



## Appearances:

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9 : 1 1 A M 1           **THE COURT:** Good morning. Please be seated.

9 : 1 1 A M 2                   I'm sorry. I reluctantly ask the question, is  
9 : 1 1 A M 3 there anything y'all wish to bring up before we bring in the  
9 : 1 1 A M 4 jury?

9 : 1 2 A M 5           **MR. LEVENTIS:** For old times' sake, yes, Your Honor,  
9 : 1 2 A M 6 we have one thing I would like to bring up.

9 : 1 2 A M 7           **THE COURT:** What's that?

9 : 1 2 A M 8           **MR. LEVENTIS:** After talking to the actual lawyers on  
9 : 1 2 A M 9 our team, we decided we should probably make a motion for  
9 : 1 2 A M 10 judgment as a matter of law at this point, Your Honor. It  
9 : 1 2 A M 11 would just be to find the defendants liable for the False  
9 : 1 2 A M 12 Claims Act and incorporating our arguments from our motion for  
9 : 1 2 A M 13 summary judgment and the evidence presented at trial.

9 : 1 2 A M 14           **THE COURT:** Very good. For all the reasons stated at  
9 : 1 2 A M 15 that time and, under especially Rule 50, taking it in a light  
9 : 1 2 A M 16 most favorable to the nonmoving party, I believe a reasonable  
9 : 1 2 A M 17 jury could rule with the defense that there is no liability.  
9 : 1 2 A M 18 That's of course not judging credibility or any issues like  
9 : 1 2 A M 19 that. Intent, I believe is an issue for the jury.

9 : 1 2 A M 20                   So I respectfully deny that motion, just as I  
9 : 1 2 A M 21 did for the defendants. And of course you did it -- you put it  
9 : 1 2 A M 22 on the record. You knew I had already ruled, because I said  
9 : 1 2 A M 23 it --

9 : 1 2 A M 24           **MR. LEVENTIS:** Yes. Thank you, Your Honor.

9 : 1 2 A M 25           **THE COURT:** -- as they say, dicta, already.

9 : 1 2 A M 1 Okay. Let's bring in the jury.

9 : 1 3 A M 2 Miss Eunice, could I have the verdict form?

9 : 1 3 A M 3 Thank you, ma'am.

9 : 1 4 A M 4 (Whereupon the jury entered the courtroom.)

9 : 1 4 A M 5 **THE COURT:** Good morning.

9 : 1 4 A M 6 **JURY:** Good morning.

9 : 1 4 A M 7 **THE COURT:** Miss Caruana, would you please provide a  
9 : 1 4 A M 8 copy of my charge to each of the jurors.

9 : 1 4 A M 9 Please be seated. I'm sorry. I've been bad  
9 : 1 4 A M 10 about that this morning.

9 : 1 5 A M 11 Folks, when -- a lot of years I've practiced,  
9 : 1 5 A M 12 over 30 years, and I've heard judges give charges to jurors.  
9 : 1 5 A M 13 And it seems like a lot of information to be giving people who  
9 : 1 5 A M 14 had no legal background and asking them to absorb it all, what  
9 : 1 5 A M 15 could be arguably the first year of law school, in about 45  
9 : 1 5 A M 16 minutes. And I thought hard about what is the best way to try  
9 : 1 5 A M 17 to communicate this information, and I've adopted a couple of  
9 : 1 5 A M 18 practices over the years.

9 : 1 5 A M 19 Number one is, I try to write my charges in  
9 : 1 5 A M 20 English. I write them. And I try to write them in a way that  
9 : 1 5 A M 21 people can understand them. You don't have to be a lawyer to  
9 : 1 5 A M 22 understand.

9 : 1 5 A M 23 Secondly, some judges traditionally just would  
9 : 1 5 A M 24 do it, just sit up here with a bunch of cases and they'd just  
9 : 1 5 A M 25 sort of talk to you. I don't think I'm that good. I write it

9 : 1 5 A M 1 out.

9 : 1 5 A M 2 Third, I give you my charge. And the reason I  
9 : 1 6 A M 3 do that is all the studies show that if you hear something and  
9 : 1 6 A M 4 see something and follow it as you do it, you absorb more than  
9 : 1 6 A M 5 if you either hear it or read it yourself. So there's that.

9 : 1 6 A M 6 And, finally, I send the charge back to the jury  
9 : 1 6 A M 7 room so you can consult it during your deliberations.

9 : 1 6 A M 8 And so each of you will be able to take yours  
9 : 1 6 A M 9 back. And you can write on it and do whatever you wish with  
9 : 1 6 A M 10 it. I want it to be a real working tool, because your task, of  
9 : 1 6 A M 11 course, is to apply the facts. You are the master of the  
9 : 1 6 A M 12 facts, and you apply them to the law. And that's our task here  
9 : 1 6 A M 13 today.

9 : 1 6 A M 14 So we will begin with the final charge.

9 : 1 6 A M 15 Members of the jury, now that you've heard all  
9 : 1 6 A M 16 the evidence and the arguments of the lawyers, it is my duty to  
9 : 1 6 A M 17 instruct you on the law which applies to this case. These  
9 : 1 6 A M 18 instructions will be in three parts.

9 : 1 6 A M 19 First, the instructions on general rules that  
9 : 1 7 A M 20 define and control your duties.

9 : 1 7 A M 21 Second, the instructions that state the rules of  
9 : 1 7 A M 22 law you must apply; that is, what the government must prove to  
9 : 1 7 A M 23 make its case.

9 : 1 7 A M 24 And, third, rules for your deliberations.

9 : 1 7 A M 25 Let's first discuss general rules.

9 : 1 7 A M 1 Duty of the jury to find facts and follow the  
9 : 1 7 A M 2 law. It is your duty to find the facts from all the evidence  
9 : 1 7 A M 3 in the case. To those facts, you will -- must apply the law as  
9 : 1 7 A M 4 I give it to you. You must follow the law whether you agree  
9 : 1 7 A M 5 with it or not. You must not be influenced by any personal  
9 : 1 7 A M 6 likes, or dislikes, opinions, prejudice, or sympathy. That  
9 : 1 7 A M 7 means you must decide the case solely on the evidence before  
9 : 1 7 A M 8 you and according to the law. You will recall that you took an  
9 : 1 7 A M 9 oath promising to do so at the beginning of the case.

9 : 1 7 A M 10 You must follow all of my instructions and not  
9 : 1 7 A M 11 single out some and ignore others. They're all equally  
9 : 1 7 A M 12 important. You must not interpret these instructions or  
9 : 1 7 A M 13 anything I may say or do during the trial as a suggestion as to  
9 : 1 8 A M 14 what the verdict you should return. That is a matter entirely  
9 : 1 8 A M 15 for you, the jurors, and the jury to decide.

9 : 1 8 A M 16 Jury to consider only these defendants. You are  
9 : 1 8 A M 17 about to be asked to consider and decide independently whether  
9 : 1 8 A M 18 the government has proven by a preponderance of the evidence  
9 : 1 8 A M 19 that any one of these defendants is liable for the violations  
9 : 1 8 A M 20 of the False Claims Act. You're not being asked whether any  
9 : 1 8 A M 21 other person has been proven liable. Your verdict should be  
9 : 1 8 A M 22 based solely upon the evidence or lack of evidence as to each  
9 : 1 8 A M 23 of these defendants in accordance with my instructions and  
9 : 1 8 A M 24 without regard to whether any other person is or is not liable.

9 : 1 8 A M 25 Evidence. The evidence from which you are to

9 : 1 8 A M 1 decide what the facts are consists of: (1) the sworn testimony  
9 : 1 8 A M 2 of the witnesses both on direct and cross-examination,  
9 : 1 8 A M 3 regardless of who called the witness; (2) the exhibits which  
9 : 1 8 A M 4 have been received into evidence; and (3) any facts which all  
9 : 1 9 A M 5 the lawyers have agreed or stipulated.

9 : 1 9 A M 6 Let's talk about what is not evidence. In  
9 : 1 9 A M 7 reaching your verdict, you may consider only the testimony,  
9 : 1 9 A M 8 stipulations, and exhibits received into evidence. Certain  
9 : 1 9 A M 9 things are not evidence, and you may not consider them in  
9 : 1 9 A M 10 deciding what the facts are. I will list several of the items  
9 : 1 9 A M 11 which are not evidence.

9 : 1 9 A M 12 1. The complaint, which has not been provided  
9 : 1 9 A M 13 to you, is not evidence.

9 : 1 9 A M 14 2. Arguments and statements by the lawyers are  
9 : 1 9 A M 15 not evidence. The lawyers are not witnesses. What they have  
9 : 1 9 A M 16 said in their opening statements, closing arguments, and at  
9 : 1 9 A M 17 other times is intended to help you interpret the evidence, but  
9 : 1 9 A M 18 it is not evidence. If the facts as you remember them differ  
9 : 1 9 A M 19 from the way the lawyers have stated them, your memory of the  
9 : 1 9 A M 20 facts controls.

9 : 1 9 A M 21 3. Questions and objections by lawyers are not  
9 : 1 9 A M 22 evidence. Attorneys have a duty to their clients to object  
9 : 1 9 A M 23 when they believe a question is improper under the rules of  
9 : 1 9 A M 24 evidence. You should not be influenced by the objection or by  
9 : 1 9 A M 25 the Court's ruling on it.

9 : 1 9 A M 1 4. Testimony that has been excluded or stricken  
9 : 2 0 A M 2 or that you have been instructed to disregard is not evidence  
9 : 2 0 A M 3 and must not be considered.

9 : 2 0 A M 4 And, finally, lastly, you may not consider  
9 : 2 0 A M 5 anything you may have seen or heard when the court was not in  
9 : 2 0 A M 6 session. You are to decide the case solely on the evidence  
9 : 2 0 A M 7 received at trial.

9 : 2 0 A M 8 Let's talk about direct and circumstantial  
9 : 2 0 A M 9 evidence. As I explained to you at the beginning of this  
9 : 2 0 A M 10 trial, there are two kinds of evidence: direct and  
9 : 2 0 A M 11 circumstantial.

9 : 2 0 A M 12 Direct evidence is direct proof of a fact, such  
9 : 2 0 A M 13 as testimony of an eyewitness. Circumstantial evidence is  
9 : 2 0 A M 14 indirect evidence; that is, proof of a chain of facts from  
9 : 2 0 A M 15 which you can find that another fact exists even though it has  
9 : 2 0 A M 16 not been proven directly.

