

12:20 1 (July 20, 2016)

09:14 2 **THE COURT:** Good morning.

09:15 3 **MR. RUSHING:** Good morning, Your Honor.

09:15 4 **THE COURT:** Is the government ready to proceed?

09:15 5 **MR. RUSHING:** We are, Your Honor.

09:15 6 **THE COURT:** Are the defendants ready to proceed,
7 Mr. Watts.

09:15 8 **MR. MIKAL WATTS:** Yes, sir.

09:15 9 **MR. MCCRUM:** Mr. McCrum.

09:15 10 **MR. MCCRUM:** Yes, sir.

09:15 11 **THE COURT:** If I say gentlemen, would that be
12 sufficient so I don't have to go through a roll call every
13 time?

09:15 14 **MR. MIKAL WATTS:** Yes, sir.

09:15 15 **THE COURT:** All right. Bring in the jury.

09:17 16 **(JURY IN AT)**

09:17 17 **THE COURT:** Thank you. Please be seated. Good
18 morning, ladies and gentlemen. I probably forgot to mention
19 yesterday, insofar as the seating arrangement is in the jury
20 box, of course, you are not married to the seat you are in now.
21 If you find that you would be more comfortable somewhere else,
22 you certainly can move around the jury box to suture own
23 comfort. Some people like to be closer to the witnesses, but
24 don't arm wrestle with each other or fight with each other over
25 a chair. Just do the best you can. We have a lot of folks in

1 the jury box.

09:18 2 Now, the lawyers have indicated to the Court they are
3 ready to proceed, and they will proceed this morning with
4 opening statements.

09:18 5 Ladies and gentlemen, as some of you might be familiar
6 with the Ingalls Shipbuilding, you might be familiar with
7 construction matters in general, before the first nail is
8 nailed, before the first keel is laid, plans are drawn, and
9 from those plans, that's where we get ship building and
10 construction work. In much the same way, an opening statement
11 is the outline, if you will, of what the evidence will show,
12 and each side is given an opportunity to make that opening
13 statement.

09:18 14 I remind you, however, that opening statements are not
15 evidence. Opening statements are intended only to assist you
16 in understanding what the evidence will be. And some of the
17 defendants have reserved their right to make an opening
18 statement to a later date, which is their right to do.

09:19 19 All right. Mr. Rushing, you may make your opening
20 statement on behalf of the government.

09:19 21 **MR. RUSHING:** Thank you, Your Honor. May I use the
22 podium, Your Honor?

09:19 23 **THE COURT:** Of course.

09:19 24 **MR. RUSHING:** If it please the Court. Good morning.
25 As the judge has told you, this is our opening statement. It's

1 a chance for the government and also the defense to tell you
2 what the case is about. He has also told that this opening
3 statement is not evidence. When I tell you it's not going to
4 be evidence, what the defense tells you is not going to be
5 evidence. It's an opportunity to give you an outline or
6 guideline of what we think the evidence is going to show.

09:20 7 Now, this all began in April of 2010, but this case is not
8 about BP. This case is about fraud that occurred after
9 April 20th of 2012 -- of 2010, rather. Shortly after that
10 date, Mikal Watts saw an opportunity. He saw an opportunity
11 where he could make some money. And shortly after that, he
12 contacted a person he knew as Hector Eloy Guerra. Mr. Guerra,
13 of course, is a defendant in this case here today. After he
14 contacted Mr. Guerra, they talked about actually going and
15 obtaining clients for lawsuits. Mr. Guerra then, of course,
16 contacted other individuals that he knew, which is going to be
17 Gregory Warren, another defendant in this case here today.
18 They also contacted Kristy Le, and also Abbie Nguyen. Now,
19 Mr. Watts, of course, had a law firm there in Texas, and he's
20 the main person in that law firm, the first name is Watts
21 Guerra and Craft, back in 2010. He also had his brother named
22 David that works there at that facility, and David is involved
23 in the mass torts area of that law firm. There is also another
24 employee at that law firm by the name of Wynter Lee, and
25 Ms. Wynter Lee also is involved in the tort division of that

1 law firm. Mr. Watts has handled quite a few mass torts in his
2 lifetime.

09:21 3 When they talked about opening up the investigation to
4 actually obtain information of potential clients, they opened
5 up a shop in Biloxi, Mississippi to collect names. And over
6 that summer, they collected some names, and they sent many
7 spreadsheets of information of people's names and personal
8 identifiers from Mississippi to Texas. Now, some of these, of
9 course, were sent to Mr. Watts' law firm -- all of them were
10 sent to Mr. Watts' law firm, and of course David Watts was
11 involved in looking at those lists. As he looked at those
12 lists in the very beginning, he saw problems, and the problems
13 he saw were they had names and they had some of those actual
14 submissions to them didn't have social security, had partial
15 social security numbers, and had inaccurate information on
16 them. That was back on August 24, 2010.

09:22 17 On that date he sent an e-mail to Mikal Watts and to
18 Hector Eloy Guerra. And we submit that e-mail if it comes into
19 evidence will show that that time period that Mr. Watts, David
20 Watts and Mikal Watts, and Hector Eloy Guerra, knew there were
21 problems with those submissions. What he said was, we have a
22 problem with it that we've received the spreadsheets there, and
23 basically what I'm looking at, it doesn't pass the smell test.
24 It doesn't pass the smell test. Now, we know during to time
25 period, there were numerous lawsuits filed across the gulf

1 south, and those lawsuits are combined in Louisiana in a
2 multi-district litigation case, number 2179. And all this case
3 consolidated there in that particular district.

09:23 4 During the time period that Mr. Watts is trying to get his
5 clients, he is trying to get as many clients as he can in a
6 short period of time. In a short period of time, he gets
7 40,000 names. And with the multi-district litigation over in
8 Louisiana, Mr. Watts submits an application for the PSC, the
9 Plaintiff's Steering Committee. You may not have heard about
10 that before. I was not aware of it that much myself, but the
11 Plaintiff's Steering Committee is a group of attorneys for the
12 defendants who kind of manage that portion of their case.
13 Mr. Watts applied for that position on that. It's a very
14 lucrative position because if you are on the Plaintiff's
15 Steering Committee, you are entitled to receive large attorneys
16 fees at the end of the case if your case goes successful.

