5 MR. LEVENTIS: Yeah, and if he answers things now  
5 : 0 5 P M 6 that he didn't before, Your Honor, that would be a problem as  
5 : 0 5 P M 7 well.

5 : 0 5 P M 8 THE COURT: That would be a potential problem as  
5 : 0 5 P M 9 well. So -- but, you know --

5 : 0 5 P M 10 MR. LEVENTIS: Let's ask him some introduction  
5 : 0 5 P M 11 questions and then get to the video and see if he would  
5 : 0 5 P M 12 identify himself. And I guess we'll see.

5 : 0 5 P M 13 THE COURT: Yeah. And, you know, I think we have --  
5 : 0 5 P M 14 I need to -- I will explain to him in the beginning that it  
5 : 0 5 P M 15 must be a question that could link him in a chain of evidence  
5 : 0 5 P M 16 needed to prosecute him.

5 : 0 6 P M 17 But let me just give you a hypothetical. You've  
5 : 0 6 P M 18 got a video that shows him tendering -- seeking to -- to induce  
5 : 0 6 P M 19 someone for a referral. Is that you? Fifth Amendment. I'm  
5 : 0 6 P M 20 not sure that isn't a valid assertion of the Fifth Amendment.

5 : 0 6 P M 21 You know, he's -- you know, the essence of the  
5 : 0 6 P M 22 Fifth Amendment is you cannot be made to be a witness against  
5 : 0 6 P M 23 yourself; right? That's the foundation of the Fifth Amendment,  
5 : 0 6 P M 24 right, against self-incrimination.

5 : 0 6 P M 25 So if you say, "Is that you?" you know, the

5 : 0 6 P M 1 answer would be -- of course, if you were being prosecuted,  
5 : 0 6 P M 2 "Put the government to the proof," you know. And you might put  
5 : 0 6 P M 3 something up and say, "Is this Mr. Blasko?" Yes, it is. Well  
5 : 0 6 P M 4 then you've established it, you know.

5 : 0 6 P M 5 And you've got a witness, I presume, who  
5 : 0 6 P M 6 participated in that exchange? Do you have a --

5 : 0 6 P M 7 **MR. LEVENTIS:** Yes, Your Honor. I guess that I would  
5 : 0 6 P M 8 say that the jury is going to see Mr. Blasko sitting in that  
5 : 0 7 P M 9 chair and they're going to see him on this video.

5 : 0 7 P M 10 **THE COURT:** Right. It's the old Flip Wilson joke,  
5 : 0 7 P M 11 you can believe me or those lying eyes of yours.

5 : 0 7 P M 12 **MR. LEVENTIS:** They'll be able to identify him for  
5 : 0 7 P M 13 themselves.

5 : 0 7 P M 14 **THE COURT:** Right. So they can do their own.

5 : 0 7 P M 15 But is the video in at this point?

5 : 0 7 P M 16 **MR. LEVENTIS:** Yes, Your Honor.

5 : 0 7 P M 17 **THE COURT:** Okay. You can play the video and then  
5 : 0 7 P M 18 ask him if that's him. I'm going to explain if he -- state  
5 : 0 7 P M 19 your name, and if he refuses to state his name, that's not a  
5 : 0 7 P M 20 proper invocation of the Fifth Amendment.

5 : 0 7 P M 21 But he needs to be guided and then he'll make  
5 : 0 7 P M 22 his own decisions. Obviously, I would love to have an attorney  
5 : 0 7 P M 23 for him sitting here, but that's not the choice. And he's got  
5 : 0 7 P M 24 a constitutional right with or without an attorney.

5 : 0 7 P M 25 Any thoughts, other comments anyone wishes to

5 : 0 7 P M 1 make on this issue?

5 : 0 7 P M 2 MR. COOKE: Yes, Your Honor, two things at least.  
5 : 0 7 P M 3 One is I'm speculating based on the briefing that the other  
5 : 0 7 P M 4 people who did have lawyers filed with the Court. And  
5 : 0 8 P M 5 essentially what they said was we don't think we did anything  
5 : 0 8 P M 6 wrong, but the government contends that the very process of  
5 : 0 8 P M 7 accepting commissions to sell is itself a violation of the  
5 : 0 8 P M 8 Anti-Kickback Statute.

5 : 0 8 P M 9 THE COURT: If he says, "I didn't do anything wrong,"  
5 : 0 8 P M 10 I think he's waived his privilege.

5 : 0 8 P M 11 MR. COOKE: That comes to the next point.