9 : 2 0 A M 17 It is for you to decide whether a fact has been  
9 : 2 0 A M 18 proven by circumstantial evidence. In making that decision,  
9 : 2 0 A M 19 you must consider all the evidence in light of your reason,  
9 : 2 0 A M 20 common sense, and experience.

9 : 2 0 A M 21 You're entitled to consider both kinds of  
9 : 2 0 A M 22 evidence, direct and circumstantial. The law permits you to  
9 : 2 0 A M 23 give equal weight to both, but it is for you to decide how much  
9 : 2 1 A M 24 weight to give any evidence.

9 : 2 1 A M 25 Exhibits. During the trial, documents and other

9 : 2 1 A M 1 items were received into evidence as exhibits. These exhibits  
9 : 2 1 A M 2 will be sent into the jury room with you when you begin to  
9 : 2 1 A M 3 deliberate. You may examine exhibits if you think it will help  
9 : 2 1 A M 4 you in your deliberations.

9 : 2 1 A M 5 Credibility of witnesses. In deciding what the  
9 : 2 1 A M 6 facts are, you must consider all the evidence. In doing this,  
9 : 2 1 A M 7 you must decide which testimony to believe and which testimony  
9 : 2 1 A M 8 not to believe. You may disbelieve all or any part of any  
9 : 2 1 A M 9 witness's testimony. In making that decision, you may take  
9 : 2 1 A M 10 into account a number of factors, including the following:

9 : 2 1 A M 11 1. Was the witness able to see or hear or know  
9 : 2 1 A M 12 the things about which that witness testified?

9 : 2 1 A M 13 2. How well did the witness recall and describe  
9 : 2 1 A M 14 those things?

9 : 2 1 A M 15 3. What was the witness's manner while  
9 : 2 1 A M 16 testifying?

9 : 2 1 A M 17 4. Did the witness have an interest in the  
9 : 2 2 A M 18 outcome of this case or any bias or prejudice concerning any  
9 : 2 2 A M 19 party or any matter involved in the case?

9 : 2 2 A M 20 5. How reasonable was the witness's testimony  
9 : 2 2 A M 21 when considered in light of all of the evidence in the case?

9 : 2 2 A M 22 6. Was the witness's testimony contradicted by  
9 : 2 2 A M 23 what that witness has said or done at another time or by the  
9 : 2 2 A M 24 testimony of other witnesses or by other evidence?

9 : 2 2 A M 25 7. Did the witness change his testimony in an

9 : 2 2 A M 1 effort to conform to other evidence in the case?

9 : 2 2 A M 2 In deciding whether or not to believe a witness,  
9 : 2 2 A M 3 keep in mind that people sometimes forget things. You need to  
9 : 2 2 A M 4 consider whether a contradiction is an innocent lapse of memory  
9 : 2 2 A M 5 or an intentional falsehood. And that may depend on whether it  
9 : 2 2 A M 6 has to do with an important fact or with only a small detail.

9 : 2 2 A M 7 Number of witnesses. The weight of the evidence  
9 : 2 2 A M 8 is not necessarily determined by the number of witnesses  
9 : 2 2 A M 9 testifying to the existence or nonexistence of any fact. You  
9 : 2 2 A M 10 may find that the testimony of a smaller number of witnesses  
9 : 2 3 A M 11 about a fact is more persuasive than that of a greater number  
9 : 2 3 A M 12 of witnesses, or you may find that they are not persuasive at  
9 : 2 3 A M 13 all.

9 : 2 3 A M 14 Expert witness testimony. You have also heard  
9 : 2 3 A M 15 testimony from expert witnesses. An expert is allowed to  
9 : 2 3 A M 16 express his or her opinion on those matters about which he or  
9 : 2 3 A M 17 she has special knowledge and training. Expert testimony is  
9 : 2 3 A M 18 presented to you on the theory that someone who is experienced  
9 : 2 3 A M 19 in the field can assist you in understanding the evidence or in  
9 : 2 3 A M 20 reaching independent decisions on the facts.

9 : 2 3 A M 21 In weighing an expert's testimony, you may  
9 : 2 3 A M 22 consider the expert's qualifications, his opinions, his reasons  
9 : 2 3 A M 23 for testifying, as well as all the other considerations that  
9 : 2 3 A M 24 ordinarily apply when you're deciding whether or not to believe  
9 : 2 3 A M 25 a witness's testimony.

9 : 2 3 A M 1 You may give expert testimony whatever weight  
9 : 2 3 A M 2 you find it deserves in light of all the evidence in the case.  
9 : 2 3 A M 3 You should not, however, accept an expert's testimony merely  
9 : 2 3 A M 4 because he is an expert on a particular matter, nor should you  
9 : 2 4 A M 5 substitute it for your own reason, judgment, and common sense.  
9 : 2 4 A M 6 The determination of the facts in this case rests solely with  
9 : 2 4 A M 7 you.

9 : 2 4 A M 8 The government as a party. You are to perform  
9 : 2 4 A M 9 the duty of finding the facts without bias or prejudice as to  
9 : 2 4 A M 10 any party and with an attitude of complete fairness and  
9 : 2 4 A M 11 impartiality. The fact that the United States government is a  
9 : 2 4 A M 12 plaintiff or that the defendant BlueWave is a corporation  
9 : 2 4 A M 13 should not affect your decision. All parties are equals at the  
9 : 2 4 A M 14 bar of justice.

9 : 2 4 A M 15 Additionally, the fact that the United States  
9 : 2 4 A M 16 brought a lawsuit and is seeking damages creates no inference  
9 : 2 4 A M 17 that the United States is entitled to a judgment. Anyone may  
9 : 2 4 A M 18 make a claim and file a lawsuit. The act of making a claim in  
9 : 2 4 A M 19 a lawsuit by itself does not in any way tend to establish that  
9 : 2 4 A M 20 claim and is not evidence.

9 : 2 4 A M 21 Burden of proof. The plaintiff, the United  
9 : 2 4 A M 22 States, has the burden of proving its case, including every  
9 : 2 4 A M 23 element of its claims by a preponderance of the evidence.

9 : 2 5 A M 24 To establish a fact by a preponderance of the  
9 : 2 5 A M 25 evidence means to prove something is more likely true than not

9 : 2 5 A M 1 true. That means plaintiff has to produce evidence that, when  
9 : 2 5 A M 2 considered in light of all the facts, leads you to believe that  
9 : 2 5 A M 3 plaintiff's claims are more likely true than not. In other  
9 : 2 5 A M 4 words, if you were to put the plaintiff's evidence and the  
9 : 2 5 A M 5 defendants' evidence on opposite sides of the scales, the  
9 : 2 5 A M 6 plaintiff must make the scales tip in its favor, even if only  
9 : 2 5 A M 7 slightly. And if the plaintiff fails to meet this burden, the  
9 : 2 5 A M 8 verdict must be for the defendants.

9 : 2 5 A M 9 You may have heard on television or -- you may  
9 : 2 5 A M 10 have heard on television or in your experiences about proof  
9 : 2 5 A M 11 beyond a reasonable doubt in criminal cases. That is a higher  
9 : 2 5 A M 12 standard than is required in this case. Therefore, you should  
9 : 2 5 A M 13 not consider the standard of beyond a reasonable doubt.

9 : 2 5 A M 14 The use of depositions as evidence. During the  
9 : 2 6 A M 15 trial, certain testimony has been presented by way of  
9 : 2 6 A M 16 deposition. Depositions consist of sworn recorded answers to  
9 : 2 6 A M 17 questions asked of a witness in advance of trial by one or more  
9 : 2 6 A M 18 of the attorneys for the parties in the case. The testimony of  
9 : 2 6 A M 19 a witness who for some reason is not present to testify from  
9 : 2 6 A M 20 the witness stand may be presented in writing or by videotape  
9 : 2 6 A M 21 under oath. You must give such testimony the same  
9 : 2 6 A M 22 consideration you would as if the witness had been present and  
9 : 2 6 A M 23 had testified from the witness stand.

9 : 2 6 A M 24 You may have heard some audio recordings during  
9 : 2 6 A M 25 trial and seen transcripts of those recordings. The recording

9 : 2 6 A M 1 itself and not the transcript is the evidence of what was said.  
9 : 2 6 A M 2 You should rely on what you hear rather than what you read if  
9 : 2 6 A M 3 you think there is a difference.

9 : 2 6 A M 4 Now, let me turn to the instructions on the law.  
9 : 2 6 A M 5 First, I want to address with you generally about the False  
9 : 2 6 A M 6 Claims Act. The False Claims Act is a federal law designed to  
9 : 2 7 A M 7 discourage fraud against the federal government. The False  
9 : 2 7 A M 8 Claims Act authorizes the United States government to recover  
9 : 2 7 A M 9 damages caused by false or fraudulent claims for money or  
9 : 2 7 A M 10 property of the United States.

9 : 2 7 A M 11 The United States alleges that defendants  
9 : 2 7 A M 12 violated the False Claims Act by presenting or causing to be  
9 : 2 7 A M 13 presented false or fraudulent claims or false records which  
9 : 2 7 A M 14 were (1) medically unnecessary; and/or (2) violated the  
9 : 2 7 A M 15 Anti-Kickback Statute.

9 : 2 7 A M 16 In a moment, I will explain the elements of the  
9 : 2 7 A M 17 Anti-Kickback Statute and False Claims Act in detail. For  
9 : 2 7 A M 18 those claims involving alleged violations of the Anti-Kickback  
9 : 2 7 A M 19 Statute, the United States must prove all the elements of the  
9 : 2 7 A M 20 Anti-Kickback Statute and all the elements of the False Claims  
9 : 2 7 A M 21 Act by a preponderance of the evidence. For those claims  
9 : 2 7 A M 22 involving an alleged lack of medical necessity, the United  
9 : 2 7 A M 23 States need only prove all of the elements of the False Claims  
9 : 2 7 A M 24 Act.

