

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 13-
 :
 v. :
 :
 DAVID NICOLL : 18 U.S.C. §§ 371, 1956 and 2

I N F O R M A T I O N

COUNT 1
(Conspiracy to Commit Bribery)

1. At all times relevant to this Information:

a. Biodiagnostic Laboratory Services, LLC ("BLS") was a clinical blood laboratory headquartered in Parsippany, New Jersey that, among other things, performed tests on the blood specimens of patients referred to BLS by doctors, and then billed payors and others for those tests and related services.

b. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was a "Federal health care program" as defined in Title 42, United States Code, Section 1320a-7b(f) and a "health care benefit program" as defined in Title 18, United States Code, Section 24(b). Individuals who receive benefits under Medicare are commonly referred to as "beneficiaries."

c. The Medicare Part B program was a federally funded supplemental insurance program that provided supplementary Medicare insurance benefits for individuals aged sixty-five or

older, and certain individuals who are disabled. The Medicare Part B program paid for various medical services for beneficiaries, including blood tests and related services.

d. BLS was an approved Medicare provider, and Medicare paid BLS for performing blood tests and related services on beneficiaries who were referred to BLS by physicians participating in Medicare.

e. BLS billed, and was paid by, various private health care insurance companies (the "private insurers") in the business of providing health care insurance to individuals and entities under various insurance policies (the "insureds"), pursuant to which the private insurers paid BLS for blood tests and related services performed for insureds who had been referred to BLS by physicians.

f. Defendant DAVID NICOLL was an owner and the President of BLS, and routinely exerted direct control over various aspects of the operations of BLS that are relevant to this Information.

g. Co-conspirator Scott Nicoll was an employee of BLS and defendant DAVID NICOLL's brother.

h. Defendant DAVID NICOLL, along with co-conspirator Scott Nicoll, supervised individuals ("salespeople") paid by BLS to recruit physicians to refer their patients' blood specimens to BLS for the performance of blood tests and related services.

i. BLS salespeople were paid a commission by BLS based on the amount of revenue received by BLS from Medicare and the private insurers (collectively, the "Payors") for the performance of blood tests and related services performed on blood samples referred to BLS by physicians the salespeople recruited.

2. From at least in or about January 2006 through in or about April 2013, in Morris County, in the District of New Jersey, and elsewhere, defendant

DAVID NICOLL

did knowingly and intentionally conspire and agree with co-conspirator Scott Nicoll and others to commit offenses against the United States, that is:

a. to knowingly and willfully offer and pay remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, to physicians in order to induce referrals of patients to BLS for the furnishing and arranging for the furnishing of items and services, that is, the referral by physicians of patient blood specimens to BLS for testing and related services, for which payment was made in whole or in part under a Federal health care program, that is, Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b) (2) (A); and

b. to knowingly and intentionally travel in interstate commerce and use and cause to be used the mail with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, that is, commercial bribery, contrary to N.J.S.A. §2C:21-10 and Title 18, United States Code, Section 1952(a)(3) and, thereafter, to perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity.

Object of the Conspiracy

3. The object of this conspiracy was for defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others to obtain millions of dollars of additional revenue and profits for BLS by paying kickbacks and bribes to physicians for the referral of blood specimens from their patients to BLS for testing and related services, which testing and related services BLS would then bill for and use to obtain payment from the Payors.

Manner and Means of the Conspiracy

The manner and means by which defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others sought to accomplish the object of the conspiracy included, among other things, the following:

4. Defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others caused bribes from BLS to be paid to physicians to induce the physicians to refer their patients' blood samples to BLS.

5. To effectuate the conspiracy and disguise their bribe payments, defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others utilized sham lease agreements, sham service agreements, and sham consulting agreements, among other methods, to induce physicians to refer patient blood samples to BLS and induce them to order unnecessary tests.

6. Sham lease agreements: while leasing space within physicians' offices from the physicians (purportedly so a BLS employee could work in the physicians' offices taking blood samples from patients), defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others leased substantially more space than was actually used by BLS and otherwise misstated and misrepresented the substance of the transaction, thus causing the payments to the physicians to be for substantially more money than if they had been legitimate, arms-length, negotiated leases.

7. Sham service agreements: defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others entered into service agreements through which defendant BLS paid physicians above market value for performing basic blood drawing tasks that many of the physicians would have undertaken even if they were not paid substantial sums by BLS to do so.

8. Defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others bribed numerous physicians using sham lease agreements and sham service agreements between 2006-2009, paying millions of dollars to these physicians and receiving at least tens of millions of dollars from private insurers and Medicare based on referrals from those physicians.

9. Until July 2010, lease agreements and service agreements between clinical laboratories and physicians that met the relevant federal safe harbors of the Anti-Kickback Statute were also permitted under New Jersey state law under limited circumstances. A change in New Jersey law was proposed in October 2009 and enacted in July 2010, effectively prohibiting even legitimate lease and service payments from clinical blood laboratories to physicians (the "New Jersey Ban").

10. The New Jersey Ban was in response to an apparent plethora of reports "that rental agreements between laboratories and physicians for physician office collection stations [in the physicians' medical offices] exceed[ed] fair market value and influence[d] the selection of laboratory services," and that New

Jersey state authorities lacked "any effective means of assuring that these rental agreements do not exceed fair market value." Consequently, on or about October 19, 2009, the New Jersey Department of Health and Senior Services proposed effectively prohibiting lease agreements and service agreements between clinical laboratories and physicians, and then enacted that ban, effective on or about July 19, 2010. 42 N.J.R. 1530(a), pg. 1532.

11. When the New Jersey Ban in 2010 made it more difficult for defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others to utilize sham lease agreements and sham service agreements to disguise their bribe payments, defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others funded a number of new entities (the "BLS Funded Entities"), and used, among other methods, sham consulting agreements from the BLS Funded Entities and cash, to disguise continued bribe payments to physicians. To fund those bribes, defendant DAVID NICOLL, co-conspirator Scott Nicoll, and others provided these entities with more than \$8 million from BLS. Of that amount, more than \$1.6 million was withdrawn, as cash, in hundreds of individual transactions which rarely, if ever, exceeded the \$10,000 threshold to trigger Currency Transaction Reporting requirements. This cash was, in substantial part, utilized to make bribe payments to physicians. In addition, more than \$1 million was paid to physicians by BLS using monies funneled through BLS

Funded Entities as checks written by those entities to the physicians pursuant to sham consulting agreements.

12. Individually, numerous physicians received bribes totaling thousands of dollars, and in many cases tens of thousands of dollars, either by check or in cash from BLS through the BLS Funded Entities between in or about the summer of 2010 and in or about April 2013. In many cases, these bribes were paid through the use of sham consulting agreements between physicians and the BLS Funded Entities. In exchange for these bribe payments, bribed physicians referred blood specimens to BLS, and BLS received at least tens of millions of dollars from private insurers and Medicare based on referrals from those physicians.

13. Many of the same physicians who received bribes from BLS through the BLS Funded Entities between in or about the summer of 2010 and in or about April 2013, had previously been paid tens of thousands of dollars - in some cases substantially more than one hundred thousand dollars - in bribes from BLS through the use of the sham lease and sham service agreements between in or about January 2006 and in or about July 2010.

14. It was a further part of the conspiracy that to increase the revenue received by BLS, numerous physicians were incentivized to order more of certain types of tests that were highly profitable for BLS. These incentives included a cash fee per specific test ordered, which was intended to cause physicians

to order certain tests more often than they would have otherwise ordered those tests.

15. It was a further part of the conspiracy that BLS and various of the BLS Funded Entities maintained detailed records tracking, by month: (i) the monies paid to each physician; (ii) the blood tests ordered, by physician; and (iii) the revenue those blood tests generated for BLS.

16. Defendant DAVID NICOLL became the primary owner of BLS in September 2005. Between 2006-2012, defendant BLS's revenue from the testing of blood specimens and related services exceeded \$200 million, constituting an approximately 400% increase in annual revenue over that period. Of the more than \$200 million in revenue BLS received between 2006-2012, substantially more than \$100 million was the product of referrals from physicians receiving bribes from BLS.

Overt Acts

In furtherance of the conspiracy and in order to effect the objects thereof, defendant DAVID NICOLL and his co-conspirators committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

17. On or about August 7, 2009, defendant DAVID NICOLL engaged in a text message discussion with Frank Santangelo - a physician then practicing medicine in the State of New Jersey - regarding the amount of money BLS, through defendant DAVID NICOLL, was paying Frank Santangelo to refer and increase patient

blood testing volume. In this text message discussion, defendant DAVID NICOLL stated, "Frank, I really can't afford the 40-50,000 [dollars] a month if the girls aren't going to be drawing any blood," to which Frank Santangelo responded, "Will take care of it when I get back [from a trip outside the United States]. U can call [an office employee of Frank Santangelo] for now! U no u can count on me! I never let u down!"