09:24 17 When Mr. Watts submitted his application, one of the first
18 things he said on the application was, I've got 40,000 clients.
19 We think the evidence will show at the trial he didn't have
20 40,000 clients at that time. He had 40,000 names, and
21 inaccurate information of individuals.

09:24 22 I told you it was a very lucrative process as far as being
23 on the PSC as far as attorneys fees. I think the evidence will
24 show during this hearing, during the trial of this case, that
25 after this case was settled with BP, that the cement for the

1 attorneys fees was \$600 million to be spread among 15 attorneys
2 involved in the PSC.

09:25 3 Of course, during the summer months back in 2010,
4 Ms. Kristy Le had the actual place open up there in Biloxi,
5 Mississippi. She had Abbie Nguyen working with her also, and
6 they were constantly getting those names and social security
7 numbers, and I will submit to you, there will be some e-mails
8 and some testimony from the defense that there were e-mails
9 back from Mr. Watts to Kristy Le and Hector Eloy Guerra and
10 Gregory Warren about the issue with the social security numbers
11 and to fix it. But the problem was, it was never fixed.

09:25 12 To try to do something about it, Kristy Le hired a private
13 investigator to collect social security names, social security
14 numbers and names. And she spent over \$300,000 to that private
15 investigator to do that.

09:26 16 Now, in April of 2011 is when this investigation first
17 began because at that time period, there were two complaints
18 made by two individuals. Those individuals stated that they
19 had a claim filed in their name, that they didn't know about.
20 And it was filed by the Watts law firm. And their claim was
21 that they were not victims of that incident that occurred back
22 on April 20, 2010, and they had no basis to file a claim
23 whatsoever, that they didn't know Mr. Mikal Watts. And of
24 course the investigation began on that, and to cover up that
25 investigation, Mikal Watts and other people involved with him

1 made an attempt to contact or tried to contact these
2 individuals to get false affidavits signed by them. And they
3 obtained two affidavits from individuals. But the problem is
4 with one of the individuals that they got the affidavit from,
5 it was the wrong person, and they somewhat coerced him into
6 actually signing a false affidavit.

09:27 7 Later on these affidavits were submitted to individuals,
8 but even after these people had signed these false affidavits
9 saying they had never hired Mr. Watts, or that they had hired
10 Mr. Watts, rather, but they wanted to withdraw their claims and
11 they weren't victims of the actual incident, even after that
12 time period, Mr. Watts law firm still submitted those names for
13 claims.

09:27 14 We expect to hear testimony concerning Wynter Lee. We
15 expect the testimony to be that during the time period that all
16 of these lists were coming in there, that Wynter Lee instructed
17 certain people at the Watts law firm to falsify records.
18 Whenever they sent a sheet in concerning the person's claim, a
19 lot of the times they had forms sent in that didn't have any
20 designation as to what their occupation was, and Ms. Le told
21 people there at the law firm that if there is a blank for
22 occupation, put deckhand, not knowing in fact whether these
23 people were deckhands or involved in some other type of
24 industry.

09:28 25 Additionally, Ms. Wynter later on, towards the end of the

1 claims process, provided false information on certain claim
2 forms submitted to BP, and those false information is that she
3 made up amounts of money that people should have claimed they
4 made their income on. In other words, she had no indication or
5 knowledge of what these people particularly made in a
6 particular year, but yet she put a particular amount of money
7 per year they made, falsifying those documents.

09:29 8 We expect also to call some witnesses that were working
9 there at the law firm during that time period to testify what
10 they saw in the process, and we expect them to say that a lot
11 of times they saw documents that appeared to be the same
12 handwriting, and also contracts that appeared to be in the same
13 handwriting. Additionally, they will say when they received
14 this information, there was no supporting documentation. By
15 that, I mean they have got a name and they've got a social
16 security number, but they've got nothing to show this person
17 was ever involved in the shrimp business, no fishing license,
18 no IRS forms to show what they made in a particular year, or
19 nothing to document the fact they were employed in the
20 shrimping or sea industry, or the seafood industry. We also
21 know, by looking at the poster in front of me, that Abbie
22 Nguyen was lower on the totem pole. We expect the testimony to
23 show she also was working there with Kristy Le, collecting
24 those numbers and names of people, and we expect the testimony
25 to show that there is some handwritings that were submitted for

1 analysis, and there were over a hundred client questionnaires
2 submitted that included her handwriting on those documents, of
3 victims of ID theft and also people that were dead. We expect
4 the testimony also to show that during this time period when
5 claims were filed by the Watts law firm, that they filed claims
6 for people who had died before the spill ever occurred.

09:30 7 We will also call a number of witnesses before you. We
8 expect them to testify that they saw claims in their names that
9 they didn't authorize Mr. Watts and his firm to file against
10 them, or for them, rather. We expect them to testify also that
11 they didn't need to file a claim because they were not affected
12 back from that ins dented in April of 2010. We expect them
13 also to say their name and social security numbers are on those
14 firms, and that Watts law firm actually submitted those forms
15 with their personal identifiers on them without their knowledge
16 to other entities to try to effect a claim for those people ^^.

09:31 17 Now, this case was settled by the BP oil spill. The case
18 was settled back in March of 2012, I believe, and at that time
19 period, Mr. Watts was still on the PSC. We expect to offer an
20 e-mail in this case that Mr. Watts sent on the night of the
21 actual settlement. And in that e-mail, he talks about the
22 actual settlement, that they settled with BP for 2.3 builds,
23 even though they couldn't prove that amount. We expect it also
24 to say that despite their crappy cases, a little more stronger
25 term than that, that they may have some leverage there, and

1 just asking these people he was involved with in this process
2 of trying to get these claims and telling them to try to make
3 them feel better about their eggshell plaintiff docket. Even
4 after that date, back in March of 2012, Mr. Watts submitted
5 what is called some presentation forms to BP. Those
6 presentation forms were claims outside the lawsuit against BP
7 for people, and he submitted over 40,000 claims to BP during
8 that time period. Those included submissions for people who
9 had also died before April of 2010.

09:33 10 When you sit here this next few weeks and listen to the
11 evidence presented in this case, I think there will be a
12 conclusion you can make at the very end of this case, and
13 that's to show that these defendants and prove that these
14 defendants to you, beyond a reasonable doubt, that they are
15 guilty of a conspiracy to to commit mail and wire fraud, and
16 they are also guilty of the mail and wire fraud counts, they
17 are also guilty of the identity theft and they are also guilty
18 of aggravated identity theft. But please wait until the very
19 end of the case before you making your decision in the case.
20 Listen all the evidence that will be offered by the government
21 and all the defendants, but at the conclusion of this trial, I
22 feel confident you will render a verdict according to the
23 evidence, which will be guilty.