9 : 2 7 A M 25 For claims the government alleges were -- for

9 : 2 8 A M 1 claims the government alleges were presented in violation of  
9 : 2 8 A M 2 the Anti-Kickback Statute, you should first determine whether  
9 : 2 8 A M 3 the claim violated the Anti-Kickback Statute and then decide  
9 : 2 8 A M 4 whether the claim violated the False Claims Act. Therefore, I  
9 : 2 8 A M 5 will first explain the elements of the Anti-Kickback Statute  
9 : 2 8 A M 6 and then explain the elements of the False Claims Act.

9 : 2 8 A M 7 The Anti-Kickback Statute. I will now explain  
9 : 2 8 A M 8 in more detail what it means for a claim to result from a  
9 : 2 8 A M 9 violation of the Anti-Kickback Statute. Remember that an  
9 : 2 8 A M 10 Anti-Kickback Statute violation is not an independent basis for  
9 : 2 8 A M 11 liability in the case. Instead, a violation of the  
9 : 2 8 A M 12 Anti-Kickback Statute makes a claim false or fraudulent, which,  
9 : 2 8 A M 13 as I will explain later, is one of the elements of a False  
9 : 2 8 A M 14 Claims Act violation.

9 : 2 8 A M 15 The government may prove a violation of the  
9 : 2 8 A M 16 Anti-Kickback Statute by proving by a preponderance of the  
9 : 2 8 A M 17 evidence that a defendant asked for or received improper  
9 : 2 8 A M 18 remuneration or offered or paid improper remuneration.

9 : 2 9 A M 19 To prove a violation for asking for or receiving  
9 : 2 9 A M 20 improper remuneration, the government must prove the following  
9 : 2 9 A M 21 elements by a preponderance of the evidence:

9 : 2 9 A M 22 1. The defendant asked for or received any  
9 : 2 9 A M 23 remuneration, including any kickback or bribe, directly or  
9 : 2 9 A M 24 indirectly, openly or secretly, in cash or in kind;

9 : 2 9 A M 25 2. The payment defendant asked for or received

9 : 2 9 A M 1 was in return for arranging for or recommending the purchase or  
9 : 2 9 A M 2 order of any item or service that could be paid for in whole or  
9 : 2 9 A M 3 in part by Medicare or TRICARE;

9 : 2 9 A M 4 3. The defendant acted knowingly and willfully.

9 : 2 9 A M 5 To prove a violation of the Anti-Kickback  
9 : 2 9 A M 6 Statute for offering or paying an improper remuneration, the  
9 : 2 9 A M 7 government must prove the following elements by a preponderance  
9 : 2 9 A M 8 of the evidence:

9 : 2 9 A M 9 1. The defendant offered or paid any  
9 : 2 9 A M 10 remuneration, including any kickback or bribe, directly or  
9 : 2 9 A M 11 indirectly, openly or secretly, in cash or in kind;

9 : 3 0 A M 12 2. The defendants' offer or payment was made to  
9 : 3 0 A M 13 a person to induce that person to do one of the following:

9 : 3 0 A M 14 A. To refer an individual to a person for the  
9 : 3 0 A M 15 furnishing or arranging for the furnishing of an item or  
9 : 3 0 A M 16 service that could be paid for in whole or in part by Medicare  
9 : 3 0 A M 17 or TRICARE; or

9 : 3 0 A M 18 B. To purchase, order, or arrange for the -- or  
9 : 3 0 A M 19 arrange for or recommend purchasing or ordering any item of  
9 : 3 0 A M 20 service that could be paid for in whole or in part by Medicare  
9 : 3 0 A M 21 or TRICARE; and

9 : 3 0 A M 22 3. The defendant acted knowingly and willfully.

9 : 3 0 A M 23 To establish a violation of the Anti-Kickback  
9 : 3 0 A M 24 Statute, the United States must prove that at least one purpose  
9 : 3 0 A M 25 of the remuneration was to induce the referral of individuals

9 : 3 0 A M 1 such as patients or the ordering of services such as laboratory  
9 : 3 0 A M 2 services which may be paid for in whole or in part by Medicare  
9 : 3 0 A M 3 or TRICARE or there may have been other purposes for the  
9 : 3 0 A M 4 remuneration. The government must only show by a preponderance  
9 : 3 1 A M 5 of the evidence that at least one of the purposes of the  
9 : 3 1 A M 6 remuneration was to induce the referral of patients or services  
9 : 3 1 A M 7 that may be paid for by Medicare or TRICARE.

9 : 3 1 A M 8           During trial, you have heard some references to  
9 : 3 1 A M 9 statutory regulatory safe harbors which protect certain  
9 : 3 1 A M 10 arrangements from being a violation of the Anti-Kickback  
9 : 3 1 A M 11 Statute. Defendants have not asserted in this lawsuit that  
9 : 3 1 A M 12 their conduct fell within a statutory safe harbor. However,  
9 : 3 1 A M 13 just because the defendants' conduct or arrangements did not  
9 : 3 1 A M 14 fit into a safe harbor does not mean that their conduct  
9 : 3 1 A M 15 violated the Anti-Kickback Statute.

9 : 3 1 A M 16           Remuneration. Under the Anti-Kickback Statute,  
9 : 3 1 A M 17 the term "remuneration" includes any payment or other benefit,  
9 : 3 1 A M 18 including the waiver of a financial obligation. As used in the  
9 : 3 1 A M 19 Anti-Kickback Statute, the term "remuneration" means the  
9 : 3 1 A M 20 transfer of anything of value from one person or entity to  
9 : 3 2 A M 21 another person or entity.

9 : 3 2 A M 22           Remuneration can be direct or indirect.  
9 : 3 2 A M 23 Remuneration includes payment for services already paid by  
9 : 3 2 A M 24 another or payment for more than fair market value. Fair  
9 : 3 2 A M 25 market value is the price that a seller is willing to accept

9 : 3 2 A M 1 and a buyer is willing to pay on the open market and in an  
9 : 3 2 A M 2 arm's length transaction when neither party is under compulsion  
9 : 3 2 A M 3 to buy or sell.

9 : 3 2 A M 4 Induce. Under the Anti-Kickback Statute, the  
9 : 3 2 A M 5 term "induce" means to have the intent to exercise influence  
9 : 3 2 A M 6 over the reason or judgment of another in an effort to cause  
9 : 3 2 A M 7 the referral. To prove a violation of the Anti-Kickback  
9 : 3 2 A M 8 Statute, the United States must prove by a preponderance of the  
9 : 3 2 A M 9 evidence that the action was taken both knowingly and  
10 willfully.

9 : 3 2 A M 11 Knowingly. An act is done knowingly under the  
9 : 3 2 A M 12 Anti-Kickback Statute if it is done voluntarily and  
9 : 3 2 A M 13 intentionally, not because of a mistake or accident. The  
9 : 3 3 A M 14 United States does not need to prove that any defendant  
9 : 3 3 A M 15 specifically knew that he or she was violating the  
9 : 3 3 A M 16 Anti-Kickback Statute.

9 : 3 3 A M 17 willfully. An act is done willfully under the  
9 : 3 3 A M 18 Anti-Kickback Statute if it is done voluntarily and with the  
9 : 3 3 A M 19 purpose either to disobey or disregard the law. In order to  
9 : 3 3 A M 20 act willfully, a defendant must act unjustifiably and wrongly  
9 : 3 3 A M 21 while knowing that his or her actions are unjustifiable and  
9 : 3 3 A M 22 wrong. A defendant need not be aware of the specific law or  
9 : 3 3 A M 23 rule that he or she may be violating.

9 : 3 3 A M 24 A defendant may not avoid liability for a  
9 : 3 3 A M 25 willful violation of the Anti-Kickback Statute by his or her

9 : 3 3 A M 1 deliberate ignorance. You may find that a defendant willfully  
9 : 3 3 A M 2 violated the law if he or she was deliberately ignorant because  
9 : 3 3 A M 3 he or she (1) was aware of the high probability of the  
9 : 3 3 A M 4 existence of the illegal conduct; and (2) purposely avoided  
9 : 3 4 A M 5 learning of the illegality of the conduct.

9 : 3 4 A M 6 A defendant who acts with a good-faith belief  
9 : 3 4 A M 7 that his or her conduct is lawful does not willfully violate  
9 : 3 4 A M 8 the Anti-Kickback Statute even if that belief is mistaken.  
9 : 3 4 A M 9 Good faith has no precise definition, but it encompasses, among  
9 : 3 4 A M 10 other things, a reasonable belief or opinion honestly held and  
9 : 3 4 A M 11 an absence of malice or ill will.

9 : 3 4 A M 12 In determining whether a defendant acted in good  
9 : 3 4 A M 13 faith, you must consider the totality of the evidence  
9 : 3 4 A M 14 presented. This includes all of the legal opinions and advice  
9 : 3 4 A M 15 received by or known to the defendant, regardless of the  
9 : 3 4 A M 16 source, to determine whether the defendant acted in good faith.

9 : 3 4 A M 17 Presentment of false claims. Under the False  
9 : 3 4 A M 18 Claims Act, a defendant is liable if the government proves all  
9 : 3 4 A M 19 three of the following elements by a preponderance of the  
9 : 3 4 A M 20 evidence:

- 9 : 3 4 A M 21 1. The defendant presented a claim or caused a  
9 : 3 5 A M 22 claim to be presented to the United States;  
9 : 3 5 A M 23 2. The claim was false or fraudulent; and  
9 : 3 5 A M 24 3. The defendant acted knowingly.

9 : 3 5 A M 25 The United States alleges that the Bluewave

9 : 3 5 A M 1 defendants knowingly caused Health Diagnostic Laboratories,  
9 : 3 5 A M 2 HDL, and Singulex to present false or fraudulent claims to  
9 : 3 5 A M 3 Medicare and TRICARE. The United States alleges that defendant  
9 : 3 5 A M 4 Mallory knowingly presented and caused HDL to present false or  
9 : 3 5 A M 5 fraudulent claims to Medicare and TRICARE.

9 : 3 5 A M 6 Presenting a claim to the United States. As  
9 : 3 5 A M 7 used in the False Claims Act, a claim is any request or demand  
9 : 3 5 A M 8 for money that is (A) presented to an officer, employee, or  
9 : 3 5 A M 9 agent of the United States or (B) is made to a contractor,  
10 grantee, or other recipient if the money or property is to be  
11 spent or used on the government's behalf or to advance a  
12 government program or interest and the United States provides  
13 any portion of the money requested.