18. In or about February 2009, defendant DAVID NICOLL caused a check drawn on BLS's business bank account, bearing #7614, in the amount of \$1,200, to be paid to MD1, who was a physician then practicing medicine in the State of New Jersey. That payment was made pursuant to a sham lease agreement between BLS and MD1 to induce MD1 to refer the blood specimens of his patients to BLS for testing.

19. In or about February 2009, defendant DAVID NICOLL caused a check drawn on BLS's business bank account, bearing #7549, in the amount of \$3,466, to be paid to MD2, who was a physician then practicing medicine in the State of New Jersey. That payment was made pursuant to a sham service agreement between BLS and MD1 to induce MD2 to refer the blood specimens of his patients to BLS for testing.

20. In or about February 2013, defendant DAVID NICOLL engaged in additional text message discussions with Frank Santangelo regarding the amount of money BLS, through defendant DAVID NICOLL, was paying Frank Santangelo - using checks totaling

more than \$50,000 per month from BLS to a female companion of Frank Santangelo - to refer and increase patient blood testing volume. In one text message, Frank Santangelo stated "my goal is for you to bill out over a million a month! It's very possible!" In another text message discussion, Frank Santangelo stated "me and [another physician] put our heads together and added A significant amount of testing...The testing is 90% legit! Also added two more endocrine panels." In another text message discussion, defendant DAVID NICOLL and Frank Santangelo discussed the volume of referrals from Frank Santangelo's office to BLS for the first 11 days of February 2013. Defendant DAVID NICOLL stated "...7 [blood samples] yesterday was great but 11 for the rest of the month is week!...Seeing 20 people a day you should get 40 easily that is only 10 a week."

All in violation of Title 18, United States Code, Section 371.

COUNT 2
(Money Laundering)

1. Paragraphs 1 and 4 through 20 of Count 1 are incorporated as if set forth at length herein.

2. In or about March 2013, in Monmouth County, in the District of New Jersey, and elsewhere, defendant

DAVID NICOLL

knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, and knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, did knowingly and willfully conduct a financial transaction affecting interstate and foreign commerce which in fact involved the proceeds of specified unlawful activity, specifically the transfer, delivery, and other disposition of United States currency in excess of \$64,000 that was the proceeds of the conspiracy described in Count 1 of this Information to bribe physicians to refer the blood specimens of their patients to BLS for testing and related services.

In violation of Title 18, United States Code, Section 1956(a)(1)(B)(i) and Section 2.

FORFEITURE ALLEGATION AS TO COUNT 1

1. The allegations contained in this Information are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(7).

2. Upon conviction of the offense of conspiracy to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A) and Title 18, United States Code, Section 1952(a)(3), in violation of Title 18, United States Code, Section 371, defendant DAVID NICOLL shall forfeit to the United States, (i) pursuant to Title 18 U.S.C. Section 982(a)(7), all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the conspiracy to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), and (ii) pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the conspiracy to violate Title 18, United States Code, Section 1952(a)(3), including, but not limited to, a sum of money in the amount of \$49,936,000, representing the property constituting or derived, directly or indirectly, from gross proceeds traceable to the conspiracy offense charged in Count 1.

FORFEITURE ALLEGATION AS TO COUNT 2

3. The allegations contained in this Information are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 982(a)(1).

4. As the result of committing the money laundering offense in violation of 18 U.S.C. § 1956 alleged in Count 2 of this Information, defendant DAVID NICOLL shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(1), all property, real and personal, involved in the money laundering offense and all property traceable to such property, including, but not limited to, a sum of money in the amount of \$64,000, representing the property involved in the money laundering offense charged in Count 2, and all property traceable to such property.

Substitute Assets Provision

5. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which

cannot be divided without difficulty, the United States shall be entitled, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), and Title 28, United States Code, Section 2461(c), to forfeiture of any other property of defendant DAVID NICOLL up to the value of the property described in the paragraphs 2 and 4 of these forfeiture allegations.



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INFORMATION

18 U.S.C. §§ 371, 1956 and 2

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