#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

###### UNITED STATES OF AMERICA,

Plaintiff,

vs.

###### WILLIAM A. HAGSTROM, MARK G. DIMITROFF, and MICHAEL N. McDONALD

Defendants.

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) Case Number: CR 04-120 R

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**DEFENDANTS MARK DIMITROFF AND WILLIAM HAGSTROM'S OPPOSITION TO THE GOVERNMENT'S**

**MOTION TO EXCLUDE DEFENDANTS' PROPOSED EXPERT WITNESSES**

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**PRELIMINARY STATEMENT**

The government's motion to exclude the Count 1 experts is an effort to have this case decided before it is tried. These experts will be called to testify not about guilt or innocence and not about questions of law, but on simple factual questions. The phrase "fair market value" is a concept that was prominently featured in definitive pronouncements that were circulated to the public at large, and to Mr. Dimitroff and Mr. Hagstrom. The defendants are entitled to show what they understood that phrase to mean, and in that regard they are entitled to show that this understanding was not concocted for trial but instead was grounded in authoritative sources and comports with the meaning of the phrase as used by experts in the health-care field and in business generally.

The Tenth Circuit routinely allows expert testimony as to the meaning of fair market value. In the health care field, other courts have allowed expert testimony where, as here, questions of guilt or innocence may turn on the meaning of a phrase that-as the pleadings in this case demonstrate-may be subject to some debate. Naturally, we think our understanding of the phrase "fair market value" is the proper one, indeed the only proper one. But if the government disagrees, it has the means of making its points through cross-examination. That is the government's remedy here, if there is one. The Court should not keep these relevant and obviously qualified experts off the stand.

FACTS

Mr. Stanley Murphy will testify about two topics. (Exhibit A) First, he will testify about the meaning of the phrase "fair market value" in the context of the health care industry as well as the relationship of this concept to "cost" and how to determine fair market value in a competitive marketplace such as the lab industry. Second, he will testify about the government's public

statements, standards and pronouncements about discounting by clinical labs at the time of the

alleged offense. Contrary to the government's expressed concern, Mr. Murphy will not testify as to the "ultimate issue." He will not testify about UroCor's discounting practices or about whether those particular practices were legal.

Dr. Bart Ward will testify about the meaning and measurement of fair market value from a general business perspective. (Exhibit B) He will offer testimony that is not specific to the health care industry but that will aid the jury in understanding the meaning of the phrase "fair market value" from a commercial perspective, and as the phrase is commonly understood in the business community.

Mr. Murphy and Dr. Ward are well qualified to testify about these matters based on their

education and experience. The qualifications of Mr. Murphy and Dr. Ward are set forth in their curriculum vitae which are attached. (Exhibits A and B) Mr. Murphy has been a certified public accountant for over 25 years and was one of five partners at PriceWaterhouse Coopers who coordinated its health care fraud and abuse services practice. He has worked with counsel for providers in conducting numerous health care fraud and abuse investigations, conducted

investigations in connection with the Office of Inspector General's Voluntary Disclosure protocol, and conducted numerous other forensic accounting and fraud investigations. Dr. Ward is the former dean of the Meinders School of Business at Oklahoma City University, where he is now a professor. He has been a certified public accountant for over 35 years. The government offers no explanation as to why they are not qualified under Rule 702.

#### ARGUMENT

##### The Expert Testimony Of Mr. Murphy and Dr. Ward Is Both Relevant And Admissible

The testimony of Mr. Murphy and Dr. Ward is appropriate under Federal Rule of Evidence 702 because it will "assist the trier of fact to understand the evidence or to determine a

###### fact in issue." The "'touchstone' of admissibility is helpfulness to the trier of fact." Werth v.

Makita Electric Works, Ltd., 950 F.2d 643, 648 (10th Cir. 1991) (citation omitted). Any doubts about the helpfulness of Mr. Murphy and Dr. Ward's testimony should be resolved in favor of

admissibility. Robinson v. Missouri Pac. R.R. Co., 16 F.3d 1083, 1090 (10th Cir. 1994); Sil-Flo

Inc. v. SFHC, Inc., 917 F.2d 1507, 1517 (10th Cir. 1990).

Testimony about fair market value is routinely admitted in this Circuit. See, e.g.,

Eateries, Inc. v. J.R. Simplot Co., 346 F.3d 1225, 1230 n.2 (10th Cir. 2003); Atlantic Richfield

Co. v. Farm Credit Bank of Wichita, 226 F.3d 1138, 1166-67 (10th Cir. 2000); Rhodes v. Amoco

Oil Co., 143 F.3d 1369, 1373 (10th Cir. 1998). The government does not cite-and we were unable to find-a single case in this Circuit even suggesting that expert testimony is inappropriate where "fair market value" is at issue. And at least one other anti-kickback case has expressly permitted expert testimony about fair market value. See United States ex rel.

Goodstein v. McLaren Regional Medical Center, 202 F. Supp. 2d 671 (E.D. Mich. 2002) (in civil Anti-Kickback Statute case, court permitted four experts to testify about whether defendants had met the "fair market value" standard as it related to the safe harbor for rental property).

In the health care industry, in precisely analogous situations, state and federal courts have allowed this type of testimony where guilt or innocence depends (at least in part) on the meaning

of a key phrase like "fair market value." In United States v. Siddiqi, 959 F.2d 1167, 1171 (2d Cir. 1992), for example, the defendant was convicted for making a false Medicare claim based on his use of a certain billing code for chemotherapy. The trial court properly allowed "expert and lay testimony that there was widespread confusion regarding the proper billing code for the professional component of chemotherapy'' and that this code was the "'standard practice' at the

times charged in the indictment." Id. at 1171.

In United States v. Dino. 919 F.2d 72 (8th Cir. 1990). the Eighth Circuit affirmed the conviction of a pharmacist for reselling samples of prescription drugs. The trial court had permitted defendant to "present[] witnesses who claimed that selling sample drugs was a wide­ spread practice in the pharmacy business until 1988" because "[t]hat was when Congress passed an amendment to the Federal Food. Drug. and Cosmetic Act of 1970 prohibiting the sale of drug

samples." Id. at 74.

In New Jersey v. Greco. 148 A.2d 164. 168 (N.J. 1959). the New Jersey Supreme Court reversed the defendant's conviction for health insurance fraud because the proof of scienter was insufficient based in large part on the testimony of three local doctors about the commonly­ understood meaning of the phrase "resident physician."

Here, the testimony to be offered by Mr. Murphy and Dr. Ward is relevant because it directly relates to several important "facts in issue." This testimony will aid the jury in its determination of whether the defendants possessed the required mental state. As a threshold matter. the government must show that the defendants specifically intended to offer remuneration. The defendants are entitled to show that, as they understood it. there is no remuneration where a lab merely discounts to the prices prevailing in the market. And. in this regard, the defendants are entitled to offer expert testimony that this understanding comports with the definition of fair market value used in the health-care field and in business generally.

With respect to the issue of ''remuneration," the government argues that even if the defendants had offered "full list price" for the tests. this would be enough to convict them. Gov't Mot. at 9. But this ignores that there are at least two distinct elements to a conspiracy to violate the Anti-Kickback Statute. The government must show that the defendants knowingly and willfully conspired to offer remuneration and that they knowingly and willfully conspired to

###### induce Medicare referrals. If the defendants offered full list price, there could not possibly be any remuneration.

This Court has already recognized the significance of the fair market value standard in assessing the legality of discounts. "when a laboratory offers or renders services to a health care provider not paid for at fair market value, it violates or may violate the anti-kickback statute." 12/28/04 Order Denying Mot. to Strike Special Pricing Allegations at 5.1 This is the same standard promulgated in the 1994 Fraud Alert and the 1998 Compliance Plan. Its logic is straightforward. If UroCor merely met its competitors' prices, it was not offering the doctors "anything of value" that was not already provided by a competitive marketplace. Thus, there is no remuneration.

Moreover, as this Court has held, the government must prove that the defendants "knowingly and willfully" conspired to offer remuneration to induce Medicare referrals, and to act willfully, the defendants must have "specifically intend[ed] to do the acts or engage in the

course of conduct that the laws proscribe." 5/5/06 James Hrg. Order at 16. fu addition, the defendants must have had the "bad purpose either to disobey or disregard the law" and "specifically intend[ed] to do something the law forbids, purposely intending to violate the law."

McClatchey. 217 F.3d at 829. The government must show that the defendants acted ''with the knowledge that [their] conduct was unlawful." Bryan v. United States, 524 U.S. 184, 193 (1998). It is a long-standing rule in this Circuit that if willfulness or intent is an element of the offense, Mr. Dimitroff and Mr. Hagstrom must be given wide latitude to introduce evidence to

1 Indeed, in its earlier brief, the government suggested that the standard is fair market value. See Gov't Consolidated Resp. to Def's. Mot. to Dismiss and/or Strike Allegations Relating to Special Pricing, filed 10/29/04 at 12 (''The clear message is that when a discowited price *falls below fair market value,* the government can infer" that it implicates the Anti-Kickback Statute) (emphasis added).

prove that they lacked the requisite intent. Petersen v. \_United States, 268 F.2d 87, 89 (10th Cir.

1959); Miller v. United States, 120 F.2d 968, 970 (10th Cir. 1941). ·

These two experts' testimony will assist the jury's determination of whether Mr. Dimitroff and Mr. Hagstrom "purposely intend[ed] to violate the law." Evidence of record establishes that the defendants were of the view that the test for whether discounts were illegal was the fair market value test. The defendants should be permitted to introduce evidence that this belief was both sincerely held and reasonable. The sincerity and reasonableness of this

belief can be shown, in part, by the fact that the government itself, in both 1994 and 1998, issued pronouncements that said that as long as labs charged "fair market value" for. tests, the statute was not implicated. These pronouncements are also relevant because they show that every other lab offered deep discounts; the widespread nature of this practice makes their belief in the legality of the practice more reasonable. And, as noted, health care fraud cases frequently permit expert testimony about whether practices were commonplace in the industry or the meaning of

phrases within the industry. Siddiqi, 959 F.2d at 1171; Dino, 919 F.2d at 74; Greco, 148 A.2d at 168.