09:34 24 **THE COURT:** Thank you, Mr. Rushing. Mr. McCrum, it
25 is my understanding that you wish to make an opening statement

1 on behalf of your client.

09:34 2 **MR. MCCRUM:** Yes, sir, I do.

09:34 3 **THE COURT:** You may proceed.

09:34 4 **MR. MCCRUM:** Thank you. Good morning, folks. Folks,
5 you remember my name is Michael McCrum. I represent David
6 Watts in this case.

09:35 7 If we were to jump to the end of this situation, knowing
8 facts that we now know, I submit to you the evidence that you
9 are going to see in this case, once you jump to the end of it,
10 is that Mikal Watts and his investors who invested in
11 representing people in this case, after spending over
12 \$10 million to go out and meet people or get contracts for
13 people who were actually injured, that they got scammed.
14 That's a pretty heavy statement. Mikal Watts and his
15 investors, and Mikal Watts' law firm got scammed. They spent
16 over \$10 million hiring independent contractors to go out and
17 meet folks who were actually injured, not getting names, as Mr.
18 Rushing just said, to go out and actually meet folks who were
19 fishermen, who were boat owners, who were deckhands who were
20 involved in the fishing industry, and trusted them to do their
21 job for that \$10 million, to get accurate information. And if
22 we look at the end of the case, way down here at the end, we
23 will find out you are are going to see they got scammed, that
24 the money was not spent on what it was supposed to be spent on,
25 that the independent contractors that were hired didn't do

1 their job.

09:36 2 Now, everybody knows in our lifetime that people, some
3 people lie. They just lie to you. They don't do what they are
4 supposed to do. But if we are going to look at a person's
5 intent, not down here at the end, but this case involves
6 actions taken in 2010, 2011, 2012 and 2013, years ago, and the
7 issue is going to be, what were their specific intent back
8 then, without the benefit of hindsight.

09:37 9 And so some people would say that this story starts on
10 April, 2010, when this oil spill happened. As a matter of
11 fact, Mr. Rushing just said that, practically those words, this
12 story starts in April of 2010, when oil is gushing out of a
13 well into the Gulf of Mexico. So many people think that's
14 where it starts. But if we're going to look at some somebody's
15 intent, we've got to go back to that time period, not go to the
16 end. And we remember -- and we are going to introduce evidence
17 so that we get back to what people were thinking back then in
18 2010. And y'all know more than people in the interior of the
19 country what that was like. It was the largest oil spill in
20 history. Millions of barrels of oil gushing out into the
21 water, causing mass devastation. If we are going to look at
22 people's intent back then, we are going to have to look at the
23 evidence that we are going to introduce to show what was
24 happening back then and how people were feeling., how it caused
25 widespread devastation not just to the environment, but to

1 people whose livelihood depended on, the commercial fishing
2 industry. Millions of people were affected on the coast whose
3 businesses depend on tourism, depend on these different
4 industries, but the people involved in the commercial fishing
5 industry, the evidence will show, they are out of work, if we
6 are going to go back then.

09:39 7 Eleven good hard working men died on that rig. Y'all
8 remember that. And the evidence will show that the spill's
9 affect was widespread, not on Mississippi but Louisiana, all
10 the way to Florida, down to Texas, all up and down the coast.
11 Many would think that the story starts right there, as far as
12 this case, and how millions of people in different environments
13 were affected, illnesses from medication, illnesses from
14 environmental disasters, all of these products affecting all
15 kinds of things. It was a difficult time. And defendants who
16 were responsible for this were sued. BP, of course, Mr.
17 Rushing referred to that, but also there was a corporation
18 called Transocean owned and operated the rig, Halliburton
19 attempted to cap the well, and Cameron, the blowout preventer
20 that was provided that failed.

09:40 21 So many people would think that's where we are going to
22 start. We are going to start looking at all the people that
23 were affected from this spill, the commercial fisherman, over
24 75,000 possible claimants, one study will show that we will
25 introduce into evidence. Business employees, over 6 million

1 people affected. Recreational fishermen, over 3 million.
2 Offshore workers and spill cleanup workers and Mexican
3 commercial fishermen from a country down in Mexico, how it went
4 even that far, over 9 million people.

09:41 5 So the issue is, where are you going to focus your
6 attention on. You are going to hear evidence that in May of
7 2010, the National Oceanic and Atmospheric Administration began
8 closing the Gulf of Mexico, think back to 2010, closing it to
9 recreational fishermen, just closing it down. The NOAA
10 subsequently increased the size of those closures to encompass
11 over 83,000 square miles in the gulf, 35 percent of the Gulf of
12 Mexico prohibiting fishing. We saw and you will see in the
13 evidence that hundreds of thousands of businesses were hurt,
14 millions of their employees, incomes dropping to zero, no way
15 to feed their family, no way to pay their bills, not just names
16 on a paper, not just a name on the sheet of a spreadsheet, but
17 real people, real lives, because of these large corporations.
18 So we look at these large -- and the evidence is going to to us
19 on BP, British Petroleum, and these other wealthy and powerful
20 corporate giants. So in 2010, if we are looking at what you
21 are thinking then, how do these folks, business people,
22 fishermen, oil spill workers, how are they going to fight these
23 big corporations. How does that happen? That's what we are
24 going to present evidence, go back in that time period, and
25 many people will say that is when it really starts, of figuring

1 out how do these people come together to fight -- who one of us
2 could fight BP if we were injured? How many of you, how many
3 of us, anybody this this courtroom, fight them on our own? So
4 some would say, that's where the story starts, but these were
5 uncharted waters. This was unprecedented what happened.
6 This was a time for only people with experience, law firms with
7 experience to step in and navigate these kind of disasters was
8 necessary. Through all of this chaos and uncertainty, this
9 kind of event required that kind of experience to do what needs
10 to be done.