5 : 0 8 P M 12 THE COURT: He can't do it -- he can't put up  
5 : 0 8 P M 13 evidence he thinks is favorable to him and then when you want  
5 : 0 8 P M 14 to challenge him on that, "Oh, I've taken the Fifth."

5 : 0 8 P M 15 No. Once he puts his foot in the water, he's  
5 : 0 8 P M 16 going to be wet.

5 : 0 8 P M 17 MR. COOKE: What of the fact that he's already given  
5 : 0 8 P M 18 an interview to the OIG and the FBI? So we've got those --  
5 : 0 8 P M 19 we've got the notes of those interviews. So he's already  
5 : 0 8 P M 20 testified about a number of the matters that would be relevant  
5 : 0 8 P M 21 here -- not testified, but he's already --

5 : 0 8 P M 22 THE COURT: Are you claiming he's waived his  
5 : 0 8 P M 23 privilege?

5 : 0 8 P M 24 MR. COOKE: well, I raise that question as to  
5 : 0 8 P M 25 whether --



5 : 0 8 P M 1           **THE COURT:** I haven't seen those. You know, I'm --  
5 : 0 8 P M 2 this is like a very serious matter when you have an  
5 : 0 8 P M 3 unrepresented person. You may have your interest, you wish him  
5 : 0 9 P M 4 to testify. I'm not sure what circumstances were with those  
5 : 0 9 P M 5 interviews and so forth and what he understood.

5 : 0 9 P M 6           I'm not going to willy-nilly waive his Fifth  
5 : 0 9 P M 7 Amendment right. And he's sitting here in a federal trial,  
5 : 0 9 P M 8 false claims, with the United States Department of Justice  
5 : 0 9 P M 9 sitting here. I'll look at the issue over the evening about  
5 : 0 9 P M 10 these other waivers.

5 : 0 9 P M 11           But what's the government's view on whether he  
5 : 0 9 P M 12 waived?

5 : 0 9 P M 13           **MR. LEVENTIS:** well, the deposition he last gave he  
5 : 0 9 P M 14 pled the Fifth Amendment, Your Honor. If the defendants were  
5 : 0 9 P M 15 going to object to that, it would have been good to know that a  
5 : 0 9 P M 16 while back. But this is the first time I've heard them bring  
5 : 0 9 P M 17 up a waiver issue. We've talked about this with the other  
5 : 0 9 P M 18 defendants. We've had briefing on the Fifth Amendment.

5 : 0 9 P M 19           **THE COURT:** well, we haven't addressed the issue of  
5 : 0 9 P M 20 waiver, have we, on the others?

5 : 0 9 P M 21           **MR. COOKE:** No. And I think he's got the burden  
5 : 0 9 P M 22 reversed. It was their questions that he pleaded the Fifth to,  
5 : 0 9 P M 23 so it would have been incumbent on them to go to the Court and  
5 : 0 9 P M 24 require him to testify based on the waiver.

5 : 1 0 P M 25           **THE COURT:** well, they take the view he hasn't

5 : 1 0 P M 1 waived, I take it; is that correct?

5 : 1 0 P M 2 MR. LEVENTIS: Correct, Your Honor.

5 : 1 0 P M 3 THE COURT: And what's the argument? Did he talk to  
5 : 1 0 P M 4 the OIG? And what's the argument that that wasn't a waiver?

5 : 1 0 P M 5 MR. LEVENTIS: well, my understanding is that then he  
5 : 1 0 P M 6 obtained an attorney. We put him to a deposition, and he pled  
5 : 1 0 P M 7 the Fifth amendment.

5 : 1 0 P M 8 THE COURT: Does that matter? I mean, had he already  
5 : 1 0 P M 9 waived it?

5 : 1 0 P M 10 MR. LEVENTIS: I don't think so, Your Honor. I mean,  
5 : 1 0 P M 11 I'll have to go look --

5 : 1 0 P M 12 THE COURT: I'm going to look this evening. It's  
5 : 1 0 P M 13 more than a rhetorical question. I'm not sure I know quite the  
5 : 1 0 P M 14 answer here.

5 : 1 0 P M 15 You know, if at some earlier point, he may have  
5 : 1 0 P M 16 said something but not under oath, not, you know, up -- we need  
5 : 1 0 P M 17 to take a look at what constitutes waiver. I'll take a look at  
5 : 1 0 P M 18 it over the evening.

5 : 1 0 P M 19 MR. LEVENTIS: We will as well, Your Honor.