1. All Of The Government's Arguments About The Inadmissibility Of This Expert Testimony Fail

The government offers several specific arguments as to why Mr. Murphy and Dr. Ward should not be permitted to testify. For the most part, the government's arguments go to the weight of the evidence and not its admissibility. The government will have ample opportunity to cross-examine these experts and can address these issues appropriately in that way.

* 1. Mr. Murphy May Testify About His Opinions From Which A Jury Can Infer That The Defendants Lacked Specific Intent

The government first contends that it "is clear" that the defendants "intend to evoke improper testimony that applies the facts to the law" and that Mr. Murphy will "opin[e] about the law." Gov't Mot. at 10. This is not correct.

Under Rule 702, Mr. Murphy cannot opine about the ultimate question of whether Mr. Dimitroff or Mr. Hagstrom had the specific intent to break the law. The Tenth Circuit, however, does not preclude expert testimony simply because it has some relationship to the defense of lack of intent. Quite the contrary. Experts are routinely and properly permitted to offer opinions "from which a jury could determine whether a defendant had the requisite criminal intent."

United States v. Orr, 68 F.3d 1247, 1252 (10th Cir. 1995). Rule 702 does not prohibit Mr. Murphy from offering testimony that relates to whether Mr. Dimitroff or Mr. Hagstrom had the intent to violate the Anti-Kickback Statute; it only prevents Mr. Murphy from testifying that they

"did or did not possess the requisite mental intent at the time of the crime." Id. For example, in

United States v. Richard, 969 F.2d 849 (10th Cir. 1992), the government's law enforcement expert testified about the various tasks performed by the defendants during a drug conspiracy. The Tenth Circuit rejected the defendants' argument that this testimony impermissibly stated an inference that they had knowingly participated in the offense, explaining that the expert "did not

expressly draw that conclusion or inference for the jury." Id. at 855. In contrast, in United

States v. Wood, 207 F.3d 1222, 1235 (10th Cir. 2000), the Tenth Circuit reversed the conviction of the defendant for murder in part because the government's pathologist expert testified that the manner of death was a "homicide." This testimony "expressly inferred" that the defendant

"acted with specific intent" to kill.. Id.

###### The defense does not seek to elicit testimony from Mr. Murphy that "expressly infers" that Mr. Dimitroff and Mr. Hagstrom lacked the intent to break the law. But the government cannot preclude this valid defense.

* 1. **Mr. Murphy And Dr. Ward Need Not Have Personal Knowledge Of The Alleged Violations**

The government next argues that Mr. Murphy and Dr. Ward may not testify because they did not have ''personal knowledge" of the discounting program and because they did not "act[] as advisors to the defendants at the time of the commission of the alleged violations." Gov't Mot. at 4 (citing Fed. R. Evid. 602). This proposition is directly contradicted by Rule 602 (which contains a carve-out for experts) and by Rule 703, which makes clear that experts need not rely on admissible evidence in forming their opinions. In fact, if the government's standard is correct, then its own experts must be excluded, as neither of the government's proposed experts had ''personal knowledge" of the events that are alleged in Count 2 nor were they "advisors to the defendants at the time of the alleged violations." Mr. Murphy and Dr. Ward have "personal knowledge" of the meaning of "fair market value" in the competitive economic marketplace in

this country and the other issues about which they intend to testify. This is enough. Daubert v.

Merrell Dow Pharms.• Inc., 509 U.S. 579, 592 (1993) (holding that "an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or

observation."); Smith v. Ingersoll-Rand Co., 214 F.3d 1235, 1244 (10th Cir. 2000) (admitting testimony even though experts did not have experience with the particular milling machine at issue because "firsthand knowledge is not requisite to the admissibility of expert opinion").

* 1. **The Proposed Testimony Of Mr. Murphy And Dr. Ward Is Relevant To The Defense**

The government advances several arguments as to why this testimony is irrelevant to the case. All should be rejected.

##### The Meaning Of "Fair Market Value" Is Relevant To Whether The Discounts Offered Were Illegal Remuneration

The government's main argument is that testimony about fair market value is completely irrelevant to this case. As addressed more fully above, testimony about the meaning of fair market value is relevant to the elements of remuneration and specific intent. In making this argument, however, we wish to address a few specific arguments made by the government.

First, the government contends that the 1994 Fraud Alert offers the definition of "fair market value" relevant to this case.2 The expert testimony will cover that definition, which has two parts. First, the price charged must be "fair market value" (defined as "value for general commercial purposes"). Second, this value cannot be "adjusted to include the additional value" the parties may have attributed to Medicare referrals. It is the government's burden to prove

*both* parts of this definition. Goodstein, 202 F. Supp. 2d at 686-87 (conducting separate analyses of whether the purchase price was "fair market value" and whether this price was influenced by Medicare referrals). The investigating FBI agent in this case, Agent Markey, has already

testified that the government has no evidence of any "adjustment" for Medicare referrals. James Hrg. Tr. 182: 7-9. The only remaining issue for the jury is whether the discounts were below fair market value, an issue as to which this expert testimony directly relates.

Second, the government notes that it is "particularly pertinent" that the defense did not provide Mr. Murphy with a copy of the October 1994 Fraud Alert, insinuating that the defense has somehow hidden this fair market value standard from Mr. Murphy. Gov't Mot. at 10-11. The government, in the very next sentence, concedes that the December 1994 Fraud Alert that

2 The 1994 Fraud Alert must be read in conjunction with other, more relevant sources of authority, including the more recent 1998 Compliance Plan. In that pronouncement, the government stated that "[!]laboratories that charge physicians a price below fair market value to induce them to refer their Federal health care program business may be risking anti-kickback enforcement and false claim actions." 63 Fed. Reg. 45081 (Aug. 24, 1998). This tracks the Anti-Kickback Statute language by requiring proof *both* of prices below fair market value and inducement. Remuneration and inducement are separate and distinct elements of the crime.

###### *was* provided to Mr. Murphy "reiterates" the October 1994 Fraud Alert. In fact, the December 1994 Fraud Alert is the official version of the Fraud Alert that was published in the Federal Register and contains-word-for-word-the October 1994 Fraud Alert including the fair market value standard that is relied upon by the government. Indeed, even if the defense had "hidden" the October 1994 Fraud Alert from Mr. Murphy, this would be a subject for cross examination, not a reason to preclude his testimony.

Third, the government points to two sources to argue that expert testimony about fair market value is irrelevant in an anti-kickback case: a footnote in a district court case out of

Illinois, United States ex rel. Obert-Hong v. Advocate Health Care, 211 F. Supp. 2d 1045 (N.D. Ill. 2002), and a 1992 letter from the OIG to the Internal Revenue Service. These two sources

are inapposite here. First, neither Obert-Hong nor the IRS letter relates to discounting. Both concern the acquisition of a physician practice by a hospital. Second, these sources do not address situations where, as here, the government had already admitted that there is no adjustment in price based on Medicare referrals. Here, of course, the government bears the burden of showing that the discounts at issue were below fair market value. Third, both relate to the *safe harbor* for these practices. Safe harbors are affirmative defenses and the burden rests on

the defendant to prove compliance with them. Finally, in Obert-Hong. the court did not say that fair market value was irrelevant. Rather, in the remainder of the footnote that is *not* quoted by the government, the court states that "[t]here is, nonetheless, some value that would be considered fair and would comply with the statute." 211 F. Supp. 2d at 1049 n.2. Even these cases concede that fair market value has a place in the calculation.

If the government believes that the definition of "fair market value" differs in the health care context, it is certainly permitted to cross examine the witnesses on that point.

* + 1. **The "Fair Market Value" Standard Is Not Easily Understandable By A Lay Person**

The government argues that no expert testimony about the fair market value standard is necessary because "[i]t is easy for a lay person to read and understand." Gov't Mot. at 11. The concept of fair market value, however, is not one that is known by and understood by all lay persons. That is exactly why the courts in this Circuit have routinely allowed testimony about

fair market value in the past. See, supra cases cited at p. 3. ''Fair market value" is a complex economic term of art. When the Tenth Circuit excludes experts where "it is easy for a lay person to read and understand" (a rare occurrence), it is because the topic is something that it is safe to

assume every juror has experience with in his daily life. See. e.g., United State v. Fredette, 315 F.3d 1235, 1240 (10th Cir. 2003) (expert testimony about how rebate program worked was

properly excluded because most jurors "were familiar with rebate programs"); Getter v. Wal­

Mart Stores. Inc., 66 F.3d 1119, 1124 (10th Cir. 1995) (expert testimony in a slip-and-fall case was properly excluded because the "normal life experiences and qualifications of the jury would permit it to draw its own conclusions concerning the safety of the floor, based upon the lay testimony of eyewitnesses."). Mr. Murphy and Dr. Ward are not going to testify about coupons or slippery floors. They will testify about the meaning of a specific economic phrase that is vitally important to the jury's deliberations.

##### This Testimony Is Not Precluded By The Court's Pre-Trial Ruling On Entrapment By Estoppel Ruling

The government argues that the defendants cannot present expert testimony about the government's own pronouncements because the court denied their motion to strike which included an "entrapment by estoppel" argument. The United States Supreme Court has held that it is error to refuse to permit a criminal defendant "to introduce evidence in support of its claim that it had been affirmatively misled into believing that the [conduct] was not a violation of the

statute." United States v. Pennsylvania Indus. Chem. Corp., 411 U.S. 655, 675 (1973). PICCO noted that ''traditional notions of fairness inherent in our system of criminal justice" permit a criminal defendant to introduce evidence showing that government pronouncements "deprived" the defendant "of fair warning as to what conduct the Government intended to make illegal." Id. at 674. As a procedural matter, the Court's ruling was at an early stage of this case, long before the government had produced all of the evidence. It does not preclude the defendants from offering such a defense at trial.

In addition, the concept of "fair market value" is also relevant to other defenses, including the "safe harbors" in the Anti-Kickback Statute. The defendants cannot be precluded from seeking evidence that relates to their defenses.