09:43 11 Experience to do what needs to be done.that's where the
12 story starts, not in April of 2010. And that's why we are
13 going to show you why -- what were people thinking in April of
14 2010 when they went into this, what was David Watts thinking,
15 what was Mikal Watts' thinking. You have to look at their
16 experience coming up to there why they approached this
17 situation and how they approached the situation in the certain
18 way that they did. That's what we will focus on the evidence.
19 We will focus on time building up to this point on the
20 experience of the lawyers and the people working on this
21 particular mass injury case, because there's only a select
22 group of attorneys across the country that can do something of
23 this magnitude, of this volume. This isn't a job for just any
24 lawyer. The evidence is going to show that only certain
25 amount.

09:44 1 **MR. RUSHING:** Your Honor, I -- sorry.

09:44 2 **MR. MCCRUM:** Only a certain amount of attorneys can
3 can do this type of work. And so when we introduce testimony
4 to see what the Watts firm did when the oil was spilling and
5 who they looked at, they said we are qualified of a lot, you
6 will see the evidence shows they were a firm, as Mr. Rushing
7 said, had years of experience doing mass injury cases. They
8 said, okay, we are now called upon to help these people. These
9 people need lawyers that can do that. So who do we do it? Who
10 can we help?

09:45 11 Now, the government said that they are going to say we
12 made up clients in order to get money, that we spent over
13 \$10 million to build a client base of fishermen. Now, if the
14 we want -- the evidence is going to show that if you wanted
15 employees, if you wanted clients, there's 9 million people of
16 other occupations to go and get if they just wanted to get up
17 names of people. But, no, they focused on the people that had
18 the most devastation. They looked at the law -- we are going
19 to introduce e-mails to show why was it that the Watts firm
20 went and hired independent contractors to reach out to those
21 fishermen and deckhands and boat owners and people in the
22 fishing industry, that group in particular. You are going to
23 see e-mails leading up to that, people testifying that this was
24 a decision to go to the people who were the most devastated,
25 the people who did not -- no longer could sustain their

1 livelihood. Because they were just flat out of work. And so
2 that's what the Watts firm focused on. You are going to see
3 and hear testimony that questions were asked, how do we do
4 this? Lawyers are going to come in and testify to you, lawyers
5 with experience, of how do we even approach these kind of
6 people. So that's where you are going to get to hear. There
7 are different ways you are going to hear from the testimony
8 that in these mass injury cases where people, millions of
9 people are affected, or tens of thousands, depending on what
10 kind of case it is. It may be a bad medicine that is put out
11 across the country, it may be something that affects tens of
12 thousands or hundreds or thousands, millions. So there are
13 different ways and you will hear the evidence, on how lawyers
14 reach out to people who may have been injured or damaged. It
15 is either through town hall meetings, referrals, direct mail,
16 internet, all authorized ways under our law for lawyers to put
17 out and say, hey, look, we are qualified to do this kind of
18 claim if you have got some. If you want to fight BP on your
19 own, go ahead, but we are going to pull together. So the
20 evidence will show that in this vast experience, the Watts firm
21 did that. These at the time were the three leading partners of
22 Watts Guerra. Mikal Watts, Frank Guerra and Hunter Craft. In
23 their firm, you are going to see that they had approximately
24 200 people in their firm. This isn't just a small little
25 office of lawyers. This is an organization here. In the

1 bottom right, you will see there alone is about 125 people in
2 the mass injury section that worked this thing. This will all
3 be introduced into evidence. You will have it.

09:48 4 At the time they had these kind of cases that were coming
5 in, it was necessary to have this number of people, because
6 when you have thousands of people who have been injured and
7 damages, class action lawsuits or mass injury cases, mass
8 torts, multi-district litigations, you are going to learn what
9 that means. This is not the normal kind of lawsuit. But you
10 will hear in the evidence that these law firms like Watts and
11 other law firms come in and take all these people and represent
12 them one by one, but in a way that they can ban together so
13 that there is strength in numbers to level the playing field
14 with BP and these real big corporations. Watts Guerra, you
15 will hear, had offices in San Antonio and Corpus Christi at the
16 time, where they would operate all of these different cases.
17 During this case alone, while BP was going on, they had 19
18 other injury cases going on. This wasn't just their only case.

09:49 19 The evidence is going to show that Mikal Watts was a
20 lawyer with vast experience, was respected in his field. You
21 will hear lawyers come in and talk about that, how he had made
22 a reputation for showing the courage to go against these
23 corporate giants, built a law firm with quality people. We
24 will see that, all of these lawyers that are on here. You one
25 of the men that worked for Mr. Watts is David Watts, my client.

1 David Watts is not a lawyer. He worked hard in this law firm
2 managing in the mass injury section down in the bottom left of
3 what is on the screen. He is a data guy. I will talk about
4 him more what he did in a little bit. But insofar as BP, Watts
5 firm started receiving actual contracts, copies of contracts
6 from these independent contracts they had hired to go interview
7 people out there in the fishing industry, where contracts were
8 signed by these folks to represent people that had been
9 damaged.

09:50 10 Now, eventually, Mr. Rushing referred to, you are going to
11 hear evidence of a multi-district litigation, where all of
12 these things were centralized into one court down in New
13 Orleans, but the evidence is also going to show that initially,
14 when this first happened back in April and in the summer of
15 2010, there was no multi-district litigation in New Orleans.
16 It didn't exist yet. Nothing. So what happened is, you are
17 going to hear the evidence, is that lawsuits started being
18 filed all over the country to address this situation. And
19 there was a big tenuous time. You will hear that in the summer
20 of 2010 that senators, Senator Haley Barbour and Trent Lott and
21 other senators in Mississippi went and put pressure on BP and
22 said, you have got to come to the table and put up a fund to
23 fund these people who have been damaged. And they went through
24 the White House. A 20 billion dollar escrow fund was put up by
25 BP in the summer of 2010 to pay for this damage, \$20 billion,

1 to pay for this damage and injury. But you won't hear as far
2 as at the beginning, it didn't go into this multi-district
3 litigation that Mr. Rushing talked about until August. Through
4 the summer of 2010, when people were being interviewed and
5 signed up and lawsuits being filed, that didn't exist. In
6 August of 2010, they established this claims facility. You
7 will hear a lot about that. You will hear evidence about
8 something called the GCCF, Gulf Coast Claims Facility,
9 established on August 23rd of 2010.

09:52 10 It was established by BP in coordination with the White
11 House and others in order to coordinate the claims of all of
12 these folks and businesses, these millions of people. A man
13 named Ken Feinberg was appointed to administer that GCCF. You
14 are going to hear his testimony. I suspect he may even be here
15 today.