9 : 3 6 A M 14 In this case, the claims are the requests for  
9 : 3 6 A M 15 reimbursement presented by HDL and Singulex through Medicare  
9 : 3 6 A M 16 and TRICARE for laboratory testing services. It does not  
9 : 3 6 A M 17 matter if the request for reimbursement was submitted in paper  
9 : 3 6 A M 18 or electronic form. Either form constitutes a claim.

9 : 3 6 A M 19 A claim is presented if it is submitted for  
9 : 3 6 A M 20 reimbursement. The United States alleges that certain  
9 : 3 6 A M 21 defendants who did not themselves present claims to Medicare or  
9 : 3 6 A M 22 TRICARE violated the False Claims Act by causing others to  
9 : 3 6 A M 23 present false or fraudulent claims or statements.

9 : 3 6 A M 24 In order to find a defendants' conduct caused  
9 : 3 6 A M 25 claims to be submitted, you must determine that the conduct was

9 : 3 6 A M 1 a substantial factor in the claim being presented to the United  
9 : 3 6 A M 2 States and that it was foreseeable to the defendant that the  
9 : 3 6 A M 3 claim would be presented.

9 : 3 6 A M 4 You may find that the United States has shown  
9 : 3 6 A M 5 causation even if you find that HDL and Singulex, the  
9 : 3 6 A M 6 laboratories who submitted the claims to the United States, did  
9 : 3 6 A M 7 not know that the claims, records, or statements were false.  
9 : 3 7 A M 8 Further, it is not necessary for a defendant to receive the  
9 : 3 7 A M 9 money directly from the government. Causing the payment of  
9 : 3 7 A M 10 government money to some individual or entity will suffice.

9 : 3 7 A M 11 False or fraudulent claim. The United States  
9 : 3 7 A M 12 alleges that certain of the claims defendants presented or  
9 : 3 7 A M 13 caused to be presented were false because those claims were  
9 : 3 7 A M 14 presented in violation of the Anti-Kickback Statute. A claim  
9 : 3 7 A M 15 is false if it was submitted to Medicare or TRICARE in  
9 : 3 7 A M 16 violation of the Anti-Kickback Statute. Thus, if you find a  
9 : 3 7 A M 17 claim violated the Anti-Kickback Statute, the second element of  
9 : 3 7 A M 18 a False Claims Act violation is satisfied.

9 : 3 7 A M 19 The United States also alleges that certain of  
9 : 3 7 A M 20 the claims defendants presented or caused to be presented were  
9 : 3 7 A M 21 false because those claims were for medically unnecessary  
9 : 3 7 A M 22 tests. Medicare and TRICARE reimburse only for items or  
9 : 3 7 A M 23 services that are medically necessary. An item or service is  
9 : 3 7 A M 24 medically necessary if it is reasonable and necessary for the  
9 : 3 8 A M 25 diagnosis or treatment of an illness or injury or to improve

9 : 3 8 A M 1 the functioning of a malformed body part. A claim is false if  
9 : 3 8 A M 2 it was submitted to claim reimbursement for medically  
9 : 3 8 A M 3 unnecessary services. Thus, if you find a claim was for  
9 : 3 8 A M 4 medically unnecessary services, the second element of a False  
9 : 3 8 A M 5 Claims Act violation is satisfied.

9 : 3 8 A M 6 Acting knowingly. The United States alleges  
9 : 3 8 A M 7 that all defendants knowingly presented or caused to be  
9 : 3 8 A M 8 presented false or fraudulent claims or false records. For  
9 : 3 8 A M 9 purposes of the False Claims Act, the terms "knowingly" --  
9 : 3 8 A M 10 "knowing" and "knowingly" mean that the defendant (1) acted  
9 : 3 8 A M 11 with actual knowledge of the claim's falsity, or (2) acted in  
9 : 3 8 A M 12 deliberate ignorance of the claim's falsity, or (3) acted in  
9 : 3 8 A M 13 reckless disregard of the claim's falsity.

9 : 3 8 A M 14 The United States does not need to prove that  
9 : 3 8 A M 15 any defendant specifically intended to violate the False Claims  
9 : 3 8 A M 16 Act; however, mere errors or negligence are not enough to  
9 : 3 9 A M 17 create liability under the False Claims Act.

9 : 3 9 A M 18 Actual knowledge. The United States can prove  
9 : 3 9 A M 19 actual knowledge under the False Claims Act by showing that a  
9 : 3 9 A M 20 defendant had affirmative knowledge that the claims or records  
9 : 3 9 A M 21 or statements were false. The United States may establish that  
9 : 3 9 A M 22 a defendant had actual knowledge through direct and/or  
9 : 3 9 A M 23 circumstantial evidence.

9 : 3 9 A M 24 Deliberate ignorance. The United States can  
9 : 3 9 A M 25 prove deliberate ignorance under the False Claims Act by

9 : 3 9 A M 1 showing that a defendant deliberately closed his or her eyes to  
9 : 3 9 A M 2 the clear warning signs or to what otherwise would have been  
9 : 3 9 A M 3 obvious. A person's knowledge of a particular fact may be  
9 : 3 9 A M 4 shown from a deliberate or intentional ignorance or deliberate  
9 : 3 9 A M 5 or intentional blindness to the existence of that fact.

9 : 3 9 A M 6 It is, of course, entirely up to you as to  
9 : 3 9 A M 7 whether you find any deliberate ignorance or deliberate closing  
9 : 3 9 A M 8 of the eyes and any inferences to be draw from any such  
9 : 3 9 A M 9 evidence. A finding by a preponderance of the evidence that a  
9 : 3 9 A M 10 defendant avoided knowledge or enlightenment would permit you,  
9 : 4 0 A M 11 the jury, to find knowledge. You may not conclude that a  
9 : 4 0 A M 12 defendant had knowledge, however, from proof of a mistake,  
9 : 4 0 A M 13 negligence, carelessness, or a belief in an inaccurate  
9 : 4 0 A M 14 proposition.

9 : 4 0 A M 15 Reckless disregard. The term knowingly includes  
9 : 4 0 A M 16 acting in reckless disregard of an act's truth or falsity.  
9 : 4 0 A M 17 Reckless disregard is conduct that entails such an  
9 : 4 0 A M 18 unjustifiably high risk of running afoul of the standard that  
9 : 4 0 A M 19 it cannot -- it can be said that doing so was either known or  
9 : 4 0 A M 20 so obvious that it should have been known. Mere negligence is  
9 : 4 0 A M 21 not sufficient to constitute reckless disregard.

9 : 4 0 A M 22 Independent contractors. You have heard  
9 : 4 0 A M 23 evidence that sales representatives for defendant Bluewave  
9 : 4 0 A M 24 Healthcare Consultants were independent contractors. The  
9 : 4 0 A M 25 defendants in this case are not automatically liable for the

1 conduct of the Bluewave independent contractors.

2           However, should you find that the Bluewave  
3 independent contractors and one or more of the defendants were  
4 part of a conspiracy to violate the False Claims Act, you may  
5 impute the conduct of the Bluewave independent contractors to  
6 any defendant who was part of the conspiracy.

7           Further, if you find that one or more Bluewave  
8 independent contractors engaged in conduct in violation of the  
9 False Claims Act, you may impute that unlawful conduct to any  
10 defendant who directed, participated in, adopted, and/or  
11 ratified that unlawful conduct.

12           Conspiracy. The United States has alleged that  
13 all defendants are also liable for conspiracy to violate the  
14 False Claims Act. A conspiracy is an agreement among two or  
15 more persons to achieve an unlawful object, in this case, to  
16 submit or cause the submission of a false or fraudulent claim.  
17 In this case, there can be no liability for conspiracy where  
18 there is no underlying violation of the False Claims Act.

19           If you find that the government failed to prove  
20 any violation of the False Claims Act, then no defendant can be  
21 liable for conspiracy to violate the False Claims Act.

22           If you find the government did prove a violation  
23 of the False Claims Act, then in order for a defendant to be  
24 liable for a conspiracy to violate the False Claims Act, the  
25 United States must prove by a preponderance of the evidence

9 : 4 2 A M 1 that:

9 : 4 2 A M 2 1. A conspiracy existed to submit or cause the  
9 : 4 2 A M 3 submission of a false or fraudulent claim;

9 : 4 2 A M 4 2. The defendant knowingly and willfully joined  
9 : 4 2 A M 5 and participated in the conspiracy;

9 : 4 2 A M 6 3. At least one member of the conspiracy  
9 : 4 2 A M 7 knowingly and willfully committed an overt act in furtherance  
9 : 4 2 A M 8 of the conspiracy.

9 : 4 2 A M 9 Agreement. To show a conspiratorial agreement,  
9 : 4 2 A M 10 the United States is not required to prove that two or more  
9 : 4 2 A M 11 people enter into a solemn pact but only that two or more  
9 : 4 2 A M 12 persons explicitly or implicitly came to an understanding to  
9 : 4 2 A M 13 achieve the unspecified unlawful object whether or not they  
9 : 4 3 A M 14 were successful. Therefore, the government may prove a  
9 : 4 3 A M 15 conspiracy by circumstantial evidence.

9 : 4 3 A M 16 Circumstantial evidence tending to prove a  
9 : 4 3 A M 17 conspiracy may consist of a defendant's relationship with other  
9 : 4 3 A M 18 members of the conspiracy, the length of the association, the  
9 : 4 3 A M 19 defendants' attitude and conduct, and the nature of the  
9 : 4 3 A M 20 conspiracy.

9 : 4 3 A M 21 Also it is not necessary for the United States  
9 : 4 3 A M 22 to prove that the conspiracy lasted throughout the entire  
9 : 4 3 A M 23 period that pertained to the object of their conspiracy but  
9 : 4 3 A M 24 only that it existed for some time within that period.

9 : 4 3 A M 25 knowingly and willfully joined the conspiracy.

9 : 4 3 A M 1 A defendant joins a conspiracy if he or she agrees with a  
9 : 4 3 A M 2 conspirator to participate in the project or enterprise that is  
9 : 4 3 A M 3 the object of a scheme involving others and knowingly acts in  
9 : 4 3 A M 4 furtherance of that object. A defendant joins the conspiracy  
9 : 4 3 A M 5 knowingly if he or she acts consciously and deliberately rather  
9 : 4 3 A M 6 than mistakenly or inadvertently. A defendant joins the  
9 : 4 3 A M 7 conspiracy willfully if he or she acts purposefully and with an  
9 : 4 4 A M 8 intent to do something unlawful.