* 1. **Testimony About Relevant Government Pronouncements Is Permissible**

The government's final complaint is that Mr. Murphy will testify that the government's pronouncements were "ambiguous and condoned defendants' criminal behavior." Gov't Mot. at

12. Once again, this is an argument that goes to the weight and not the admissibility of the testimony.3 The government is free to cross examine him about whether the pronouncements are ambiguous. But it cannot seek to prevent the defendants from introducing evidence that supports their defense of lack of intent. Indeed, in PICCO, the Supreme Court specifically reversed because the trial court should have permitted the defendant to introduce evidence of the government's regulations and pronouncements concerning the conduct at issue. 411 U.S. at 674. Pronouncements by the OIG certainly fit this category of authoritative pronouncements. See

Zimmer, Inc. v. Nu Tech Medical, Inc., 54 F. Supp. 2d 850 (N.D. Ind. 1999) (stating that OIG

3 The hearsay rules are also no barrier to the introduction of these pronouncements and studies as they specifically exclude "factual findings resulting from an investigation made pursuant to authority granted by law." Fed. R. Evid. 803(8).

advisory opinions, "as an agency interpretation of the statute, [are] entitled to deference as an 'informed judgment to which courts and litigants may properly resort for guidance"').

The government cites United States v. Zang, 703 F.2d 1186 (10th Cir. 1982), for the proposition that any evidence that federal regulations are ambiguous is inadmissible. Gov't Mot. at 13. Zang. however, makes no such holding. In that case, the defendants sought to introduce evidence that certain pricing regulations were "confusing and vague." 703 F.2d at 1195. The district court properly excluded them because the defendants were not accused of violating those regulations. Here, of course, Mr. Dimitroff and Mr. Hagstrom are accused of violating the Anti­ Kickback Statute and the government's pronouncements about that statute are certainly relevant.

CONCLUSION

The government cannot preclude the testimony of Mr. Murphy and Dr. Ward because it does not like what they will say. And it will have the opportunity to challenge this testimony when these experts are on the stand. Their testimony will directly relate to the valid defenses of Mr. Dimitroff and Mr. Hagstrom oflack of intent and the government's failure to prove that they

conspired to offer illegal remuneration. The government's motion should be denied.

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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that on May 25, 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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# EXHIBIT A .....

##### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

###### UNITED STATES OF AMERICA,

Plaintiff,

**vs.**

WILLIAM A. HAGSTROM, MARK G. DIMITROFF, and MICHAELN.McDONALD

###### Defendants.

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###### ) Case Number: CR 04-120 R

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**RULE 16(b}{l}{C) SUMMARY OF TESTIMONY**

**OF DEFENSE EXPERT WITNESS STAN MURPHY, CPA, CIRA**

###### Pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C), Defendant Mark Dimitroff provides a summary of the testimony of Stanley Murphy, an expert witness expected to be called at trial.1

1. **Summary of Stan Murphy's Opinions:** Based on the documents and information reviewed and analyzed, his experience and research, Mr. Murphy anticipates testifying related to the following topics in the above matter:
   1. The Government's lmowledge of and attitude towards the common practice by clinical laboratories of discounting prices on lab tests for certain non-Medicare patients, including its lmowledge of pricing below cost.
   2. The standards articulated by the Government with respect to discounting lab tests for certain non-Medicare patients by clinical laboratories, including the "Fair Market Value" standard.
   3. The definition of "Fair Market Value" in a competitive marketplace both as articulated by the Government and as defined in economic, accounting and valuation treatises, and its relationship to "Cost."

1 This is not an attestation report as defined by the American Institute of Certified Public Accountants ("AICPA") and OW' engagement is not an attest engagement as defined by the AICPA. This report is to be used solely in this litigation and is not to be used for any purpose unrelated to this litigation without Navigant Consulting's prior approval.

* 1. The common practices of a competitive industry (such as the lab industry) of selling goods and services at prices below "Cost/' including an explanation of the business reasons for such practices.

1. **Bases and Reasons for Stan Murphy's Opinion:** Mr. Murphy's staff, working pursuant to his direction, and Mr. Murphy have reviewed pleadings, certain documents produced by the govemment, relevant statutes and regulations, industry "white-papers," industry journals and periodicals, business articles and commentaries and economic, marketing, valuation and accounting treatises and pronouncements, as listed in Exhibit B. They have also reviewed several govemment pronouncements, opinions and reports concerning discounting in the laboratory industry.

This research and analysis and the findings and opinions derived from them were based upon information provided to Mr. Murphy relating to this action in conjunction with his industry knowledge and experience in accounting and related :financial matters.

1. **Stan Murphy's Qualifications:** Mr. Murphy is a Managing Director in the Litigation and Investigations practice at Navigant Consulting, Inc.'s Tampa, Florida office. Navigant Consulting provides a variety of accounting, financial analyses and related services. Prior to joining Navigant in July 2001, he was a partner in PricewaterhouseCoopers, LLP's Dispute Analysis and Investigation practice. He was one of five national partners responsible for coordinating PwC's national health care fraud and abuse services. In addition, he was co-chair of PwC's task force responsible for the firm's Corporate Integrity Agreement services. He has worked with counsel for providers in conducting numerous health care fraud and abuse investigations, conducted investigations in connection with the Office of Inspector General's Voltmtary Disclosure protocol, and conducted numerous other forensic accounting and fraud

investigations. Mr. Murphy graduated from Florida State University in 1977 with a Bachelor of

Science in Accounting. He has been a Certified Public Accountant since 1978, including 13 years of "Big 5" auditing and accounting experience where he provided accounting, auditing, financial and special client services in industries including, but not limited to, the healthcare industry. He has been a Certified Insolvency Restructuring Advisor since 2001 and has passed

the written examination portion of the Certified Valuation Analyst certification. During the last fifteen years, a substantial portion of Mr. Murphy's professional time has been spent perfonning accounting and economic analyses, investigations, valuations and business damages analyses for

entities in a variety of industries, including health care. Please see Exhibit A for his current curriculum vitae.

Respectfully submitted,

HAROLD D. MURRY, JR. MICHAEL J. BARTA SARA E. KROPF JENN1FER E. OWENS **BAKER BOTTS L.L.P.**

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EXHIBIT A

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Education **and Professional**

* **B.S. degree** inaccounting alFlorida Stale University
* Certified Public Accountant In the State of Florida
* Certified Insolvency and Reslruclurlng Advisor

Professional Associations

* Member, Association ofInsolvency and Restructuring Advisors
* Member, American Institute of Certified Public Accountants
* Member, Florida Institute of Certified Public Accountants
* Affiliate Member, American Bar Association
* Member, American Bankruptcy Institute

Stan Murphy, CPA, CIRA

Mr. Murphy is a Managing Director in Navigant Consulting's Tampa office. He has over 28 years of experience that includes 14 years experience in financial analyses, and forensic accounting investigations and analyses. Mr. Murphy is a Certified Public Accountant and a Certified Insolvency and Restructuring Advisor (CIRA). Mr. Murphy has successfully passed the written examination portion of the Certified Valuation Analysts designation.

Prior to joining Navigant Consulting, Mr. Murphy was a partner with PricewaterhouseCoopers, where his responsibilities included, among others, serving as one of 5 national partners with functional responsibility for the firm's health care fraud and abuse services and serving as Co-Chair of the firm's task force responsible for coorqination of all corporate integrity agreement services. His prior experience also includes 13 years of "Big 5" auditing and accounting experience providing accounting, auditing, financial and special services to manufacturing, health care, construction, mining, real estate, insurance, retail, professional services, public utility and transportation clients. Some of these clients included entities subject to regulatory oversight.

Since 1990, he has spent a substantial portion of his professional hours on forensic accounting, economic analyses, business damages matters, and financial consulting and accounting services in troubled company workouts and Chapter 11 reorganizations.

##### Professional Experience

**Investigations**

He has performed a forensic accounting/fraud investigation in connection with a civil fraud claim against an investment manager. This investigation included tracing the flow of funds through numerous related companies used or controlled by the investment manager to assess whether the Plaintiff's investment funds were utilized by the Defendant for his personal benefit. The investigation also involved comparing certain representations made by the Defendant related to the Plaintiffs investment to the financial related documents. In addition, the investigation included comparing the investigation findings to "indicia of fraud" per the AICPA and to the badges of fraud per state statutes.

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At the request of the Audit Committee for a public equipment distributor and in response to an informal SEC inquiry, Mr. Murphy conducted an accounting investigation to assess allegations of improper revenue recognition practices. The investigation required the review and analysis of financial records, certain sales transactions, and interviews of management at various regional offices of the company.

He has calculated the incremental costs incurred by a medical equipment manufacturer resulting from an interruption in the business of a sterilization service provider, and prepared an analysis relating to a subsequent claim by the service provider for breach of contract.

At the request of the Audit Committee for a public corporation, conducted an investigation into allegations of fraud and conflict of interest regarding a former company executive. The investigation required .the review and analysis of financial records, interviews of management and vendors, background checks, asset searches and assessment of the potential scope of the alleged fraudulent activities. We also developed and critiqued proposed related recommendations to address improvements in the entities' internal control systems and policies and procedures.

He has assisted an insurance company defendant in a governmental investigation of its billing practices in its high risk Medicare HMO product, covering alleged improper billing of monthly premiums for dual eligible Medicare beneficiaries.

He has assisted a physician billing service company defendant and other physician group defendants in whistle blower actions. Services included historical analyses of alleged improprieties, reviews of system configurations and software, and other responses to the allegations including working with counsel in developing and evaluating possible defense strategies.

He has assisted a home health agency defendant in a governmental agencies investigation covering alleged improper billings for home health services, alleged improper expenses included in the Medicare cost reports, alleged improper cost shifting, and alleged improper related party transactions.

He has assisted a health care provider in a governmental agency investigation covering alleged improper billings by an entity under contract with a large multi-hospital chain. Services included valuation analyses of various components of the services provided to the multi-hospital chain.

He has assisted a health care provider in an internal investigation performed under the OIG's Voluntary Disclosure guidelines covering alleged improper billings for numerous diagnostic tests performed by outside contractors. He worked with the providers' outside counsel in conducting the investigation, interacting with the OIG and other governmental agencies on the scope and progress of the investigation, and assisted in drafting the Voluntary Disclosure report.