09:52 16 You will see that Ken Feinberg had a contract with BP,
17 that he was paying him about -- BP was paying him about
18 \$10 million a year, about a million a month to administer this
19 particular GCCF. But again, this didn't exist at the
20 beginning, and that's why I'm going to keep taking -- we are
21 going to see the evidence keep focusing back on what was
22 happening when people were being signed up, because you can't
23 look back here with the benefit of hindsight. So in the summer
24 of 2010, we will show evidence that the Watts firm knew there
25 were time deadlines imposed, there are special rules that have

1 to do with governing oil pollution and events that happen on
2 the open sea. The law firm knew this. You will see the
3 research they did. They felt they needed to start filing
4 lawsuits. They sent independent contractors out in the field
5 to go interview these folks, see if they have a claim, send us
6 the information, so we have to preserve their claim. There are
7 a lot of reasons to file lawsuits, and you will hear evidence
8 about this. There are statute of limitations. In Louisiana
9 alone there is only a one year statute of limitations. If you
10 don't file a lawsuit, you are going to lose it. Another reason
11 to file a lawsuit quickly, you will hear, is to protect the
12 client base from other lawyers, lawyers that will try to prey
13 on them, lawyers who don't have the experience to do this. You
14 will hear evidence that the Watts firm had to file lawsuits
15 quickly. They didn't know what was going to happen, that there
16 was going to be a multi-district litigation, or a Plaintiff's
17 Steering Committee, as Mr. Rushing was talking about. It
18 didn't exist. So you will see over here in June, July and
19 August of 2010, Watts firm filed a bunch of lawsuits on behalf
20 of a bunch of people, real people. They believed it was real
21 people.

09:54 22 And so -- I will show you in a little bit the lawsuits
23 that were filed, but those lawsuits were being filed in courts
24 all across.

09:54 25 Just to give you an example, we had lawsuits filed in 15

1 different courts, federal courts, and then about 12 state
2 courts across the land. Not just one lawsuit, not trying to
3 sneak some names in. In June, July and August, before this
4 multi-district litigation was even started, they are filing
5 lawsuits in front of all these different judges.

09:55 6 Well, all these lawsuits had been filed not only by the
7 Watts firm but by people all over the country, that's when they
8 started talking about putting this thing together. And we want
9 you to understand what a multi-district litigation is. We are
10 going to bring a gentleman called Kevin Roddy, who is an expert
11 in this thing to talk to you. We will bring evidence in so you
12 can understand what an MDL is. The evidence is going to show
13 that a multi-district litigation is created after a bunch of
14 attorneys file many cases with common issues, where there are
15 hundreds of cases filed. In order to make it easier, they
16 consolidate it into one court, and it is assigned to one judge.
17 It's designed to speed up the process, to coordinate and
18 streamline all pretrial proceedings, to avoid duplication. A
19 chief justice, United States chief justice appoints seven
20 different United States District Court judges in federal courts
21 just like we are sitting in today to serve on the judicial
22 panel on multi-district litigation. These are judges all over
23 the country. In this particular case, they appointed Carl bar
24 yea. I believe I'm pronouncing his name right. He is out of
25 New Orleans, Louisiana, United States District Judge. You will

1 see how this particular case was appointed to his Court. And
2 so right away, he says, we are going to conduct an initial
3 scheduling conference of all the lawyers in here, and we are
4 going to start getting this thing going and trying to organize
5 this thing and put some deadlines in place. So the Court had a
6 hearing and started putting some pretrial deadlines. You will
7 see all of this evidence.

09:56 8 Part of the requirements that the Court imposed is the
9 thing you will see in the evidence that is called a plaintiff
10 fact sheet. And the judge is going to say, you've got to file
11 some plaintiff fact sheets by a certain date, and it's got to
12 have a name, date of birth, social security number, it has to
13 have tax, authorizations. And often they have to be sworn by
14 the clients under penalty of perjury.

09:57 15 And these are the filing deadlines that were imposed by
16 the Court. You see on the left there, it is April 20th was the
17 oil spill. Well, November 13th of 2010 was this limitations of
18 liability filing. November 22, you will see evidence was a
19 deadline to file these plaintiff fact sheets or these plaintiff
20 profile forms. So think of the time limit. We were going to
21 introduce evidence that it was in August that this
22 multi-district litigation is created. Three months later they
23 got a deadline. And that's what you are going to see in the
24 evidence. And in those three months, the Court is requiring
25 that if you represent tens of thousands of people, better get

1 your forms in. You will see a deadline of April 20th of 2011.
2 That was a one year statute of limitations in Louisiana. There
3 was another deadline for short term filings, and then later on
4 in 2012, other states had two year statute of limitations,
5 Mississippi included.

09:58 6 January of 2013, there was another deadline to file a
7 claim. If you want to preserve your claims. If a lawyer has
8 some clients that he believes he has a client and he wants to
9 preserve his claim, he's got a deadline to file by that date or
10 you lose it. The claim dies.

09:58 11 So what happens, you are going to see in the evidence, is
12 within six months of that oil spill, they've got to file these
13 things. They've got to get all the information from the client
14 in order to file these plaintiff fact sheets. You will see the
15 evidence in this case is that on November 11th -- or 18th of
16 2010, I think it is four days before that deadline, at that
17 point the Watts firm had 22,533 people that had been told to
18 them were clients by the independent contractors who got --
19 went out and said they interviewed these folks, signed
20 contracts, and they filed those forms.

09:59 21 After that, they had additional people, and so in January,
22 they filed another collection of plaintiff profile forms,
23 plaintiff fact sheets, 17,400, and then several others after
24 that.

09:59 25 Now, as far as the other deadlines, you will see that the

1 Watts firm was filing things all along the way. Short forms
2 were filed in time, in April of 2011. 2012, they will send --
3 Watts firm sent out a letter up there in the right-hand corner
4 of upcoming deadlines, sent it out to all of the people they
5 believed were their clients, alerting them to coming deadlines,
6 and they filed everything that was necessary in order to keep
7 these dates, deadlines, and to keep and preserve their client's
8 claim that they believed they had.