9 : 4 4 A M 9 Thus a defendant enters into a conspiracy  
9 : 4 4 A M 10 knowingly and willfully if he or she joins and participates in  
9 : 4 4 A M 11 the conspiracy with knowledge of and the intent to further its  
9 : 4 4 A M 12 unlawful object. It is not necessary, however, that a  
9 : 4 4 A M 13 defendant be fully informed of all the details of a conspiracy  
9 : 4 4 A M 14 or all of its participants. The defendant may not have known  
9 : 4 4 A M 15 more than one other member of the conspiracy or more than one  
9 : 4 4 A M 16 of its objects. The defendant may have joined a conspiracy at  
9 : 4 4 A M 17 any time in its duration and may not have received any benefit  
9 : 4 4 A M 18 in return.

9 : 4 4 A M 19 Remember that this definition of "knowingly and  
9 : 4 4 A M 20 willfully" that I have given you applies only to whether a  
9 : 4 4 A M 21 defendant knowingly and willfully joined a conspiracy. As I  
9 : 4 4 A M 22 instructed you earlier, "knowingly and willfully" are defined  
9 : 4 4 A M 23 differently under the False Claims Act and the Anti-Kickback  
9 : 4 4 A M 24 Statute.

9 : 4 4 A M 25 You may conclude that a defendant joined a

9 : 4 4 A M 1 conspiracy even in the absence of evidence directly showing an  
9 : 4 5 A M 2 express or formal agreement. Rather, you may infer that an  
9 : 4 5 A M 3 agreement existed between the defendants or between a defendant  
9 : 4 5 A M 4 and other conspirators from any collection of circumstances  
9 : 4 5 A M 5 tending to show a mutual understanding, spoken or otherwise.

9 : 4 5 A M 6           However, mere association by a defendant with a  
9 : 4 5 A M 7 conspirator does not make -- make the defendant a member of the  
9 : 4 5 A M 8 conspiracy even if he knows of the conspiracy. In other words,  
9 : 4 5 A M 9 knowledge is not enough. The defendant himself must  
9 : 4 5 A M 10 intentionally participate in the conspiracy with the purpose of  
9 : 4 5 A M 11 helping to achieve at least one of its unlawful objects.

9 : 4 5 A M 12           Overt act. An overt act is any act knowingly  
9 : 4 5 A M 13 committed by at least one member of the conspiracy, not  
9 : 4 5 A M 14 necessarily a defendant, in an effort to accomplish an object  
9 : 4 5 A M 15 or purpose of the conspiracy. The overt act need not be  
9 : 4 5 A M 16 unlawful if considered separately and apart from the  
9 : 4 5 A M 17 conspiracy. It must, however, be an act which tends toward  
9 : 4 6 A M 18 accomplishment of the plan or scheme and must be knowingly done  
9 : 4 6 A M 19 and in furtherance of some object or purpose of the conspiracy.

9 : 4 6 A M 20           Co-conspirators. If you find that a person was  
9 : 4 6 A M 21 a member of a conspiracy of which a defendant was also a  
9 : 4 6 A M 22 member, then any act or statement by that person made in  
9 : 4 6 A M 23 furtherance of the conspiracy may be considered against the  
9 : 4 6 A M 24 defendant. That is so even if the acts were done or the  
9 : 4 6 A M 25 statements were made in the defendants' absence and without the

9 : 4 6 A M 1 defendants' knowledge.

9 : 4 6 A M 2 On the other hand, acts or statements made by  
9 : 4 6 A M 3 someone whom you did not find to be a member of the conspiracy  
9 : 4 6 A M 4 and acts or statements made by the co-conspirator that were not  
9 : 4 6 A M 5 in furtherance of the conspiracy may not be considered by you  
9 : 4 6 A M 6 only as -- may be considered by you only as evidence against  
9 : 4 6 A M 7 the person who said or did them.

9 : 4 6 A M 8 If liability for conspiracy under the False  
9 : 4 6 A M 9 Claims Act is established, each conspirator is liable for each  
9 : 4 6 A M 10 of the overt acts committed pursuant to the conspiracy and for  
9 : 4 6 A M 11 the damages arising from the entire conspiracy even if he or  
9 : 4 7 A M 12 she did not personally commit all of the acts that took place  
9 : 4 7 A M 13 under the conspiracy.

9 : 4 7 A M 14 A corporation is liable for a conspiracy  
9 : 4 7 A M 15 committed by its officers, employees, or agents if the  
9 : 4 7 A M 16 conspiracy is committed at least in part for the benefit of the  
9 : 4 7 A M 17 corporation. Likewise, the officers, employees, or agents of a  
9 : 4 7 A M 18 corporation can conspire with each other if the conspiracy is  
9 : 4 7 A M 19 at least in part for the benefit -- in part for their benefit.  
9 : 4 7 A M 20 A corporation and its officers, agents, and employees cannot  
9 : 4 7 A M 21 conspire with each other if the conspiracy is not at least in  
9 : 4 7 A M 22 part for the benefit of the officers, agents, and/or employees.

9 : 4 7 A M 23 Fifth Amendment and adverse inferences. You  
9 : 4 7 A M 24 have heard testimony in which a witness invoked the Fifth  
9 : 4 7 A M 25 Amendment to refuse to answer one or more questions. A witness

9 : 4 7 A M 1 has a constitutional right to refuse to answer a question on  
9 : 4 7 A M 2 the grounds that it may tend to incriminate him.

9 : 4 8 A M 3           However, you may consider a witness's refusal to  
9 : 4 8 A M 4 answer a question as evidence in this case. In addition, you  
9 : 4 8 A M 5 may make certain inferences from a witness's refusal to answer  
9 : 4 8 A M 6 a question. You may but are not required to infer such refusal  
9 : 4 8 A M 7 that the answer would have been unfavorable to the witness's  
9 : 4 8 A M 8 interests.

9 : 4 8 A M 9           And if you find that such witness was a member  
9 : 4 8 A M 10 of a conspiracy to violate the False Claims Act, you may but  
9 : 4 8 A M 11 are not required to infer by such refusal that the witness's  
9 : 4 8 A M 12 answer would have been unfavorable to the interests of any  
9 : 4 8 A M 13 co-conspirator. Any inferences you may have drawn should be  
9 : 4 8 A M 14 based on all of the facts and circumstances in this case as you  
9 : 4 8 A M 15 may find them.

9 : 4 8 A M 16           Number of false claims. If you find one or more  
9 : 4 8 A M 17 defendants liable under the False Claims Act, then you must  
9 : 4 8 A M 18 determine the number of false claims that the defendant or  
9 : 4 8 A M 19 defendants presented, caused to be presented, or conspired to  
9 : 4 8 A M 20 have presented.

9 : 4 8 A M 21           Damages. If you find that one or more of the  
9 : 4 8 A M 22 defendants violated the False Claims Act, you must award the  
9 : 4 9 A M 23 United States damages to reasonably compensate it for any --  
9 : 4 9 A M 24 for any loss it sustained as a proximate result of each  
9 : 4 9 A M 25 defendant's False Claims Act violations. You should not

9 : 4 9 A M 1 interpret the fact that I am giving instructions about damages  
9 : 4 9 A M 2 as an indication that I believe the United States should or  
9 : 4 9 A M 3 should not prevail on its claims.

9 : 4 9 A M 4 It is your task first to decide whether any or  
9 : 4 9 A M 5 all of the defendants are liable. I am instructing you on  
9 : 4 9 A M 6 damages only so that you will have guidance in the event you  
9 : 4 9 A M 7 decide that any or all of the defendants are liable and that  
9 : 4 9 A M 8 the United States is entitled to recover money from those  
9 : 4 9 A M 9 defendants.

9 : 4 9 A M 10 In order for the United States to recover  
9 : 4 9 A M 11 damages in this lawsuit, the allegedly false or fraudulent  
9 : 4 9 A M 12 claims must have caused the United States to suffer damages it  
9 : 4 9 A M 13 otherwise would not have suffered.

9 : 4 9 A M 14 The United States has the burden to prove its  
9 : 4 9 A M 15 damages by a preponderance of the evidence. This means the  
9 : 4 9 A M 16 United States must prove by a preponderance of the evidence  
9 : 4 9 A M 17 that a defendant's conduct was a substantial factor in causing  
9 : 5 0 A M 18 the United States to suffer damages; that the amount of damages  
9 : 5 0 A M 19 suffered by the United States was a foreseeable consequence of  
9 : 5 0 A M 20 the defendants' allegedly false statement, false claims, or  
9 : 5 0 A M 21 fraudulent course of conduct.

9 : 5 0 A M 22 The United States is not entitled to speculative  
9 : 5 0 A M 23 damages; that is, you should not award any amount for injury or  
9 : 5 0 A M 24 damage, which, although possible, is remote or left to  
9 : 5 0 A M 25 conjecture. The United States is entitled only to damage it

9 : 5 0 A M 1 can prove with reasonable certainty.

9 : 5 0 A M 2 On the other hand, reasonable certainty does not  
9 : 5 0 A M 3 require proof of damages with mathematical precision, but the  
9 : 5 0 A M 4 United States must show sufficient facts and circumstances to  
9 : 5 0 A M 5 permit you to make a reasonable estimate of damages. You may  
9 : 5 0 A M 6 base your evaluation of reasonable certainty on opinion and  
9 : 5 0 A M 7 evidence.

9 : 5 0 A M 8 In calculating damages, you should not consider  
9 : 5 0 A M 9 the amount a defendant may have profited from the submission of  
9 : 5 0 A M 10 a false claim. Rather you should consider only the amount of  
9 : 5 0 A M 11 the actual loss to the United States caused by the false claim.

9 : 5 1 A M 12 For any claim you find resulted from a violation  
9 : 5 1 A M 13 of the Anti-Kickback Statute, the measure of the United States'  
9 : 5 1 A M 14 damages is the full amount the United States paid out for the  
9 : 5 1 A M 15 claim.

9 : 5 1 A M 16 Now we're going to turn to rules for  
9 : 5 1 A M 17 deliberations, the duty to deliberate. I have now instructed  
9 : 5 1 A M 18 you on the law relating to the government's allegations against  
9 : 5 1 A M 19 each defendant. Now I will give you a few final instructions  
9 : 5 1 A M 20 regarding your deliberations and return of verdict.