He has assisted a health care provider in a governmental agency investigation covering alleged improper billings for radiology related physician services. He worked with the provider's outside counsel in conducting the investigation, determining the actual amount of the overpayment, testing the reasonableness of the governmental agency's alleged overpayment calculation methodology, negotiating with the OIG and other governmental agencies on the actual amount of the overpayment and the terms of the settlement agreement.

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Forensic Accounting

He has provided expert services in an accounting malpractice matter regarding misleading financial statements prepared for an investment firm, which had made fraudulent representations to attract investors. The engagement required analyses of financial records of the investment firm, review of the work papers of the accounting firms that compiled the financial statements, evaluation of compliance with appropriate professional standards and related expert witness testimony regarding the accounting firm's lack of compliance with these standards. He served as consulting expert in an accounting malpractice action against a Big 4 firm that had been the outside auditor for a tertiary care hospital and related foundation. Our assistance to outside counsel included: (1) evaluating the defendants' audit workpapers for compliance with generally accepted auditing standards, (2) assessing the audited financial statements' compliance with generally accepted accounting principles, (3) assisting in identifying documents for inclusion in discovery requests, (4) assisting in identifying items to be included in responses to certain discovery requests, (5) assisting in drafting outlines for defendant depositions, (6) reconciling defendant's audit workpapers to audited financial statements, (7) evaluating certain internal hospital and outside consultant documents for potential consideration in the litigation, (8) identifying particular professional standards that the defendant failed to meet in their audits (9) researching various changes in the professional standards during the time period that defendant served as the hospital's outside auditor, (10) researching separate professional standards for the Single Audits and (11) assisting in evaluating potential damages approaches available to the hospital.

He has performed a forensic accounting investigation on behalf of a telecommunications provider in a matter involving fraudulent transfers made by an entity to various related parties, and assessed how the transfers negatively impacted the entity's solvency. He also has prepared a business valuation of the entity immediately prior to termination of telecommunication services to the entity.

He has performed numerous forensic accounting, auditing, and disclosure investigations in several industries including among others, health care, real estate development, construction, mortgage banking, and manufacturing.

He has prepared analyses of and testified in state court on the completeness and accuracy of accounting disclosures in a municipal entity's financial statements related to bond debt for a sports complex facility.

He has evaluated the financial reporting methods utilized by a pipeline owner/operator under a long-term lease and the propriety of the related cost passthroughs to the lessee.

He has performed forensic analyses and evaluation of potential or existing accounting malpractice claims in several industries including, among others, investment funds, technology outsourcing, real estate development, management and construction, integrated health care delivery, and mortgage banking.

He has worked with counsel for a special committee of the Board of Directors in performing a forensic accounting investigation of a public company in connection with a shareholder derivative action alleging reckless and gross mismanagement through the issuance of false and misleading financial statements that did not comply with Generally Accepted Accounting Principles and required numerous accounting restatements.

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He has assisted outside counsel for the audit committee of public companies in their independent investigation of certain alleged improperly accounted for transactions in response to formal or informal regulatory inqumes. In addition, he has provided consulting assistance including evaluations/recommendations to improve accounting/operating systems internal control effectiveness.

**Agribusiness Claims**

He has calculated lost profits, including infringement sales and business damages arising from a breach of contract of a settlement agreement of a previous intellectual property dispute involving seed for a seedless fruit product. His analyses included .unong others, analyzing the historical market trends for the seed product, analyzing the agricultural production industry cost, sales, and production method trends for the seedless fruit production, evaluating the defendants' marketing, sales, financial and capita] structure and comparing the defendants' structure in these areas to their competitors. His analyses in these areas also incorporated his knowledge and experience in the factors agricultural producers evaluate and analyze in their seed selection decision processes and how seed production entities market and sell their products.

He has calculated lost profits and business damages allegedly arising from use of numerous agricultural products (seeds, plants, fungicides, herbicides, seed treatment, plastic mulch and pesticides), and assisted legal counsel in structuring discovery requests, identified potential documents for discovery, critically reviewed the opposing parties expert witnesses' reports and calculations, provided counsel with suggestions for fruitful areas to explore during deposition and cross examination and provided related expert witness testimony. Many of these engagements included analyzing market and production cost trends for the agricultural product and in depth financial analyses of the producer's operations during, prior and subsequent to the claim periods. These cases have included, among others; ornamentals, foliage, field and greenhouse crops, fruits, vegetables, plants, trees, flowers, and other nursery and row crop products.

**Intellectual Property**

He assessed damages to a corporation due to the breach of a settlement agreement that hinged on the trade secrets of watermelon seed formulae development and seed production. The analysis was based on the valuation of the settlement agreement and calculation of damages in the underlying trademark infringement suit, including apportionment of the lost sales factors other than the infringement. He also developed the rescission theory in order to calculate the true damage arising from the breach of settlement agreement.

He has calculated damages including the plaintiff's lost profits and the defendant's actual profits allegedly arising from a breach of contract of an agreement for a new business in the durable medical equipment industry. He has also critiqued the plaintiffs' experts' damage calculations including determining the proper methodology for calculating the plaintiff's alleged trade secret damages, if any, in this matter. In addition, he analyzed the types of financial records used by the two parties for this \_business and compared them to the types of accounting and financial records that a partnership or joint venture would have prepared for this business.

He has calculated alleged damages incurred by certain central Florida ·locations of an international restaurant chain arising from alleged trade dress infringement, alleged unfair competition and alleged

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trademark dilution by a competing restaurant chain. His analyses included among others, assessing both the plaintiff's actual losses and the defendant's gains attributable to the alleged trade dress infringement and critiquing the opposing damages experts' findings.

He assessed damages arising from alleged false advertising, product disparagement, unfair competition and tortuous interference for a corporation that specialized in the recycling and refurbishment of used golf balls.

He has calculated lost profits in the context of a copyright infringement and misappropriation of trade secrets matter, considering the nuances of lost profits analyses particular to intellectual property damages. The trade secrets were software code, file structures and logic and other proprietary configurations of the software.

He has prepared financial and accounting analyses in a matter involving damages in connection with an intellectual property dispute involving several software patents in the telecommunications industry.

He developed the strategy for a damage analysis of a theft of trade secrets case in a consultant brokerage specializing in software implementations using valuation and assessing the extent of diversion of the revenues.

He calculated lost profits of a new franchise operation based on the loss of trademark and its impact on the franchise's future development. . ·

He has prepared financial analyses involving "royalty audits" under licensee agreements for computer software products.

He has calculated damages related to alleged copyright infringement of house floor plans.

Employment Discrimination

He assessed the lost earnings capacity and related damages allegedly arising from a hospital's retaliatory, wrongful termination of a management employee on two separate matters.

He analyzed and assessed for reasonableness and accuracy the opposing expert's calculation of damages in a racial discrimination class action filed against a multi state retailer.

He has calculated lost earnings capacity and damages allegedly arising from an outdoor media firm's wrongful termination of an employee.

He has calculated lost profits and business damages allegedly arising from a hospital's denial of physicians' admitting privileges on two separate matters.

He has calculated the lost earnings capacity, on two separate matters, allegedly arising from two physicians' wrongful termination from a surgical residency program.

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He has calculated individual plaintiffs' lost earnings capacity allegedly arising from mental disorders caused by alleged acts of racial discrimination and the individuals' termination from a college basketball program on approximately ten separate cases.

He has calculated lost earnings capacity and related damages allegedly arising from a hospital's wrongful termination of a management employee.

**Partnership/Shareholder Disputes**

He has prepared damage analyses in a partnership distribution matter. The analyses included among others, reconstructing the partner capital accounts to properly include all partners, adjusting the partnership capital accounts to reflect assets at market value, and recalculating the net amounts due to or from each partner upon dissolution of the partnership.

He has calculated lost profits, damages and a business valuation in a shareholder breach of contract/breach of fiduciary duty, trademark and corporate dissolution matter in the gaming industry.

Other Damage Analyses

He has analyzed the operating policies and procedures used by a premium finance company during the time period that fraud by an agent of the premium finance company was occurring and went undetected. His analyses also compared the premium finance company's operating procedures to those generally used by the premium finance industry during the time period of the undetected fraud.

He has calculated damages incurred by a large pharmacy benefits management company (PBM) arising from an alleged breach of a multi year contract under which the PBM was to process all of a health insurance client's pharmacy claims submitted by its insured's.

He has analyzed and prepared a response to a governmental regulatory agency's expert report that addressed alleged false and misleading information in Business Plans and Private Placement Memorandum provided to potential investors of a start up company. The engagement included in depth evaluation of the opposing expert's opinions regarding the reasonableness and basis of specific representations by management in the Business Plans and Private Placement Memorandums.

He has analyzed certain transactions between a municipality and a public waste services entity and calculated damages allegedly arising in a break of contract.

He has calculated damages allegedly incurred by estates of individuals related to an alleged defective aircraft part for a professional golfer, a professional athlete manager and two of its employees.

He has prepared a financial analyses and assessment of damages for a telecommunications provider in connection with a claim for failure to deliver stock certificates and the subsequent alleged loss related to a decrease in stock value.

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Hehasprepared analyses of certain damage issues for a municipality defendant in litigation alleging improper termination of the general contractor under a construction contract.

He has prepared analyses of lost profits/damages for a plaintiff manufacturer in a product liability matter.

He has prepared analyses of the reasonableness of due diligence procedures performed by an acquirer in litigation arising from termination of a physician practice management services contract.

He has prepared a lost profits/damages analysis for a large national health care provider defendant in litigation alleging breech of an alleged national exclusive contract for electronic submission of claims to thud party payers over a five-year period.

He has prepared insolvency/damages analysis for a Physician Practice Management debtor in connection with an adversary action by several physician practice entities alleging failure to perform under the management agreements with the debtor.

He has prepared financial analyses of lost profits/business damages for parties to litigation related to contract termination arising from alleged environmental contamination resulting in inability to utilize a manufacturing facility, revocation of a building permit for an upscale waterfront recreational facility, construction contract termination by a general contractor for building residential apartments, and contamination of a convenience store gasoline storage tanks.

He has prepared financial analyses of lost profits/business damages for a plaintiff related to the alleged failure to perform under a contract for the processing of health claims including lost cash flow, direct costs, lost customers, and lost goodwill.