10:00 9 Now, these dates are notable because the evidence is going
10 to show that the government's charges relate to these filings
11 by these deadlines. On the left it says the conspiracy count
12 that the government has charged goes from April 10, 2010
13 forward, but wire fraud counts focus on the filings they had to
14 do to meet that deadline, that client packet effort. And all
15 the contact that they had with the people that they were
16 representing. The identity theft counts, that pink one right
17 there on the left-hand side correspond to the plaintiff profile
18 forms that were filed to meet those deadlines. The mail fraud
19 that Mr. Rushing talked about correspond to client update
20 letters that were being sent on this right side in the green,
21 on July 2012 all the way to January, 2013. Those are client
22 update letters, and that's what the government is focusing on
23 for the purpose of mail fraud, when the Watts firm would send
24 out letters to their clients. The identity theft and
25 aggravated identity theft focus on November of 2013, where

1 there was a deadline to present a claim. You are going to hear
2 evidence that presentment is not an actual claim. It is giving
3 notice that you have intent that you believe you have a claim,
4 and we are giving you notice to preserve. It is like a place
5 holder. You will hear evidence that these are all place
6 holders. They are not actual claims. They are putting your
7 place in line, giving notice that this is what we believe we
8 have.

10:02 9 Now, we are going to present evidence of the importance of
10 these deadlines. You are going to hear testimony of a man
11 named Darryl Barger, an expert in the duties that a lawyer owes
12 his client, that a lawyer at the top right, an attorney
13 malpractice action can be brought against Texas and the Watts
14 law firm and Mikal Watts based on negligence. Even if he had a
15 good faith excuse for attorney negligence, he could be liable
16 for malpractice. So he has a duty to communicate with clients
17 and to preserve their claims. So people are relying on the
18 lawyer to give them information, to act quickly, to meet the
19 deadline, to safeguard the potential person's right. So as a
20 lawyer, you have to meet these deadlines. You have to hear
21 evidence of what is going on in the mind and we are going to
22 look at the intent of what was going on in the mind in 2010,
23 2011, not going back here and saying, okay, this is what I
24 found out at the end. No, no, we are going to present evidence
25 of what they were doing back then to figure out what their

1 intent was, what their knowledge was back then. The government
2 says, Mr. Rushing, says these filings were filed because they
3 were fraud, and they were criminal, and they are going to bring
4 in witnesses here to say that wasn't my name on there, I didn't
5 sign up to be a client. We are going to show evidence of why
6 the Watts firm believed at the time they filed these things on
7 these deadlines that they believed they had a client.

10:03 8 Now, I want to focus a little bit on Mr. Watts, David
9 Watts. He joined his brother's firm in 2003, about 13 years
10 ago. He had had experience in management at different
11 companies, Dillard's, other companies. As a team, these two men
12 were hard working people, you are going to see, and they helped
13 hundreds and hundreds of clients recover for damages, righteous
14 cases, real people. You will hear that Mr. David Watts has
15 tremendous experience in this mass injury field. By the time
16 he got up to this point, you will see in his mindset there,
17 that David Watts, you will see in the e-mails that he has an
18 abrupt tone to him, to be honest with you, candid with you.
19 He's the kind of guy there is no gray to David. It is black or
20 white. He is an engineer. He is a ^ wonk. Some people call
21 him a nerd, a database kind of guy. He focuses on the numbers
22 and the spreadsheets, but he is a problem solver. You will see
23 in the e-mails of he is constantly going into the details, I
24 need that, I need this. He is a computer guy. He built a
25 massive database in this. He is not a lawyer, he is not

1 building legal pleadings. He is not appearing in courts. He
2 sits in his office with massive databases. You will see he is
3 a person who managed all of this stuff and delegated people to
4 do all of these things. His comments are blunt. They are in
5 your face, get it right, brutally honest comments. That's just
6 his personality. So we are going to bring you e-mails that are
7 going to show how blunt he is in getting on people and how they
8 are not giving him the data that he needs to file this stuff.
9 But you are going to hear witnesses testify about his character
10 for truth, law abiding nature. You will hear about his
11 experience before 2010 because the story does start before then
12 on his experience in managing all of these different cases, and
13 how he knew, you are going to hear evidence on how he knew,
14 when you get these kind of cases, it's not just about giving a
15 name and a number and you are going to get money. You are
16 going to have to back it up. He knew that. He knew, and we
17 are going to introduce the evidence on this, that you've got to
18 submit proof of your claim, or you're not going to get paid.
19 These mass settlement agreements on all of these mass injury
20 cases, you are going to learn they put not only deadlines for
21 this stuff, but they say, look, you've got to give this kind of
22 proof in order to do it, to get this money. David Watts, you
23 will see, was so qualified that in other cases, you will hear
24 evidence, the government is going to introduce evidence about a
25 case named FEMA, and it had to do with Hurricane Katrina.

1 Hurricane Katrina came in and devastated everything. Y'all
2 know that better than anything.

10:06 3 Well, they brought in all of these trailers, and the
4 lawsuit was that these trailers were full of formaldehyde, so
5 there was a lot of people all messed up with this stuff. The
6 Watts firm got involved in that. David got involved with
7 managing all of these things. You'll hear about this. This is
8 the style of that case. It was in front of a different judge
9 over there in New Orleans, that they were ordered, and in that
10 case they also ordered plaintiff fact sheets. You are going to
11 see this in evidence. And David Watts was recognized as such
12 as expert that he was appointed by the Court, David Watts was,
13 appointed by the Court to manage all of the data in that case,
14 not just the Watts firm's, but all of it, because he's a data
15 guy. And you are going to see how successful it was. In the
16 FEMA case, the Watts firm alone brought in 31,000 total client
17 in takes, 924 rejected by the firm, and so they submitted
18 30,000 -- see that top right -- 30,147 cases. Out of that
19 number, 29,876 cases were paid in settlement, a 99.1 percent
20 success ratio, real people, real bodies, real injury. That's
21 what that man worked on. You are going to hear it. And that's
22 what he organized.