9 : 5 1 A M 21 You, the jury, will select your foreperson. The  
9 : 5 1 A M 22 foreperson will preside over the deliberations and speak for  
9 : 5 1 A M 23 the jury here in court. When you retire to the jury room, you  
9 : 5 1 A M 24 should discuss the case with your fellow jurors to reach  
9 : 5 1 A M 25 agreement if you can do so. Your verdict must be unanimous.

9 : 5 1 A M 1 Each of you must decide the case for yourself,  
9 : 5 1 A M 2 but you should do so only after you have considered all the  
9 : 5 1 A M 3 evidence, discussed it fully with other jurors, and listened to  
9 : 5 1 A M 4 the views of your fellow jurors. Do not be afraid to change  
9 : 5 2 A M 5 your opinion if the discussion persuades you that you should,  
9 : 5 2 A M 6 but do not come to a decision simply because other jurors think  
9 : 5 2 A M 7 it is right.

9 : 5 2 A M 8 It is important that you attempt to reach a  
9 : 5 2 A M 9 unanimous verdict but, of course, only if each of you can do so  
9 : 5 2 A M 10 after having made your own conscientious decision. Do not  
9 : 5 2 A M 11 change an honest belief about the weight and effect of the  
9 : 5 2 A M 12 evidence simply to reach a verdict. In other words, do not  
9 : 5 2 A M 13 change your opinion solely for the sake of reaching a unanimous  
9 : 5 2 A M 14 verdict.

9 : 5 2 A M 15 During your deliberations, you must not  
9 : 5 2 A M 16 communicate with or provide any information to anyone by any  
9 : 5 2 A M 17 means about this case. You may not use any electronic device  
9 : 5 2 A M 18 or media, such as a telephone, cell phone, smartphone,  
9 : 5 2 A M 19 iPhone, Blackberry or computer, the internet, or any text or  
9 : 5 2 A M 20 instant messaging service or any internet chat room, blog, or  
9 : 5 2 A M 21 websites such as Facebook, LinkedIn, YouTube, or Twitter to  
9 : 5 2 A M 22 communicate to anyone any information about this case or to  
9 : 5 2 A M 23 conduct any research about the case until I have accepted your  
9 : 5 2 A M 24 verdict.

9 : 5 2 A M 25 Now, instructions regarding your notes. When

9 : 5 3 A M 1 you retire to deliberate, you may take your notes back to the  
9 : 5 3 A M 2 jury room with you but, again, only for your own personal use.  
9 : 5 3 A M 3 Your notes should not be shown or read to other jurors.

9 : 5 3 A M 4 Return of the verdict. After you have reached a  
9 : 5 3 A M 5 unanimous agreement on a verdict for each defendant, your  
9 : 5 3 A M 6 foreperson will fill in the verdict form that has been given to  
9 : 5 3 A M 7 you, sign it and date it, and advise the marshal outside your  
9 : 5 3 A M 8 door that you are ready to return to the courtroom.

9 : 5 3 A M 9 Communicating with the Court. If it becomes  
9 : 5 3 A M 10 necessary during your deliberations to communicate with me.  
9 : 5 3 A M 11 You may send a note through the marshal signed by your  
9 : 5 3 A M 12 foreperson or by one or more members of the jury. No member of  
9 : 5 3 A M 13 the jury should ever attempt to communicate with me except by a  
9 : 5 3 A M 14 signed writing, and I will communicate only in writing or  
9 : 5 3 A M 15 orally in open court with any member of the jury about anything  
9 : 5 3 A M 16 concerning the case.

9 : 5 3 A M 17 Remember you are not to tell anyone, including  
9 : 5 3 A M 18 me, how the jury stands numerically or otherwise until after  
9 : 5 3 A M 19 you have reached a unanimous verdict or have been discharged.

9 : 5 4 A M 20 Final instructions. I will send a copy of the  
9 : 5 4 A M 21 verdict form and a copy of these instructions to the jury room  
9 : 5 4 A M 22 that you may refer to them as you fill out the verdict form.  
9 : 5 4 A M 23 After you have filled out the entire verdict form, the  
9 : 5 4 A M 24 foreperson should sign and date it and advise the marshal  
9 : 5 4 A M 25 outside the door that you are ready to return to the courtroom.

9 : 5 4 A M 1 Again, your verdict on each claim alleged in the complaint must  
9 : 5 4 A M 2 be unanimous.

9 : 5 4 A M 3 Now, the verdict form is relatively  
9 : 5 4 A M 4 straightforward. The counsel -- all the counsel talked about  
9 : 5 4 A M 5 it. I feel like they were -- I asked them if they could come  
9 : 5 4 A M 6 up here and do the jury charge after that. Normally I do it,  
9 : 5 4 A M 7 but it's certainly proper for all of them to do it as well.

9 : 5 4 A M 8 The first question is:

9 : 5 4 A M 9 For claims for services by Health Diagnostic  
9 : 5 4 A M 10 Laboratories, has the United States proven by a preponderance  
9 : 5 4 A M 11 of the evidence that one or more of the following defendants  
9 : 5 4 A M 12 violated the False Claims Act? That's Question 1. It's  
9 : 5 4 A M 13 regarding HDL.

9 : 5 5 A M 14 And then you have four defendants -- BlueWave  
9 : 5 5 A M 15 Healthcare, Dent, Johnson, and Mallory -- and you have yes and  
9 : 5 5 A M 16 no against each. And you may each -- you must fill in each of  
9 : 5 5 A M 17 those.

9 : 5 5 A M 18 If you determine -- answer yes regarding any or  
9 : 5 5 A M 19 all of the defendants, you proceed to Question 2. The  
9 : 5 5 A M 20 instruction says that, and it asks you how many claims are  
9 : 5 5 A M 21 involved -- for services violated the False Claims Act and  
9 : 5 5 A M 22 then, third, what is the total value of the claims listed in  
9 : 5 5 A M 23 response to Question 2 above.

9 : 5 5 A M 24 Then you proceed to Question 4. And had you  
9 : 5 5 A M 25 answered no to Question 1, you were instructed to go right to

9 : 5 5 A M 1 Question 4. And you're asked the same questions regarding  
9 : 5 5 A M 2 Singulex.

9 : 5 5 A M 3 Has the United States proven by a preponderance  
9 : 5 5 A M 4 of the evidence that one or more of the following defendants  
9 : 5 5 A M 5 violated the False Claims Act? And those are claims against  
9 : 5 5 A M 6 all defendants except defendant Mallory. So you have the  
9 : 5 5 A M 7 Bluewave Corporation, Dent, and Johnson.

9 : 5 6 A M 8 And then to the extent you find there are  
9 : 5 6 A M 9 damages, that there are violations of the False Claims Act,  
9 : 5 6 A M 10 then you answer the same question regarding Singulex as you did  
9 : 5 6 A M 11 about HDL: How many claims for services and what is the total  
9 : 5 6 A M 12 value of those claims?

9 : 5 6 A M 13 And when you finish, your foreperson signs and  
9 : 5 6 A M 14 dates the jury form, and your duties are completed.

9 : 5 6 A M 15 Now, I'm going to send you back to the jury  
9 : 5 6 A M 16 room, and I would suggest that the first thing that you do is  
9 : 5 6 A M 17 elect a foreperson. You will not yet deliberate. You'll know  
9 : 5 6 A M 18 when you begin deliberations when Ms. Ravenel brings you the  
9 : 5 6 A M 19 exhibits. That will be your clue to begin, and -- and  
9 : 5 6 A M 20 Ms. Ravenel will bring the verdict form at that time as well.

9 : 5 6 A M 21 Okay. I'm going to ask you now to retire to the  
9 : 5 6 A M 22 jury room, but do not begin your deliberations until the  
9 : 5 7 A M 23 exhibits arrive.

9 : 5 7 A M 24 (Whereupon the jury was excused from the courtroom.)

9 : 5 7 A M 25 **THE COURT:** Please be seated.

9 : 5 7 A M 1 Any parties have any objections other than those  
9 : 5 7 A M 2 previously raised at the charge conference?

9 : 5 7 A M 3 From the government?

9 : 5 7 A M 4 MR. LEVENTIS: No, Your Honor.

9 : 5 7 A M 5 THE COURT: From the defendants?

9 : 5 7 A M 6 MR. GRIFFITH: No, Your Honor.

9 : 5 7 A M 7 MR. ASHMORE: No, sir.

9 : 5 7 A M 8 THE COURT: Very good.

9 : 5 7 A M 9 Ms. Ravenel, have you checked with all these  
9 : 5 7 A M 10 attorneys?

9 : 5 7 A M 11 THE DEPUTY CLERK: Yes, I have.

9 : 5 7 A M 12 THE COURT: And y'all are satisfied all the exhibits  
9 : 5 7 A M 13 are in order?

9 : 5 7 A M 14 MR. ASHMORE: Yes, Your Honor.

9 : 5 7 A M 15 THE COURT: I want it on the record.

9 : 5 7 A M 16 Mr. Cooke?

9 : 5 7 A M 17 MR. COOKE: Yes, Your Honor.

9 : 5 7 A M 18 THE COURT: Mr. Ashmore?

9 : 5 7 A M 19 MR. ASHMORE: Yes, sir.

9 : 5 7 A M 20 THE COURT: Very good. Ms. Ravenel, here is the  
9 : 5 7 A M 21 verdict form. Will you please take the exhibits and the  
9 : 5 7 A M 22 verdict form to the jury to begin deliberations.

9 : 5 7 A M 23 Folks, let me mention something to you. The  
9 : 5 7 A M 24 jury is deliberating. I expect you to stay in the courthouse.  
9 : 5 8 A M 25 It's not uncommon I get questions, and I'm not summoning people

9 : 5 8 A M 1 from their offices to answer it, because I want to keep  
9 : 5 8 A M 2 deliberations moving. And if we have to wait, so -- what I'll  
9 : 5 8 A M 3 ask you to do is stand by and make sure Ms. Ravenel knows where  
9 : 5 8 A M 4 you are in the event that we need you.

9 : 5 8 A M 5 THE DEPUTY CLERK: I have a list they can write their  
9 : 5 8 A M 6 numbers down.