He has prepared financial analyses of fidelity bond claims related to alleged employee theft for an insurance carrier, provided financial consulting to a financial services company related to alleged fraudulent acts by a used car dealer and employees of the financial services company, alleged fraudulent acts by management personnel of a distribution company and investigated alleged fraudulent medical billing practices.

He has calculated lost profits and business damages arising from construction defects at a transitional and long-term care health facility.

Cha,pter lVReorganization Efforts and Business Valuation

He has provided financial consulting, accounting and litigation services to attorneys, debtors, secured and unsecured creditors in troubled company workouts and Chapter 11 reorganizations. These engagements include valuation analyses of the debtor, detailed staffing reviews, monitoring of debtor operations and cash flows, insolvency analyses, identification and investigation of potential preference and avoidance transactions and fraudulent transfer analyses, development of proposed reorganization plans, feasibility analysis of proposed reorganization plans, review of liquidation values and preparing confirmation and post confirmation balance sheets, calculation of cash requirements as of and following confirmation, detail testing of proofs of claims, preparing financial projections, valuation of bond and other credit collateral, evaluation of financial effects of transactions between parent and subsidiary and other related parties on

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secured and unsecured claims and forensic accoW1ting analyses. These engagements have included debtors and borrowers in medical device and other manufacturing, retail, hospitals, real estate development, construction and management, wholesale, mortgage banking, agribusiness, physician practices, distribution and leasing, and other industries.

He has assisted a wholesale food distributor co-operative in negotiating with their principal lender and seeking replacement lenders for accounts receivable, inventory and fixed asset backed loans. Assistance included preparing business plan, viability assessment, operations review, analyzing coverage on current loans, developing alternative proposals to current bank and proposing alternative financing terms to prospective lenders.

He has prepared business valuation analyses of entities in industries including, among others, commercial real estate development, management and ownership, information systems consulting and implementation, transportation technology, hospitals, physician practices and the gaming industry.

He has assisted a secured lender in their evaluation and monitoring of a medical device manufacturer borrower credit. These services included, among others, a detailed analysis of the company's market positioning, an evaluation of the company's financial reporting and accounting systems, profitability analysis by product, debt capacity analyses, budget and forecast system process analyses, comparison of the company's product pricing and sales systems to their largest competitors, cash flow projections, industry assessments, trends business plan evaluation, and an overall evaluation of the company's short and long term financial stability.

He was appointed as the Postconfirmation Creditor Representative of a reorganized entity with the responsibility of identifying any recoverable preference payments. The assessment was performed through the analysis of the transactions entered into by the company, an analysis of the company's distributions, as well as an analysis of the existing claims register.

He has performed analyses of numerous transactions between two related broker dealers and certain related individuals covering several years and including numerous alleged fraudulent transactions. He also assessed the financial condition of the entities and determined whether the broker dealers were insolvent at the time that the alleged fraudulent transactions occurred.

**Pre-and Post-Acquisition Disputes**

He has performed pre-acquisition due diligence and/or post-acquisition analysis/investigations for clients in the home health care, integrated health care delivery system, chemical pipeline, manufacturing, personnel services, contract services, chemical manufacturing, and building products manufacturing industries. Some of these engagements have included assessing the operations of the target as to market share, trends in the market, potential excess assets, standing with creditors and vendors, adequacy of accounting and financial records and systems, and skill and experience level of accounting and financial management and staff. He has assisted the client and/or their counsel, on some of these engagements, in analyzing proposed structure and terms of the transaction agreements and the structure of post closing adjustments to purchase prices. Some of these include engagements post acquisition disputes where Mr. Murphy has provided expert testimony in deposition and arbitration.

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Hehas prepared financial and accounting analyses in a post-acquisition dispute involving a health care software franchise. The issues addressed by Mr. Murphy included, among others, (1) the impact on the final closing date balance sheet of numerous intercompany balances and transactions in process at the time of sale; (2) alleged accounting fraud and misrepresentation by the seller; (3) alleged inconsistencies in accounting policies between the seller financial statements prior to the sale and the closing date balance sheet, and final closing date balance sheet; (4) appropriateness of numerous accruals included on the final closing date balance sheet for items not yet invoiced for and the subsequent period to be used to determine the liabilities for such accruals on the final closing date balance sheet; and (5) analyses of accounting policy consistency issues related to item 4.

He.has prepared financial and accounting analyses in a post acquisition dispute involving an integrated building products manufacturer. The issues addressed by Mr. Murphy in the matter included, among others, (1) impact on the closing date and final closing date balance sheet of various intercompany balances; (2) closing date balance sheet accounting aµjustments required by the sales agreement terms; (3) inconsistencies of accounting policies between the seller's financial statements prior to the sale and subsequent to the sale; (4) appropriateness of numerous accruals included in the final closing date balance sheet for items not yet invoiced and the subsequent period to be used to determine the liabilities for such accruals on the final closing date balance sheet; (5) the impact on the final closing date balance sheet of numerous intercompany transactions in process at the time of sale; (6) the appropriateness of the seller's proposed adjustments to the closing date balance sheet; and (7) the impact of accounting and financial statements related terms in the sales agreement.

He has prepared financial and accounting analyses in a post acquisition litigation dispute involving an entity with numerous federal and state government service contracts. The issues in the dispute addressed by Mr. Murphy in this matter included, among others, (1) allegations of accounting fraud and misrepresentation by the seller related to the seller's financial statements, (2) the calculation of numerous post closing adjusbnents, (3) alleged post closing date accounting and other frauds by the seller, (4) alleged violation of the non-compete agreements, (5) interpretations of numerous accounting and financial statement terms in the sale agreements; and (6) the impact of numerous accounts payable, accounts receivable and other transactions occurring near the effective date on the final purchase price adjusbnents.

He has prepared financial and accounting analyses in a post acquisition litigation dispute in the lawn products manufacturing and wholesale industry. The issues addressed *by* Mr. Murphy in this dispute matter included, among others, (1) the settlement of all intercompany balance existing at the balance sheet effective date, (2) calculation of post closing adjustments required by different sections of the sales agreements, (3) calculation of credits against the purchase price required by different sales agreement terms, {4) reconciliation of final closing date balance sheet to initial preliminary balance sheet used for the initial pricing; and (5) interpretations of various accounting and financial statements related terms used in the sales agreements.

He has prepared financial and accounting analyses in a post acquisition dispute involving an employee leasing company. The issues addressed by Mr. Murphy included, among other; (1) the calculation of the amounts payable under the earn out provisions of the sales agreement; (2) analysis of adjustments to the post closing financial statements by the seller in the proposed calculation of the earn out payable amount; and (3) analyses of the inconsistency of accounting policies utilized in the post closing earn out calculation

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and the financial statements referenced in the sales agreement.

He has prepared financial and accounting analyses in a post acquisition dispute matter in the real estate development and construction industry. The issues in dispute addressed by Mr. Murphy in this matter included, among others, (1) calculation of numerous post closing adjustments; (2) comparison of accounting policies used in seller's financial statements prior to the sale closing date balance sheet and the final closing date balance sheet's to generally accepted accounting principles, (3) alleged inconsistent application of accounting policies prior to and subsequent to the closing date; and (4) the net impact on the final purchase price of various transaction s in process in the sale date.

He has prepared business valuation analyses of entities in industries including, among others, commercial real estate development, management and ownership, information systems consulting and implementation, transportation technology, hospitals, physician practices and outdoor advertising.

He has prepared accounting and financial analyses on post-acquisition disputes involving the sale of an integrated health care delivery system, the sale of a lawn care products manufacturer, the sale of a physician billing software distributor, the sale of a personnel agency, the sale of service contract entity, the sale· of physician practices and the sale of a professional sport franchise. All of these engagements included extensive analyses of accounting procedures used by the entity prior to and subsequent to the sale and analyses of the accounting related disclosures in the financial statements and sales agreements.

Eminent Domain

He has calculated damages in eminent domain matters including a sod farm operation and a large international fertilizer producer/distributor including a critique of the opposing expert's findings considering recent public disclosure by the fertilizer producer/distributor.

Testimony Experiences

He has provided expert testimony in U.S. Bankruptcy, U.S. District and state court cases and he has successfully completed the Florida Circuit Civil Mediation Certification training.

### EXHIBITB



Stanley Murphy Documents Considered

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| --- | --- | --- |
| 1. | Superseding Indictment | None |
| 2. | Defendant Mark Dimitroff's Motion and Brief in Support of Motion to Strike from the Indictment all Allegations Relation to the Special Pricing Program for Failure to State a Criminal Offense | None |
| 3. | Special Pricing Motion Exhibit A - "Client Bill Pricing Policy Rises to Medicare Level" | None |
| 4. | Special Pricing Motion Exhibit B - "Changes a.re Needed in the Way Medicare Pays for Clinical Lab Tests," by DlllIS, OIG | None |
| *5.* | Special Pricing Motion Exhibit C - Plea Agreement, U.S. v. Dra er | None |
| 6. | Special Pricing Motion Exhibit D - Special Price Quote Forms | US0005403-0005404, |
|  |  | 0005407,0005459, |
|  |  | 0005410 |
| 7. | Special Pricing Motion Exhibit E - Non-UroCor Price Lists | US0005412-0005419, US0005531,0005337 |
| 8. | Special Pricing Motion Exhibit F - Special Fraud Alert: Arrangements for the Provision of Clinical Lab Services; *59* FR 65372-01 | None |
| 9. | Special Pricing Motion Exhibit G - "Compliance Program Guidelines for Clinical | None |
|  | Laboratories", 63 Fed. Re . 45,076 |  |
|  |  | None |
| 11. | S ecial Pricing Motion Exhibit I - Memo to file from Bruce Goodman | UR18206-18123 |
| 12. | Special Pricing Motion Exhibit J - "Compliance Issues Clinical Laboratories" by Bruce Goodman | US0006457-0006469 |
| 13. | Letter from Dept. of Health and Human Services Office of Reimbursement Policy re: Inherent reasonableness conce t | BLS0010531-0010532 |
| 14. | 54 FR 3088 - OIG Anti-Kickback Provisions Pro osed Rule | None |
| 15. | ACLA Testimony of the American Clinical Laboratory Association Before the Subcommittee on Health and the Environment - Laborato Pa ent Issues | BLS0010537-0010538 |
| 16. | GAO Report to Congressional Committees 91-59 Medicare Laboratory Fee Schedules - Payments for Clinical Laboratory Services Are Too High | None |
| 17. | Consumer Federation of America - A Consumer Perspective on Direct Billing: the Next St in Reformin the Market for Ancill Medical Services | BLS0010539-0010556 |
| 18. | 57 FR 52723 - Safe Harbors for Protecting Health Plans - Interim final rule with re uest for comment | None |
| 19. | 58 FR 49008 - Additional Safe Harbor Provisions Under the OIG Anti-Kickback Statute - Pro osed rule | None |
| 20. | 59 FR 37202-01 - Clarification of the OIG Safe Harbor Anti-Kickback Provisions  - Pro osed rules | None |



