

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 13-
 :
 v. :
 :
 SCOTT 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. Co-conspirator 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. Defendant SCOTT NICOLL was an employee of BLS and co-conspirator David Nicoll's brother.

h. Defendant SCOTT NICOLL, along with co-conspirator David 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

SCOTT NICOLL

did knowingly and intentionally conspire and agree with co-conspirator David 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 SCOTT NICOLL, co-conspirator David 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 SCOTT NICOLL, co-conspirator David Nicoll, and others sought to accomplish the object of the conspiracy included, among other things, the following:

4. Defendant SCOTT NICOLL, co-conspirator David 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 SCOTT NICOLL, co-conspirator David 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 SCOTT NICOLL, co-conspirator David 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 SCOTT NICOLL, co-conspirator David 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 SCOTT NICOLL, co-conspirator David 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 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 SCOTT NICOLL, co-conspirator David Nicoll, and others to utilize sham lease agreements and sham service agreements to disguise their bribe payments, defendant SCOTT NICOLL, co-conspirator David 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 SCOTT NICOLL, co-conspirator David 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. Co-conspirator 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 SCOTT 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 2, 2012, defendant SCOTT NICOLL

engaged in a telephone conversation with MD1, who was a physician then practicing medicine in the State of New Jersey. In this telephone conversation, defendant SCOTT NICOLL offered to resume bribe payments to MD1 from one of the BLS Funded Entities (which payments a co-conspirator had ended in or about April 2012 after MD1's referrals to BLS decreased) provided that MD1 generated a sufficient volume of testing on MD1's patients' blood for BLS. Specifically, defendant SCOTT NICOLL stated, among other things, "so long as we could do 10 [blood specimens referred from MD1 to BLS] you know a week, I'm sure we could work something out."

18. On or about August 27, 2012, defendant SCOTT NICOLL engaged in another telephone conversation with MD1. In this telephone conversation, defendant SCOTT NICOLL referenced the blood specimens MD1 was referring to BLS, and stated, among other things, "we're trying to figure out how you know how we can work something out you know where it is beneficial for both of us. You know cause I would like to be able to get you you know around 1,500 [dollars] a month if I can but I need we would either need more tests or more patients or something along those lines. Ahm you know those allergy panels, those allergy panels would definitely help us." Later in the telephone conversation, defendant SCOTT NICOLL stated, "[a]hm you know like I said I'm looking you're doing about a \$1,000 a bag per patient...Ahm if we could, we could somehow get that up in the two's then I'm looking

at making 4,000 [dollars] and I have no problem paying you know 1,500 [dollars] for it." Later in the telephone conversation, MD1 stated that "[a]h then yeah I guess if I could double that volume you would think that would be satisfactory I guess, to which defendant SCOTT NICOLL responded, "[a]bsolutely. Yeah, absolutely we, we could start small you know and just see how it goes."

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

COUNT 2
(Money Laundering)

1. Paragraphs 1 and 4 through 18 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

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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 SCOTT 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 \$24,936,000, 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 SCOTT 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 SCOTT NICOLL up to the value of the property described in the paragraphs 2 and 4 of these forfeiture allegations.



PAUL J. FISHMAN
UNITED STATES ATTORNEY

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