10:08 23 Now, you will hear -- the government has said they are
24 going to bring some witnesses that were employees that said
25 even in that FEMA case there were problems. There was missing

1 information, the initial claims that came in were missing
2 social security numbers, or only had partial social security
3 numbers. See, because in that case, the Watts firm hired two
4 of these gentlemen back here, Mr. Eloy Guerra over here with
5 the yellow tie, Mr. Greg Warren over there with the white
6 collar on his shirt. He is sitting up. Those were independent
7 contractors that they hired in that FEMA case, before this BP
8 case. You are going to hear that. Those independent
9 contractors had their own people that they went, including in
10 that case, I believe they used Kristy Le over here in the back
11 left in the blue dress, to go out and visit with people who
12 were injured, talk to them, and if they are clients, sign them
13 up. That was the process used in FEMA. And you are going to
14 hear -- the government is going to bring some employees to
15 show, well, they had problems in there too. They should have
16 known these folks were no good. They had problems bringing in
17 some of that data. But you will hear evidence that that is
18 normal in all of these mass injury cases because people are
19 afraid to give their Social Security numbers. They don't want
20 to give them, at first, to anybody. So they will only give you
21 the last four digits or they won't give it to you at all. You
22 will hear evidence when they get this information in, well, of
23 course these initial spreadsheets are not going to have the
24 full data in it. You will hear how that is a normal process of
25 this mass injury situation. But in the FEMA case, they spend

1 the money to go back out to the field, reinterview these
2 people, get the correct data and let's get these claims
3 submitted. That's why of the 31 that came in, there was a
4 large percentage that didn't have the correct data, but did it
5 check out, after they went and checked it out? Absolutely. 99
6 percent success, it checked out, real people, real bodies, real
7 injury. And they had depended on Mr. Guerra, and Mr. Warren,
8 Ms. Le to have done their job in that case, and they did.

10:10 9 So you ask yourselves, how did things get so messed up
10 here in this BP case, with signatures and social securityies
11 and what Mr. Rushing is describing? What were claims filed
12 before these deadlines, if you knew there was social security
13 numbers not on the spreadsheet, or only the last four digits?
14 We are going to give you evidence to show why that happened.
15 But the government, as we have talked in here, has the burden
16 of proof. They have to prove that David Watts had the intent
17 to commit a crime when he filed these spreadsheets with the
18 GCCF. We are going to offer proof as to David Watts' state of
19 mind and Mikal Watts' state of mind, Wynter and everybody, what
20 their state of mind was back then. We are going to introduce
21 e-mails, letters, memos to you. We've got to take a lot of
22 time, folks. Mr. Rushing talks about one e-mail. When they
23 execute a search warrant, you about going to hear when they
24 executed a search warrant and got these people's database,
25 there were millions of e-mails on there, half a million e-mails

1 on BP related stuff alone. He is talking about one e-mail.

10:12 2 We are going to bring e-mails to give context to what that
3 meant in that one e-mail, what they were thinking back in 2010
4 and 2011, because that's what we have to focus in, what's their
5 state of mind back then, when you don't have the benefit of
6 20/20 hindsight, when you can't predict that some people are
7 stealing from you, people way down the line switching numbers
8 and dates of birth and stuff when they hadn't done that before
9 to you. The evidence is going to show that David Watts and
10 Mikal Watts discovered much later after the indictment, steps
11 after the indictment, that they figured out, oh, my gosh,
12 because they didn't have access to all these folks' bank
13 accounts in 2010 or '11 or '12. This is all benefit of
14 hindsight. They didn't have access to see how this money is
15 being spent and it is not being spent the way it should have
16 been spent.

10:13 17 So at the beginning, let's walk through this a little bit.
18 They know that the fishermen are suffering. They find out that
19 a large percentage of the fishermen here in the gulf,
20 shrimpers, deckhands, boat owners, are Vietnamese people. That
21 is just a fact. There is a large percentage of them from that
22 culture. They find out there is a language barrier. Most of
23 these folks don't even talk English. So they have to hire
24 people, there are logistical problems with this language
25 barrier, so they have to hire people they have trust in,

1 confidence in. Because of that FEMA situation they had had
2 with Mr. Guerra and Mr. Warren, and because some of the people
3 involved in the FEMA lawsuit also were nonspeaking --
4 non-English-speaking Vietnamese people, they trusted them.
5 They had a 99 percent success ratio, and the Watts went to them
6 again. They said we will pay you a bunch of money. We will
7 pay you \$10 million and go out and invest in this and build
8 your little army and interview these folks. Pick the ones that
9 are injured. Don't give us any that are not injured because we
10 will have to prove it. You will see e-mails, We are going to
11 have to prove this stuff. Don't just give me names. Names
12 don't do me any good. You will see at the end, if you don't
13 have real proof of these people losing money, and real jobs,
14 you are not going to get any money. So give me real people.

10:14 15 So that's why they hired these folks. Now, to show you a
16 little bit how these people lay out. These are the defendants
17 in this case. You know about Mikal Watts and David Watts and
18 Wynter Lee, all work for the Watts firm. Mr. Guerra I just
19 referred to, this guy in the yellow tie, he is the person that
20 primarily they had been talking to and dealing with. The
21 contractors out in the field, Greg Warren, Kristy Le and Abbie,
22 who worked for Kristy. Eloy Guerra, you are going to hear
23 evidence, was the point of contact between the Watts firm and
24 what was going on out there. He is an independent contractor.
25 The evidence show he works out in the valley of Texas, about

1 150 from Corpus, or 250 miles from San Antonio, down there in
2 the tip. He is not associated nor an employee of Watts Guerra,
3 never has been. He's an independent contractor. In this case,
4 he had a big job to do, and there had been a trusted
5 relationship between the law firm and Mr. Guerra because of
6 these past dealings in other cases, FEMA included. They had
7 done a good job in FEMA. So they trusted him at that time.
8 Eloy partnered with Mr. Warren, Greg Warren. Mr. Greg Warren
9 has never been an employee of Watts Guerra, and they hired
10 Kristy Le. They formed their own companies, and you will hear
11 all of their dealings, but that had nothing to do with the
12 Watts firm. They had partnerships in J and G or K & G, Kristy
13 and Greg I think it means, their company together. They went
14 out and hired people that knew how to talk to these Vietnamese
15 folks. They were Vietnamese themselves. In order to talk
16 about and find people who were actually injured, who might have
17 a claim of damage, who cannot pay their bills any more and
18 cannot work.