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| --- | --- | --- | --- |
| 21. DHSS Follow-up Report to "Changes Are Needed inthe Way Medicare Pays for | | | None |
|  | Clinical Laborato Tests" - A-09-93-00056 | |
| 22. | 61 FR 2122 - Safe Harbors for Protectin Health Plans -Final rule | | None |
| 23. | 62 FR 9435-01 Publication or'the 010 Model Compliance Plan for Clinical Laboratories | | None |
| 24. | OIG Guidance Memo on Provision of Free Goods and Services | | None |
| 25. | OIG Guidance Memo on Free Services Performed by Clinical Laboratories Letter | | None |
| 26. | OIG Adviso inion No. 99-3 | | None |
| 27. | OIG Guidance Memo on Free Services Performed by Clinical Laboratories Letter Discowit Arrangements Between Clinical Laboratories and SNFs | | None |
| 28. | 64 FR 63518-01 Clarification of the Initial OIG Safe Harbor Provisions and Establishment of Additional Safe Harbor Provisions Under the Anti-Kickback Statute - Final rule | | None |
| 29. | OIG Federal Anti-Kickback Law and Regulatory Safe Harbors Fact Sheet | | None |
| 30. | 64 FR 69217 -Solicitation of New Safe Harbors and Special Fraud Alerts -Intent to devel regulations | | None |
| 31. | American Clinical Laboratory Association "White Paper" in Response to OIG Advis inion re: Ph sician Discowitin | | None |
| 32. | OIG Guidance memo on Discowit arrangement involving Ambulance companies and hos itals and skilled nursin Facilities | | None |
| 33. | 65 FR 32060 - Ambulance Restocking Safe Harbor under the Anti-Kickback Statute - Pro osed rule | | None |
| 34. | 66 FR 62979 - Ambulance Replenishing Safe Harbor Under the Anti-Kickback Statute - Final rule | | None |
| 35. | 67 FR 60202 - Safe Harbor Under the Anti-Kickback Statute for Waiver of Beneficiary Coinsurance and Deductible Amounts - Pro osed rule | | None |
| 36. | Special Pricing Quote | MGD0088421, 0088514, 0089129, 0089185, 0089186, 0090075-0090077,  0090187,0090386,0090448,0090557,0016800,0016886,0017014,0017073,  0017144,0015919,0016292,0016341,0016345,0042243-0042245,0042333,  0042939,0042997,0043346,0090233,0088459,0090079,0090242,0090548,  0090567,0016890,0017070-0017071,0015928,0016152,0016253,0016291,  0016340,0042311,0043392,0043063,0088765,0088766-0088768,0089173,  0089156,0089127,0090109,0090185-0090186,0090554,0016920,0042359,  0042279,0016270-0016272,0042309-0042310,0042331,0017012-0017013,  0017085,0017131,015916 0015961-0015962,0016067 | |
|  |  | MGD0016197,0062136-0062140,0062169,0062161-0062168,0042634, 0042787,016691,0061973,0016337,0016295,0016291,0016068,0016066,  0015968,0017070-0017071,0016301,0090252,0061821-0061823,0061817-  0061820,0061382,0043365,0016285,0016253,0015918,0015915,0016915-  0016921,0090241,0088263,0062735-0062736,0042266,0016019,UR.17893-  17894 | |
| 37. | Prices of Competing Labs | MGD0090382-0090385, 0090108, 0089362-0089365, 0090148-0090149,  0061378,0061375,0061377,0061379,0061380,0090659,0090660,0089463- | |



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|  | **0089464,0017254 88S16,** | | |
|  | 0016346-0016347,0090204-0090206,0017040,0042945-0042966,0090416-  0090417.0088264-0088272,US000S881-0005882,0005337 | |
| **38.** | **PSA** Test Info | | | | None |
| 39. | USA v. Consolidated Medical Transport | | | | None |
| 40. | 42 CFR 1001.952 Medicare Program Integrity - Subpart C - Pennissive Exclusions | | | | None |
| 41. | Predatorv Pricing Cases Identified | | | | None |
| 42. | USA v. Trenton Potteries Co. | | | | None |
| 43. | Federal Trade Commission v. Anheuser-Busch, Inc. | | | | None |
| 44. | Utah Pie Co. v. Continental Baking Co. et al. | | | | None |
| 45. | Predatory Pricing: A Strategic and Welfare Analysis by Oliver E. Williamson (The Yale Law Journal) | | | | -None |
| 46. | Matsushita Electric Industrial Co. v. Zenith Radio Corn. et al. | | | | None |
| 47. | Brooke Group Ltd. v. Brown & Williamson Tobacco Corn. | | | | None |
| 48. | Cost Management v. WNGC | | | | None |
| 49. | Predation and the Logic of the Average Variable cost Test by Baumol (The Journal of Law and Economics) | | | | None |
| *50.* | Predatory Pricing and Related Practices Under Section 2 of the Sherman Act by Areeda and Turner <Harvard Law Review) | | | | None |
| 51. | Rebel Oil v. Atlantic Richfield | | | | None |
| 52. | C.B. Trucking v. Waste Management, Inc. et al. | | | | None |
| *53.* | Kentmaster Manufacturin2:v. Jarvis | | | | None |
| 54. | Average Variable Cost as Surrogate by Areeda and Hovenkamp (Antitrust Law) | | | | None |
| *55.* | Analyzing Newspaper Costs in Predation Lawsuits | | | | None |
| 56. | Conmetition Law for State-Owned Enterprises | | | | None |
| 57. | FTC comments on New York's Motor Fuel Marketing Practices Act | | | | None |
| 58. | UroCor, Inc. Primarv Serum Forecast | | | | US0005464-0005465 |
| 59. | Variable Cost Model 1995 Budget and Actual Cost per Specimen Analysis | | | | None |
| 60. | Email from Marie West to Carol Weir re: soecial pricing | | | | US0006088-006089 |
| 61. | Email and attachment from Bruce Havden re: Client Bill Fact Sheet | | | | US0006140-0006141 |
| 62. | Special Price Quote discowit forms for Drs. Hofftnan, Roohman & Franzoni and Drs. Nixon, Arrett, Stressing, Williams & Kinard | | | | MGD00423 l l,  0016291, |
| 63. | Discount Pricing Justification for Dr. Wan | | | | US0005508 |
| 64. | Summary of Opinions: Dr. Michael Knapp, Phd., CPA, CMA | | | | None |
| 65. | Internet Articles of Businesses Selling Below Cost | | | | None |
| 66. | Federal Rules of Criminal Procedure | | | | None |
| 67. | 42 US Code 1395 | | | | None |
| 68. | IRS Rev Ruling 59-60 | | | | None |
| 69. | Litigation Services Handbook 3rd Edition, Weil, Waimer And Frank | | | | None |
| 70. | Cost Accounting, 10th Edition, Homgren, Foster & Datar | | | | None |

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| 71. | Marketing, 5th Edition, Berkowitz, Kern, Hartley & Rudelius | None |
| 72. | Congressional Budget Office Study- How GAIT affects US Anti-dumping and countervailin du olicy | None |
| 73. | Financial Accountin Standard 141 and 142, FASB | None |
| 74. | Business Valuations: Case Analysis - Income and Assets Approaches, National Association of Certified Valuation Anal sts | None |
| 75. | Business Valuations: Theory and Application, National Association of Certified Valuation Anal sts | None |
| 76. | Business Valuations: Fundamentals, Techniques and Theory, National Association of Certified Valuation Anal sts | None |
| 77. | Fair Value Measurements, Pro osed Statement, FASB | None |

EXIDBITB

**Summary of Testimony Professor Bart H. Ward, Ph.D., CPA**

In U.S. v. Hagstrom. et al., Dr. Ward will testify on topics relevant to the central issues in Count One of the criminal indictment filed against the defendants. Dr. Ward will focus on the concept of "fair market value." Below is a summary of the testimony and opinions that Dr. Ward will present.

Dr. Ward will explain the meaning of "fair market value" for goods and services in the U.S. economy. His testimony will include an explanation of the relationship of "fair market value" to pricing. Dr. Ward's opinions on this subject will also include the fact that "fair market value" is not necessarily a fixed or set price. Dr. Ward's opinions will include the fundamental principle that "fair market value" can constitute a range of pricing that is dependent on a number of factors, including but not limited to geography and competition, and that "fair market value" may be below the cost of a participant in the marketplace.

**Bases and Reasons for Dr. Ward's Opinions**

Dr. Ward's opinions in this case will be based upon his qualifications and his educational and professional background. Dr. Ward's regular teaching responsibilities include coverage of pricing and cost behaviors in accounting classes for MBA students, and coverage of fair valuation in auditing classes.

**Summary of Dr. Ward's Qualifications**

Dr. Ward has been a Certified Public Accountant (CPA) since 1969. He holds a Ph.D. in Accounting and Information Systems from Northwestern University, and has served on the faculties of The University of Oklahoma, Kendall College, The University of Texas at Austin, The University of Utah, The University of Southern Colorado, and, presently, Oklahoma City University, where he holds the position of Professor of Accounting at the Meinders School of Business. He was formerly Dean of the Meinders School of Business.

Please see Exhibit 1 for his current professional vita.