9 : 5 8 A M 7 THE COURT: Good. But that is not permission to  
9 : 5 8 A M 8 leave the courthouse. That's so Ms. Ravenel doesn't have to  
9 : 5 8 A M 9 run around the courthouse looking for each of you.

9 : 5 8 A M 10 MR. COOKE: We've been given very nice accommodations  
9 : 5 8 A M 11 in the courthouse.

9 : 5 8 A M 12 THE COURT: Well, you know, we did it on this floor  
9 : 5 8 A M 13 so everyone -- everyone having a comfortable place to work.

9 : 5 8 A M 14 Okay. We'll be at ease until there's a verdict  
9 : 5 8 A M 15 or a question from the jury.

9 : 5 8 A M 16 (Recess.)

9 : 5 8 A M 17 THE COURT: Please be seated. I am advised there's a  
3 : 0 7 P M 18 verdict. Bring in the jury.

3 : 0 7 P M 19 (Whereupon the jury entered the courtroom.)

3 : 0 8 P M 20 THE COURT: Please be seated. I take it the  
3 : 0 8 P M 21 gentleman with the -- with the blueback form is the foreperson?

3 : 0 8 P M 22 THE FOREPERSON: Yes, sir.

3 : 0 8 P M 23 THE COURT: Sir, have you reached a -- has your jury  
3 : 0 8 P M 24 reached a unanimous verdict?

3 : 0 8 P M 25 THE FOREPERSON: Yes, sir.

3 : 0 8 P M 1 THE COURT: Ms. Ravenel, would you please retrieve  
3 : 0 8 P M 2 it?

3 : 0 9 P M 3 (Pause.)

3 : 0 9 P M 4 THE COURT: Please publish the verdict.

3 : 0 9 P M 5 THE DEPUTY CLERK: In the case of United States of  
3 : 0 9 P M 6 America versus BlueWave Healthcare Consultants, Latonya  
3 : 0 9 P M 7 Mallory, Floyd Calhoun Dent, III and Robert Bradford Johnson,  
3 : 0 9 P M 8 we, the jury, unanimously find as follows:

3 : 0 9 P M 9 For claims for services by Healthcare Diagnostic  
3 : 0 9 P M 10 Laboratories, has the United States proven by a preponderance  
3 : 0 9 P M 11 of evidence that one or more of the following defendants  
3 : 1 0 P M 12 violated False Claims Act?

3 : 1 0 P M 13 BlueWave Healthcare Consultants. No.

3 : 1 0 P M 14 Floyd Calhoun Dent, III. Yes.

3 : 1 0 P M 15 Robert Bradford Johnson, yes.

3 : 1 0 P M 16 Latonya Mallory, yes.

3 : 1 0 P M 17 How many claims for services by HDL violated the  
3 : 1 0 P M 18 claims -- False Claims Act?

3 : 1 0 P M 19 35,074.

3 : 1 0 P M 20 what is the total value of claims listed in  
3 : 1 0 P M 21 response to question 2 above?

3 : 1 0 P M 22 \$16,601,591.

3 : 1 0 P M 23 For claims for services by Singulex, has the  
3 : 1 0 P M 24 United States proven by a preponderance of the evidence that  
3 : 1 0 P M 25 one or more of the following defendants violated the False

3 : 1 0 P M 1 Claims Act?

3 : 1 0 P M 2 BlueWave Healthcare Consultants. No.

3 : 1 1 P M 3 Floyd Calhoun Dent, III. Yes.

3 : 1 1 P M 4 Robert Bradford Johnson. Yes.

3 : 1 1 P M 5 How many claims for services by Singulex  
3 : 1 1 P M 6 violated the False Claims Act?

3 : 1 1 P M 7 3,813.

3 : 1 1 P M 8 what is the total value claims listed in  
3 : 1 1 P M 9 response to question 5?

3 : 1 1 P M 10 467 thousand 7 -- four hundred sixty-seven nine  
3 : 1 1 P M 11 hundred thirty five thousand and zero one hundred dollars.

3 : 1 1 P M 12 Signed by the jury foreman, dated January 31st,  
3 : 1 1 P M 13 2018.

3 : 1 1 P M 14 THE COURT: Let me examine that just for a second.

3 : 1 1 P M 15 THE DEPUTY CLERK: Okay.

3 : 1 1 P M 16 THE COURT: It's \$467,935 on Singulex.

3 : 1 1 P M 17 Please poll the jury.

3 : 1 2 P M 18 THE DEPUTY CLERK: Ladies and gentlemen of the jury,  
3 : 1 2 P M 19 is this your true and correct verdict? Juror Number 71?

3 : 1 2 P M 20 JUROR NUMBER 71: Yes.

3 : 1 2 P M 21 THE DEPUTY CLERK: Juror Number 6?

3 : 1 2 P M 22 JUROR NUMBER 6: Yes.

3 : 1 2 P M 23 THE DEPUTY CLERK: Juror Number 118?

3 : 1 2 P M 24 JUROR NUMBER 118: Yes.

3 : 1 2 P M 25 THE DEPUTY CLERK: Juror Number 214?

3 : 1 2 P M 1 JUROR NUMBER 214: Yes.

3 : 1 2 P M 2 THE DEPUTY CLERK: Juror Number 2?

3 : 1 2 P M 3 JUROR NUMBER 2: Yes.

3 : 1 2 P M 4 THE DEPUTY CLERK: Juror Number 10?

3 : 1 2 P M 5 JUROR NUMBER 10: Yes.

3 : 1 2 P M 6 THE DEPUTY CLERK: Juror Number 243?

3 : 1 2 P M 7 JUROR NUMBER 243: Yes.

3 : 1 2 P M 8 THE DEPUTY CLERK: Juror Number 92?

3 : 1 2 P M 9 JUROR NUMBER 92: Yes.

3 : 1 2 P M 10 THE DEPUTY CLERK: Juror Number 50?

3 : 1 2 P M 11 JUROR NUMBER 50: Yes.

3 : 1 2 P M 12 THE DEPUTY CLERK: Juror Number 135?

3 : 1 2 P M 13 JUROR NUMBER 135: Yes.

3 : 1 2 P M 14 THE DEPUTY CLERK: Juror Number 209?

3 : 1 2 P M 15 JUROR NUMBER 209: Yes.

3 : 1 2 P M 16 THE DEPUTY CLERK: And juror Number 125.

3 : 1 2 P M 17 JUROR NUMBER 125: Yes.

3 : 1 2 P M 18 THE DEPUTY CLERK: The jury has been polled, and they

3 : 1 2 P M 19 all have answered in the affirmative.

3 : 1 2 P M 20 THE COURT: Ladies and gentlemen, you have worked

3 : 1 2 P M 21 awfully hard. I've been deeply impressed. I haven't said that

3 : 1 2 P M 22 to encourage you to keep going. This was hard work. I meant

3 : 1 2 P M 23 it sincerely, and you've worked very hard, and I want to thank

3 : 1 2 P M 24 you for your service.

3 : 1 2 P M 25 I'm going to send you back to the jury room, and

3 : 1 2 P M 1 I'm going to come back and thank you personally for your  
3 : 1 3 P M 2 service.

3 : 1 3 P M 3 (Whereupon the jury was excused from the courtroom.)

3 : 1 3 P M 4 **THE COURT:** Ms. Ravenel, please enroll the verdict.

3 : 1 3 P M 5 **THE DEPUTY CLERK:** Yes, sir.

3 : 1 3 P M 6 **THE COURT:** Actually, hold on just a minute because I  
3 : 1 3 P M 7 need to come back. Please be seated. I want to speak to the  
3 : 1 3 P M 8 jury, thank them, and then come back.

3 : 1 3 P M 9 (Pause.)

3 : 1 9 P M 10 **THE COURT:** Please be seated.

3 : 2 0 P M 11 Miss Eunice, can I have the verdict form,  
3 : 2 0 P M 12 please, ma'am?

3 : 2 0 P M 13 **THE DEPUTY CLERK:** Yes, sir.

3 : 2 0 P M 14 (Pause.)

3 : 2 1 P M 15 **THE COURT:** Okay. The -- pursuant to the provisions  
3 : 2 1 P M 16 of the False Claims Act, it is my understanding I am to treble  
3 : 2 1 P M 17 damages. What's the government's view on that?

3 : 2 1 P M 18 **MR. TERRANOVA:** That is correct, Your Honor.

3 : 2 1 P M 19 **THE COURT:** Okay. Defense have any response to that?

3 : 2 1 P M 20 **MR. COOKE:** Well, we would object to it if the Court  
3 : 2 1 P M 21 has any discretion in doing it, but we also point out under  
3 : 2 1 P M 22 Rule 49(b) that we believe the verdict is inconsistent, and we  
3 : 2 1 P M 23 think we have to call that to the Court's attention under the  
3 : 2 2 P M 24 rule.

3 : 2 2 P M 25 **THE COURT:** I appreciate you bringing that to my

3 : 2 2 P M 1 attention, and you're able to make posttrial motions, and I'm  
3 : 2 2 P M 2 glad to entertain them at that time, but -- and I will address  
3 : 2 2 P M 3 those when made, but I do believe that it is my responsibility.  
3 : 2 2 P M 4 It's a mandatory duty. And I want someone to check my math on  
3 : 2 2 P M 5 this, but I calculate treble damage of the award of the jury is  
3 : 2 2 P M 6 \$51,207,978. Does that appear -- somebody want to doublecheck  
3 : 2 2 P M 7 my math on that?

3 : 2 2 P M 8 MR. LEVENTIS: Your Honor, do you mind reading out  
3 : 2 2 P M 9 what the --

3 : 2 2 P M 10 THE COURT: I will. I'm going to do it again. The  
3 : 2 2 P M 11 verdict on the HDL is \$16,601,591. The verdict regarding  
3 : 2 3 P M 12 Singulex is \$467,935. And that trebled I get \$51,207,978.

3 : 2 3 P M 13 MR. TERRANOVA: Your Honor, I think we may need to  
3 : 2 3 P M 14 treble the damages for the HDL claims separately from the  
3 : 2 3 P M 15 Singulex claims.

3 : 2 3 P M 16 THE COURT: Okay. You want me to do that separately.  
3 : 2 3 P M 17 I will --

3 : 2 3 P M 18 MR. TERRANOVA: Ms. Mallory is not jointly and  
3 : 2 3 P M 19 severally liable for --

3 : 2 3 P M 20 THE COURT: You are absolutely correct about that.  
3 : 2 3 P M 21 You are absolutely correct. Thank you.