5 : 1 0 P M 20 THE COURT: Anything else? Yes, Mr. Griffith?

5 : 1 0 P M 21 MR. GRIFFITH: Your Honor, would it be appropriate  
5 : 1 0 P M 22 now for us to move to strike Mr. Hines' testimony based on the  
5 : 1 0 P M 23 fact that he has conflated -- his underlying data and  
5 : 1 0 P M 24 assumptions are wrong because he's included as part of his  
5 : 1 1 P M 25 damages P&H fee-related damages for D.C. and Virginia which

5 : 1 1 P M 1 these guys had no part of?

5 : 1 1 P M 2 THE COURT: I believe he said he only did it if he  
5 : 1 1 P M 3 actually had evidence they paid the processing and handling  
5 : 1 1 P M 4 fees. That's what I understood him to say. So I don't know if  
5 : 1 1 P M 5 your assumption -- he limited it. He said they had to have  
5 : 1 1 P M 6 actual evidence of it being paid.

5 : 1 1 P M 7 In that specific instance, Mr. Shaheen, did I  
5 : 1 1 P M 8 misunderstand him on that?

5 : 1 1 P M 9 MR. SHAHEEN: I would say two things, Your Honor.  
5 : 1 1 P M 10 One, Your Honor has it correct that he only tied it to specific  
5 : 1 1 P M 11 P&H payments. Two, we've alleged a conspiracy here between all  
5 : 1 1 P M 12 the defendants.

5 : 1 1 P M 13 So it's appropriate for them to say when the  
5 : 1 1 P M 14 P&H --

5 : 1 1 P M 15 THE COURT: To the extent you're asking me to strike  
5 : 1 1 P M 16 his testimony, I'll overrule it. That's the kind of argument  
5 : 1 1 P M 17 you make in -- that's closing argument.

5 : 1 1 P M 18 MR. GRIFFITH: Thank you.

5 : 1 1 P M 19 THE COURT: Okay. Anything further?

5 : 1 1 P M 20 MR. LEVENTIS: Your Honor, did you say 8:30? I just  
5 : 1 1 P M 21 want to make sure.

5 : 1 1 P M 22 THE COURT: We're going to be here at 8:30. We'll  
5 : 1 1 P M 23 have Mr. Blasko here. Let's all, over evening, look at the  
5 : 1 2 P M 24 issue of what constitutes waiver. How about that? I'll be  
5 : 1 2 P M 25 glad to hear from y'all on that.

5 : 1 2 P M 1 MR. LEVENTIS: Yes, Your Honor.

5 : 1 2 P M 2 THE COURT: Very good. Hearing is adjourned until  
5 : 1 2 P M 3 tomorrow.

5 : 1 2 P M 4 Let me ask y'all just for a second here. You're  
5 : 1 2 P M 5 all not giving Ms. Eunice exhibits?

5 : 1 2 P M 6 Y'all need to have exhibits put into evidence.  
5 : 1 2 P M 7 How y'all planning to do that?

5 : 1 2 P M 8 MR. LEVENTIS: Electronically, but we can print out  
5 : 1 2 P M 9 copies as well.

5 : 1 2 P M 10 THE COURT: I want you to print out copies. I want  
5 : 1 2 P M 11 her to be able to hand those back down -- back to the jury.  
5 : 1 2 P M 12 okay?

5 : 1 2 P M 13 MR. LEVENTIS: Okay.

5 : 1 2 P M 14 THE COURT: So -- and y'all -- I want y'all to do  
5 : 1 3 P M 15 that overnight. And the ones you've admitted, I want you to  
5 : 1 3 P M 16 present them to her in the morning. Y'all agree on those have  
5 : 1 3 P M 17 been the ones admitted.

5 : 1 3 P M 18 MR. LEVENTIS: Yes, Your Honor.

5 : 1 3 P M 19 THE COURT: Okay?

5 : 1 3 P M 20 MR. LEVENTIS: Yes, sir.

5 : 1 3 P M 21

5 : 1 3 P M 22 \* \* \* \* \*

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**CERTIFICATE**

I, Tana J. Hess, CCR, FCRR, Official Court Reporter  
for the United States District Court, District of South  
Carolina, certify that the foregoing is a true and correct  
transcript, to the best of my ability and understanding, from  
the record of proceedings in the above-entitled matter.

A handwritten signature in cursive script, reading "Tana J. Hess", is written over a light blue rectangular background.

Tana J. Hess, CRR, FCRR, RMR  
Official Court Reporter