**Professional Vita**

**Name:** BartH. Ward

Professor of Accounting, Meinders School of Business

**Addresses:**

**Phone:**

**e-mail:**

Meinders School of Business Oklahoma City University 2501 N. Blackwelder

Oklahoma City, OK 73106-1493 (405) 521-6048

(405) 521-5098

[bward@okcu.edu](mailto:bward@okcu.edu)

**Degrees and**

**Certificates:** Ph.D. in Accounting and Information Systems

Northwestern University, 1973

M.A. in Accounting

The University of Oklahoma, 1970

B.B.A. in Accounting

The University of Oklahoma, 1967

Certified Public Accountant, Oklahoma, 1969

**Honors and**

**Awards:** Coopers & Lybrand Award for Teaching Excellence, 1994

O.U. Associates Instructional Grant, 1993

American Brands International Scholar, 1991, 1992, and 1994

Wildman Accounting Literature Award from American Accounting Association, 1990 (Shared with other authors of Research Opportunities in Auditing: Second Edition)

Halliburton Award for Excellence in Teaching, 1986

AICPA Annual Award for Outstanding Discussion Leaders, 1983 & 1985 Nebraska CPA Society's Discussion Leader of the Year, 1983

Peat, Marwick, Mitchell Faculty Stipend, Summer, 1981

Arthur Andersen & Co. Doctoral Dissertation Fellow, 1971-1972 National Defense Education Act Fellowship, 1969-1972 Northwestern University Fellowship, 1969-1972

Selected as Northwestern University's representative at 1971 American Accounting Association Doctoral Consortium

Member of Beta Gamma Sigma

**Professional Employment:**

July 2005- Present

Professor of Accounting

January 2000-

2005

July 2001-

August 2002

January 1996 -

December 1999

August 1974 -

December 1995

January **1988** -

June 1988

July 1978 -

August 1979

January 1973 -

August 1974

Dean and Professor of Accounting, Meinders School of Business, Oklahoma City University

Interim Vice-President for Academic Affairs, Oklahoma City University

Dean and Professor of Accounting, Hasan School of Business, The University of Southern Colorado

The University of Oklahoma, School of Accounting **KPMG** Peat Marwick Centennial Professor, 1992-1995 Director, 1987-1991

Acting Director, 1986

Associate Director, 1984-1986

Professor, 1983-1995

Associate Professor, 1977-1983

Assistant Professor, 1974-1977

Visiting Professor, School of Accounting, The University of Utah

Manager, Audit Research Associate,

Touche Ross & Company, Executive Office New York City

Assistant Professor of Accounting, The University of Texas at Austin

October 1972 -

January 1973

February 1971 -

May 1971

September 1967 -

June 1969

Finance Officer, U.S. Army Ft. Harrison, Indiana

Accounting Instructor,

Kendall College, Evanston, Illinois

Accounting Instructor,

The University of Oklahoma, Norman, Oklahoma

Summers 1968-1969 -Hospital Audits-Travis Goggans, C.P.A., Norman, Oklahoma Summers 1966-1967- Accounting Trainee, Skelly Oil, Tulsa, Oklahoma

**Articles Published:**

"On the Effectiveness of the Auditing Standards Board in Improving Audit Communication with the SAS 58 Auditor's Standard Report: An Exploratory Study," Journal of Applied Business Research, Vol. 21. No. 4, Fall, 2005, pp. 107-125, (with Trimbak Shastri, Willie Gist, Darryl Wilson).

"The Intensification of Federal Oversight of the Accounting Profession,"

Oklahoma City University Law Review, Vol. 28. No. 1, Spring, 2003, pp. 211-221.

"Applying Quality Management Concepts to Managing Business Schools," SAM Advanced Management Journal, Vol. 64. No. 3, Autumn, I 999, pp. 21-24,

(with William Chandler).

"The Influence of Mathematical Skills and Other Factors on Minority Student Performance in Principles of Accounting," Issues in Accounting Education. Vol. I 1, No. 1, Spring, 1996, pp. 49-60. (with William Gist and Harold Geodde).

"Improving the Results of Second Confirmation Procedures," Auditing: A Journal of Practice and Theory. Vol. 14, No.I, Spring 1995, pp. 87-93 (with R. File).

"OU Program Joins Classroom and Business," Certified News, Vol. 4, No. 4, 1994, pp. 7-8 (with B. Daly).

"Statistical Risk Control Strategies Used to Evaluate Substantive Audit Tests," Managerial Auditing Journal, Vol. 8, No. 4, 1993, pp. 3-12, (with J. Thompson).

"An Investigation of Sampling Efficiency in the Presence of Asymmetric Materiality Thresholds," Journal of Accounting and Finance. Vol. VI, No. 2, October 1992, (with R. Srivastava).

"Peer Review as a Market Signal: Effective Self Regulation?," Research in Accounting Regulation, Vol. 6, 1992, pp. 179-193 (with R. File and C. Gray).

"An Alternative Approach for Controlling Statistical Audit Sampling Risks, "Managerial Auditing Journal, Vol. 6, No. 3, 1991, pp. 24-29, (with J. Thompson).

"The Subject Matter of Auditing," Chapter Five in Research Opportunities in Auditing: The Second Decade, edited by A. Rashad Abdel-Khalik and Ira Solomon (Sarasota, FL; American Accounting Association: Audit Section, 1988) pp. 133-153, (with E. Blocher and R. Roussey).

"An Integrative Analysis of Audit Conflict: Sources, Consequences and Resolution," Advances in Accounting. Vol. 4, 1987, pp. 267-286, (with M. Chris Knapp).

"Unresolved Issues in Classical Audit Sample Evaluations, "Auditing Symposium VIII, edited by Srivastava and Ford, University of Kansas, 1987, pp. 105-119, (with R. Srivastava and

D. Nichols).

"The Proposed Analytical Procedures Standard: A Postprandium," The Auditor's Report, Summer, 1987, pp. 1-3.

"On the Fundamental Nature of the Professional Opinion: Traditional, Bayesian and Epistemic Approaches," Symposium on Auditing Research, Urbana-Champaign: Department of Accountancy, University of Illinois at Urbana-Champaign, 1985, pp. 63-91, (with R. Dacey).

Reliability Modeling of Infonnation Systems with Human Elements: A New Perspective," IEEE Transactions: Total Systems Reliability Conference, December, 1983, pp. 30-29, (with Raj Srivastava).

"Discussion of an Investigation of a Measurement Based Approach to the Evaluation of Audit Evidence," Auditing Symposium V, edited by Nochols & Stettler, University of Kansas, 1981, pp. 77-83.

Editorial on Professional Education, The Auditor's Report, Winter, 1981, p. 3.

"Discussion of Materiality Allocation in Audit Planning: A Feasibility Study," Journal of Accounting Research, Supplement, 1979, pp. 217-230, (with James Loebbecke).

"The Internal Audit - A Tool for Management Control," Financial Executive, March, 1978, pp.

32-37, (with George Scott).

"Outline for an Introduction to Auditing," Accounting Trends XI: Innovative Accounting and Infonnation systems Course Outlines, edited by Thomas J. Bums, (N.Y.: McGraw-Hill Book Co., 1977), pp. 28-29.

"Limitations on Conclusions Developed from Results of Attribute Sampling in Auditing," 1976, Southwestern American Institute for Decision Sciences Conference Proceedings, pp. 248- 252, (with Gary Holstrum).

"An Investigation of the Materiality Construct in Auditing," Journal of Accounting Research, Spring, 1976, pp. 138-152.

"Outline for an Introduction of Computer-Based Management Information Systems," Accounting Trends VIII: Innovating Accounting and Information Systems Course Outlines, edited by Thomas J. Bums, (N.Y.: McGraw-Hill Book Co., 1974), pp. 57-59.

"Mobilizing the Forecast Function - Organizational, Administrative and Resource Requirements," Proceedings of the 1973 Management Accounting and Planning Institute, edited by Gary Holstrum (Bureau of Business Research, The University of Texas at Austin), pp. 71-74.

**Books and Monographs:**

Auditing: Theory and Practice, Third Edition, (Boston: PWS-Kent Publishing Co., 1991), with

C.W. Thomas and E.O. Henke.

Audit Sampling, AICPA audit and Accounting Guide Series, (N.Y.; AICPA, 1983), (as member of Guide Preparation Task Force).

**Book Reviews:**

Montgomery's Auditing, Tenth Edition, and Montgomery's Auditing. College Version, by Defliese, et al., The Accounting Review, October 1986, pp. 775-776.

Accounting Estimates by Computer Sampling. Second Edition, by Maurice Newman, The Accounting Review, January, 1983, pp. 204-205.

Auditing Symposium III: Proceedings of the 1976 Touche Ross/University of Kansas Symposium on Auditing Problems, edited by Howard Stettler, The Accounting Review, April 1978, pp. 587.

Auditing: Principles and Practices, 15th Edition, by de Paula and Attwood, The Accounting Review, July 1977.

**Other Published Work:**

"Statistical Sampling" section for CPA Examination Review Vol. 1. Outlines and Study Guides, Eighth Edition by Gleim & Delaney, (N.Y.: John Wiley & Sons, 1981), revised for inclusion in subsequent editions annually through 1985.

"Commentary on the Commission on Auditor's Responsibilities Report of Tentative Conclusions," American Accounting Association Subcommittee to Respond to Cohen Commission Report, (University of Texas, CBA Working Paper 77-52).

"Selected Problems and Solutions, November 1974 Uniform Certified Public Accounting Examination (N.Y.: AICPA, 1975).

A Report on Internal Accounting Controls at the Johnson Space Center, CEMSNJSC Report 73- 25 (August, 1973), (Houston: Center for Management Studies and Analyses, College of Business Administration, University of Houston).

**Research Related Conference Presentation (Unpublished):**

"An Approach to Formatting Independent Accountants Attest Engagement Reports," presented at the Ninth Asian-Pacific Conference on International Accounting Issues, Bangkok, Thailand, Nov. 23, 1997, (with Trim Shastri).

"A Conceptual Framework for Audit Communication Research and Some Empirical Evidence," presented at the 1995 International Audit Judgment Symposium, Mandalay Beach, California, May 23, 1995, (with T. Shastri).

"A Two Stage Model of the Auditor's Problem," presented at the I ih Annual European Accounting Association Congress, Venice, Italy, April, 1994, (with R. Dacey).