3 : 2 3 P M 22 The HDL verdict as trebled is \$49,804,773.

3 : 2 4 P M 23 MR. LEVENTIS: We agree, Your Honor.

3 : 2 4 P M 24 THE COURT: I'm sorry?

3 : 2 4 P M 25 MR. LEVENTIS: Yes, we agree, Your Honor.

3 : 2 4 P M 1 THE COURT: And then the Singulex verdict is  
3 : 2 4 P M 2 \$1,403,205. Does that appear correct? 467,735 -- I'm sorry,  
3 : 2 4 P M 3 935. I may have done that wrong. Let me do that again.  
3 : 2 4 P M 4 467,935 times 3. I'm sorry, I had that wrong. It's  
3 : 2 4 P M 5 \$1,403,805.

3 : 2 4 P M 6 MR. LEVENTIS: Yes, Your Honor.

3 : 2 4 P M 7 THE COURT: Okay. Okay. Posttrial motions. You  
3 : 2 4 P M 8 wish ten days it make those, Mr. Cooke and Mr. Ashmore?

3 : 2 4 P M 9 MR. COOKE: I think the rule may actually provide for  
3 : 2 4 P M 10 longer than that.

3 : 2 4 P M 11 MR. ASHMORE: 28, I thought.

3 : 2 4 P M 12 MR. COOKE: 28 days under the rules now.

3 : 2 4 P M 13 THE COURT: Okay. Government object to 28 days?

3 : 2 5 P M 14 MR. LEVENTIS: No, Your Honor.

3 : 2 5 P M 15 THE COURT: Very good. I trust your consultation of  
3 : 2 5 P M 16 that rule. 28 days, I'll be glad to hear --

3 : 2 5 P M 17 MR. ASHMORE: Don't cite me on the law, Your Honor.  
3 : 2 5 P M 18 We appreciate 28 days.

3 : 2 5 P M 19 MR. COOKE: And, Judge, the reason I raise the  
3 : 2 5 P M 20 inconsistent verdict is --

3 : 2 5 P M 21 THE COURT: Yes.

3 : 2 5 P M 22 MR. COOKE: -- under the rule, one of the approaches  
3 : 2 5 P M 23 the Court could take would be to resubmit it to the jury if the  
3 : 2 5 P M 24 Court agrees, so I just didn't want to waive the --

3 : 2 5 P M 25 THE COURT: No. You're not waiving it, and I take it

3 : 2 5 P M 1 as the view regarding BlueWave; is that your thought about it?

3 : 2 5 P M 2 MR. COOKE: Yes.

3 : 2 5 P M 3 THE COURT: You know, I can see a basis in which the  
3 : 2 5 P M 4 jury concluded that all the actions were these two individuals  
3 : 2 5 P M 5 and that there wasn't a lot of evidence about the corporate  
3 : 2 5 P M 6 form and corporate details, so they could have concluded the  
3 : 2 5 P M 7 government didn't prove it by preponderance of the evidence. I  
3 : 2 5 P M 8 don't think that's a particularly inconsistent verdict at all.  
3 : 2 5 P M 9 You know, we're all -- you know, we tell them they can be  
3 : 2 6 P M 10 liable through it, but we don't say it's mandatory, and they  
3 : 2 6 P M 11 could conclude that. And they -- the jury worked hard. Y'all  
3 : 2 6 P M 12 know that.

3 : 2 6 P M 13 I want to say also, this is as well tried a case  
3 : 2 6 P M 14 as I have ever seen, and I know that defense counsel are  
3 : 2 6 P M 15 probably sitting here exhausted and profoundly disappointed,  
3 : 2 6 P M 16 but we saw great lawyering in this case. It is exactly the way  
3 : 2 6 P M 17 the system is supposed to work. And I'm -- I think y'all got  
3 : 2 6 P M 18 a -- you got a -- everybody got a robust opportunity to present  
3 : 2 6 P M 19 their case, which is my goal in every case, that everybody  
3 : 2 6 P M 20 should be able to do that. And I know I made rulings that both  
3 : 2 6 P M 21 sides didn't particularly like. As they say in this business,  
3 : 2 6 P M 22 if you wouldn't a friend, get a dog. You know, this is -- I'm  
3 : 2 6 P M 23 going to call it like I see it.

3 : 2 6 P M 24 So I will await the posttrial motions.

3 : 2 6 P M 25 Are there any other matters to come before the

3 : 2 7 P M 1 Court at this point?

3 : 2 7 P M 2 MR. TERRANOVA: Yes, Your Honor. Under the False  
3 : 2 7 P M 3 Claims Act, as Your Honor knows, the penalties are mandatory.  
3 : 2 7 P M 4 Your Honor has discretion within the range of --

3 : 2 7 P M 5 THE COURT: 5 to 10,000?

3 : 2 7 P M 6 MR. TERRANOVA: Right.

3 : 2 7 P M 7 THE COURT: I caution you, of course, in the *Tuomey*  
3 : 2 7 P M 8 case, the government did not seek the -- the penalties per  
3 : 2 7 P M 9 claim, and the Court, I believe, discussed the idea of when a  
3 : 2 7 P M 10 claim might become so punitive that it would violate the  
3 : 2 7 P M 11 excessive fines provisions of the Constitution.

3 : 2 7 P M 12 Having thought about what consequence these  
3 : 2 7 P M 13 numbers would be, are you -- are you seeking a -- an additional  
3 : 2 7 P M 14 amount as penalties, the government?

3 : 2 7 P M 15 MR. TERRANOVA: Yes, and we would request that on the  
3 : 2 7 P M 16 same time frame that defendants have to submit posttrial  
3 : 2 8 P M 17 briefs, the United States be allowed within 28 days to file its  
3 : 2 8 P M 18 brief explaining its rationale for the amount within the  
3 : 2 8 P M 19 mandatory range of 5500 to 10,000.

3 : 2 8 P M 20 THE COURT: It's now 5500 because of a rise in costs  
3 : 2 8 P M 21 of living or something, some sort of an escalator number? I  
3 : 2 8 P M 22 was thinking about the statute. It says 5,000 to 10,000, but  
3 : 2 8 P M 23 if there's an escalator --

3 : 2 8 P M 24 MR. TERRANOVA: There is an escalator, and my  
3 : 2 8 P M 25 colleagues correct me. The upper end of this I believe is

3 : 2 8 P M 1 11,000.

3 : 2 8 P M 2 THE COURT: Okay. So it's 5500 to -- I would just  
3 : 2 8 P M 3 simply say to you in filing this, just -- I will take seriously  
3 : 2 8 P M 4 the guidance of the Court about excessive fines. I have no  
3 : 2 8 P M 5 idea. I can analyze this, but it is a factor, and in *Tuomey*, I  
3 : 2 8 P M 6 know the verdict was extraordinary, beyond any capacity of the  
3 : 2 8 P M 7 defendants.

3 : 2 8 P M 8 MR. TERRANOVA: I believe the Fourth Circuit did go  
3 : 2 8 P M 9 through that analysis.

3 : 2 8 P M 10 THE COURT: And I encourage y'all to take a look at  
3 : 2 8 P M 11 that, because that's what I will do, and I will afford -- once  
3 : 2 9 P M 12 that's filed, I will afford defendants an opportunity to  
3 : 2 9 P M 13 address that issue as well. And -- but you're absolutely  
3 : 2 9 P M 14 right. It is your -- it is mandatory to the Court, and that's  
3 : 2 9 P M 15 why we put the claims number in there.

3 : 2 9 P M 16 I kind of thought the Fourth Circuit was sending  
3 : 2 9 P M 17 a shot across the bow to the government in that by saying, you  
3 : 2 9 P M 18 know, there's no hard rule, but when you start getting over 4  
3 : 2 9 P M 19 times, you're going to take -- 4 times the amount, it's going  
3 : 2 9 P M 20 to take a -- you know, the Court needs to scrutinize using the  
3 : 2 9 P M 21 standards for excessive fines, and I, of course, will do that.

3 : 2 9 P M 22 Any other matters to come before the Court at  
3 : 2 9 P M 23 this point?

3 : 2 9 P M 24 MR. TERRANOVA: Yes, Your Honor. There's one  
3 : 2 9 P M 25 additional matter. This relates to a tax bill that was passed

3 : 2 9 P M 1 on December 22nd, 2017. Among the various provisions in that  
3 : 2 9 P M 2 bill, there's one that relates to the tax treatment of  
3 : 2 9 P M 3 judgments, particularly how the restitution amount is accounted  
3 : 3 0 P M 4 for for tax purposes. Frankly, I'm not fully educated on how  
3 : 3 0 P M 5 that relates to this case.

3 : 3 0 P M 6 We would request an opportunity to prepare a  
3 : 3 0 P M 7 brief to submit to you, Your Honor, regarding this provision of  
3 : 3 0 P M 8 the bill within the same 28-day period.

3 : 3 0 P M 9 **THE COURT:** And how might that be relevant to the  
3 : 3 0 P M 10 Court's consideration?

3 : 3 0 P M 11 **MR. TERRANOVA:** Your Honor, I'm not fully briefed on  
3 : 3 0 P M 12 this issue, but there appears to be a provision that requires a  
3 : 3 0 P M 13 determination by an appropriate official of what amount of a  
3 : 3 0 P M 14 judgment is deemed restitution for tax purposes, and it's not  
3 : 3 0 P M 15 quite clear who the appropriate official is in my view at  
3 : 3 0 P M 16 least. And maybe other folks at DOJ already have determined  
3 : 3 0 P M 17 that, which is why I think we need the 28-day period in order  
3 : 3 1 P M 18 to submit it.

3 : 3 1 P M 19 **THE COURT:** well, obviously as they would say, that  
3 : 3 1 P M 20 is news to me, but there are a lot of things -- you know, the  
3 : 3 1 P M 21 District Court is the last general practitioners in the Bar,  
3 : 3 1 P M 22 and I'm called upon to look at issues I never knew existed.  
3 : 3 1 P M 23 That's a new one for me, but I welcome that, and I will look  
3 : 3 1 P M 24 forward to the posttrial briefs.

3 : 3 1 P M 25 **MR. TERRANOVA:** Thank you, Your Honor.