"Improving the Results of Second Confirmation Procedures," presented at the annual meeting of the Mid-West Region of the American Accounting Association, Chicago, April 12, 1994, (with R. File).

"An Empirical Study of Mathematical Skills and Other Factors Influencing Minority Student Performance in Accounting," presented at American Accounting Association Southwest Regional Meeting, New Orleans, March 4, 1993, (with W. Gist and H. Goedde).

"Perceptions About the Impact of Peer Review on Auditor Credibility," presented at Norwegian School of Business, Auditing Conference, Bergen, Norway, June, 1991.

"A Research Perspective on the Audit Process," presented at the 1988 Price Waterhouse Auditing Professors Symposium, Orlando, August, 1988, (with J. Loebbecke).

"New Directions for Research Related to the Expanding Subject Matter of Auditing," presented at the 1987 Annual Meeting of the American Accounting Association, Cincinnati,

August, 1987. ·

"Directions for Research on Audit Risk," presented at Deloitte, Haskins & Sells Audit Research Seminar, San Diego, August 12, 1982.

"On the Extension of Independent Audit Services," prepared for 1981 Research Opportunities in Auditing symposium, sponsored by Peat, Marwick, Mitchell & Co. Foundation.

"On the Fundamental Nature of the Professional Opinion: Tradition, Bayesian and Epistemic Approaches," presented at the 1977 annual meeting of the American Accounting Association, Portland, August, 1977, and American Statistical Association Annual Meeting, Chicago, August, 1977, (with R. Dacey).

"Reactive Bias in the Measurement of Internal Control Compliance," presented at the annual meeting of the Southeast Region of the American Accounting Association, March, 1975, (with G. Holstrum).

"A Framework for Audit Decision-Making: A Decision Theoretic Approach," presented at the annual meeting of the Southwest Region of the American Accounting Association, Dallas, March, 1974, (University of Texas, CBA working paper 74-18).

**Other Presentations:**

Numerous speeches, workshops, and national continuing education seminars - various auditing research and professional topics for a variety of firms and organizations including Ernst & Young, Deloitte Touche, AICPA, state CPA societies, IIA and others.

**Grant/Contract Activities:**

Member of research team for a University of Oklahoma, Center for Economic and Management Research project on petroleum energy price, cost and production data (FEA contract CO- 03-50221-00), 1975-1976.

Co-author (with B. Bentz) of proposal for the Division of Accounting, University of Oklahoma entitled, "A Proposal for Systematic and Complete Reformulation of the Graduate Accounting Curriculum," funded by Career Development Program, University of Oklahoma, 1975-1977.

**Dissertations Chaired:**

Candidate Carol Knapp

Trimbak Shastri

Jacci Speelman­ Rodgers

M. Chris Knapp

The Use of Fraud Schema During Analytical Procedures: Effects of Experience, Client Explanations And Attentional Cues

A Conceptual Framework for Audit Communication Research and Some Empirical Evidence

Use of the Inertia Effect to Explain Misadjustments Arising from Application of the Anchoring and Adjustment Heuristic

An Empirical Analysis of Auditor Independence

Funded By

Ernst & Whinney

Deloitte, Haskins & Sells

Raj Srivastava

Jim Thompson

Ben Trotter

Rajabali Kiani­ Aslani

The Realiability of Accounting Controls: Design and Analysis

Establishing Alpha and Beta Risk Levels in the Evaluation of Substantive Tests in Auditing

An Examination of the Audit Work Paper Review Process: A Basis for Practical Improvement

The Implications of Quantitative Tools of Decision Making for

Accounting: An Empirical Investigation

Arthur Andersen & Co.

AICPA

**Consulting:**

Expert testimony in a number of suits involving accountants or auditor professional duties and responsibilities, 1984 to present.

Consultation related to Oklahoma State Auditor's Operational Audit of largest state agency, 1983-1984.

Developed Senior Audit Seminar Materials for Peat, Marwick & Mitchell Executive Office, 1981.

Review of Computerized Audit Procedures System for COMSHARE, 1981. Audit network planning study for Touche Ross, Executive Office, 1980-1981.

Statistical audit sampling studies for Ernst & Whinney, Oklahoma City, Spring, 1978.

Selected and served as Faculty Research Associate at NASA's Johnson Space Center, Summer, 1973. Reviewed and evaluated control of Center's computer-based financial management system.

Participated in AICPA project involving determination of the content of future CPA examinations, 1973.

**Other Professional Activities:**

Society for the Advancement of Management­ Editorial Board, SAM Advanced Management Joumal

Financial Executives Institute - National Board of Directors

1998-2000

1992-1993

|  |  |
| --- | --- |
| President, Oklahoma City Chapter | 1992-1993 |
| Chair of University Relations | 1991-1992 |
| Chapter Board of Directors | 1989-1994 |
| AICPA- |  |
| Chainnan, Information Content of Non-Statistical |  |
| Samples Task Force | 1984-1988 |
| Member, Analytical Review Task Force | 1984-1988 |
| Leader, AICPA Continued Education Courses | 1983-1988 |
| Member, Current Value Auditing Task Force | 1982-1985 |
| Member, Statistical Sampling Subcommittee | 1981-1984 |
| Chainnan, Quantitative Methods Task Force | 1981-1984 |
| Member, Audit Sampling Audit Guide Task Force | 1981-1983 |
| American Accounting Association - |  |
| Administrators of Accounting Programs Group |  |
| Administrative Support Task Force |  |
| Chair | 1989-1991 |
| Member | 1988-1991 |
| Member, Auditing Standards Committee  Member, Notable contributions to the Accounting | 1985-1987 |
| Literature Committee | 1983-1984 |
| Member, Executive Council | 1980-1983 |
| Member, Doctoral Fellowships Committee | 1980-1981 |
| Member, Committee to Respond to Audit Standards |  |
| Exposure Draft on Supplemental Infonnation | 1979 |

Member, Committee to Respond to Cohen Commission Report

Consulting Reviewer, Research Project on the Role

1977

|  |  |
| --- | --- |
| Of an Auditor in an Economy | 1976-1979 |
| Member, Membership Committee | 1975-1976 |
| Ad Hoc Reviewer for The Accounting Review | 1975, 1979, 1981, |
|  | 1985, 1986 |
| Audit Section |  |
| Member, Futures Task Force | 1987-1989 |
| Member, Auditing Research Opportunities |  |
| Task Force | 1986-1989 |
| Editorial Board, Auditing: A Journal of |  |
| Practice & Theory | 1982-1985 |
| Ad Hoc Reviewer | 1986-1996 |
| Chairman, Nominating Committee | 1981-1982 |
| Chairman | 1980-1981 |
| Vice Chairman | 1979-1980 |
| Chairman, Continuing Education | 1977-1979 |
| Chairman, Southwestern Region | 1976-1977 |

Member, Audit Research Bibliography Committee

Oklahoma Society of CPAs - Educational Foundation

Vice Chairman Trustee

Liaison with Higher Education Committee

1978-1980

1991-1993

1989-1993

|  |  |
| --- | --- |
| Chairman | 1989-1993 |
| Vice Chairman | 1988 |
| Member | 1987-1995 |
| Member, Continuing Professional Education Committee | 1981-1982 |
| Member, Accounting and Auditing Standards Committee | 1977-1978 |
| Member, Management Services Committee | 1975-1976 |
| Legislative Key-Person Committee | 1993-1995 |
| **Major University of Oklahoma Service Activities:** |  |
| College of Business Administration Criteria for Tenure, |  |
| Promotion, Faculty Evaluation and Merit Increases Tax Force | 1992-1995 |
| School of Accounting Tenure & Promotion Committee | 1995 |
| CBA Board of Advisors |  |
| Faculty Residencies Task Force | 1994-1995 |
| CBA Quantitative Needs Task Force | 1994 |
| Mccasland Professorship Search Committee | 1994 |
| University Faculty Welfare Committee | 1994 |
| University Faculty Appeals Committee | 1993-1995 |
| University Development Strategic Planning Committee | 1994-1995 |
| School of Accounting Executive Committee | 1993-1994 |
| Accounting Club Advisor | 1993-1995 |
| Coordinator, Oklahoma Business Forum |  |
| Tort Reform Panel | 1994 |
| College of Business Administration Structure Committee | 1992-1993 |

Chair, President's Partnerships in the Educational Community Committee

College of Business Administration Tenure and

1993

|  |  |
| --- | --- |
| Promotion Committee |  |
| Chair | 1991-1992 |
| Member | 1991-1993 & |
|  | 1995-1996 |
| Vice Chair, Presidential Search Committee | 1988-1989 |
| Honors Council | 1987-1988 |
| Master of Accountancy Advisor | 1983-1987 |
| Vice-Provost's Committee on Funding of Educational |  |
| and Instructional Grant Proposals | 1981-1983, 1989 |
| Faculty Senator | 1980-1981 |
| University Tenure Committee |  |
| Chairman | 1980-1981 |
| Member | 1979-1981 |
| Recruiting Coordinator for Accounting | 1975-1976 |
|  | 1978-1981 |
|  | 1984-1986 |
| **Maior University of Southern Colorado Service Activities:** |  |
| General Education Committee | 1998-1999 |
| Teaching, Learning, and Technology Roundtable | 1998-1999 |
| Facilities Planning Committee | 1996-1999 |
| Technology Fees Committee | 1996-1998 |
| Campus United Way Coordinator | 1997 |
| **Maior Oklahoma City University Service Activities** |  |
| Deans' Council | 2000-2005 |
| University Compensation Committee | 2002-2005 |
| Academic Standards Committee | 2000-2001 |

University Strategic Planning Committee Committee to Enhance Graduation Ceremonies University Assessment Committee

2001-2004

2001

2002-Present

Business School Assessment and Quality Committee 2006-Present Chair, Reaccredidation Study Team for Students and Other Stakeholders

|  |  |
| --- | --- |
| **Recent Community Service Activities:** |  |
| Rotary #29, Oklahoma City, several committees, Chair, Jr. Rotarians | 2000-2005 |
| 16th Street Plaza Development Board | 2000-2002 |
| Rotary #43, Pueblo, several committees | 1996-1999 |
| Pueblo 2010 Commission for Regional Planning | 1996-1999 |