10:16 19 Now, Watts firm did not contract with Kristy Le. Watts
20 firm reached out and got local counsel, a man by the name of
21 Anders Ferrington. He is a lawyer here in Mississippi.
22 Whenever the Watts firm -- you will hear evidence that whenever
23 they have these mass injury cases across the country, they will
24 find a local lawyer there who knows the rules, the bar rules of
25 that state, and they contract with that lawyer. So people were

1 hired. And David Watts knew he needed proof. So this is it.
2 He knows. Of the 18 multi-district litigations, you are going
3 to hear evidence that Watts had litigated prior to BP, 16 of
4 them required a plaintiff fact sheet with all of that
5 information. You will see that 15 of them required those to be
6 filed within 30 to 90 days, which was this case, remember?
7 August, to November, 90 days. You will see plaintiff fact
8 sheets really averaged about 21 pages in length. In this case,
9 it was more than 21. All of them required social security
10 numbers or tax IDs. All of this information is required.

10:17 11 And you are going to see this evidence because this is in
12 the mind of David Watts back in 2010, all of this information,
13 that there at the bottom, you are going to have -- David Watts
14 knew that these things, these orders required a period of
15 employment and proof of documentation of earnings. It's not
16 just putting numbers on a spreadsheet or name. He knows that
17 when he is signing up people or getting these spreadsheets. He
18 is telling them this is what I'm going to need. So he is
19 instructing Eloy Guerra and Warren, so that's their job, their
20 function, giving them instructions of what he wants. This is
21 the kind of things he is telling them. David Watts is saying
22 this is your duties here for all the money we are going to pay
23 you. Collect and submit us client questionnaires,
24 questionnaires that these folks fill out about whether they
25 work, what they do, where they are from, tax release forms,

1 because we are going to have to submit proof of your income
2 taxes, if you file them, and how much money you have been
3 making, how much you are out now, you can't earn anymore. You
4 will see that he also gave them instructions if there is
5 anything missing or erroneous, go and collect that. That is
6 part of what I'm paying you for. You have to make sure these
7 plaintiff fact sheets are filled out. You have to collect
8 damage proof from each client, real proof that you are a real
9 person and you have a real job out there and you can't fish any
10 more and you can't pay your bills. You have to complete these
11 settlement claim forms. These are all instructions that David
12 Watts gave these folks. I'm not just going to send you out on
13 your own. You will hear evidence of the effort that they did.
14 This is the same poster of what is on the screen right now.
15 This is what the Watts form gave in support to these
16 independent contractors. The money they spent, over
17 \$10 million was sent to the Mississippi field effort.
18 \$10 million. All of these expenses being spent by the Watts
19 firm in excess of \$20 million in their own costs, in the
20 Plaintiff's Steering Committee costs, all of this was spent,
21 manpower, there were attorneys devoted, paying all of this,
22 sending people out to Mississippi to train these folks. They
23 sent computers, equipment. More than 80 computers and phones,
24 cameras, printers, scanners the Watts folks are sending out to
25 these independent contractors. Training. The Watts firm would

1 send out staff people, the lawyers. David Watts himself went
2 out to talk to Kristy Le and Greg Warren and all of these
3 people out there saying this is what we need. You are going to
4 take all of these files? These are the kinds of things we
5 need. And they trained them how to do it. They provided the
6 letters to the clients, live calls. You are going to see all
7 of this support going out, 422,000 total letters were sent from
8 the law firm to these clients out in the field to the addresses
9 these independent contractors had given them. Live calls,
10 58,000 calls live calls with the clients were made. We are
11 going to introduce proof of that. This isn't by just putting
12 names on a spreadsheet and filing it. This is about work being
13 done for people who they really thought were clients. Auto
14 calls. There was a robo call system that would go out, and you
15 are going to see hundreds of thousands of robo calls that went
16 out. This was all the support that had been given by the Watts
17 firm to these independent contractors so they could do their
18 job. Equipment, let me show you, just an idea of the
19 equipment, all of these being taken out to Mississippi in these
20 offices that Mr. Rushing talked about. You are going to see
21 all of this, huge amount of funds being -- and the millions of
22 dollars that the Watts firm did, it was normal part of
23 practice. You are going to hear evidence that if you look on
24 the right side, third from the right is BP. From the Watts
25 firm alone, over \$3 million dollars invested in the signup of

1 these people that were injured. Investing this much money.
2 That is not unusual. That's what they do. These are other
3 lawsuits they've been in. FEMA they invested over \$5 million.
4 The Vioxx, the Vioxx medication, over seven, almost \$8 million
5 they invested in that case. Fen phen down on the left, almost
6 \$7 million they invested in that case to represent injured
7 people, all cases where they represented real people, real
8 bodies. They went and talked to -- Mikal Watts went and talked
9 to investors. You will hear testimony of Bob Hilliard and John
10 Cracken, two men who entered into partners, a joint venture.
11 They are different law firms. They have their own law firms,
12 but they invested in this BP project with Mr. Watts. Here is a
13 chart of how much was invested. For example, on the BP thing,
14 three from the right, I said 3 million from the Watts firm
15 alone was invested. The rest came from the investors for a
16 total of \$3 million for this project, to go and talk to real
17 folks who had been injured. It is not unusual. You see how
18 much was invested by investors in other cases. That's just the
19 way this works. It is important to see how it works because
20 you have to get to know their mindset back in 2010. So over
21 the course of months in the BP case, they paid \$10 million to
22 these independent contractors. The money would be transferred
23 to the local counsel, Anders Ferrington, who by the way was
24 recommended to the Watts firm by these independent contractors,
25 saying this is the lawyer we would want to work with, the local

1 counsel. So money is being wired to Mr. Ferrington.
2 Mr. Ferrington takes care of distributing it to these
3 independent contractors, consistent. The idea is the flow of
4 information. All right. Y'all go talk to more people, get who
5 is there, create spreadsheet database and send us the database
6 information of these thousands of people that have been
7 injured, not fictitious people. The statistics show there were
8 over 75,000 people just in fishermen alone out there in the
9 gulf who couldn't work anymore. You will see evidence that
10 David Watts and his crew would receive these databases, they
11 would process it, they would see errors, missing information,
12 duplicate information. They would sent back requests, you are
13 going to see e-mails, saying, okay, you see this 2,000 here.
14 Of this 2,000, these 50 have this misinformation. You can see
15 the detail of the work that David Watts did, and I need it
16 corrected. I'm not going to submit this without these
17 corrections. You see evidence of how Kristy Le and her workers
18 and that she hired over a hundred people, Vietnamese people, to
19 help her in this project. And when David Watts and his folks
20 would go down to Mississippi to train these folks, real
21 training meetings, and in New Orleans too, and you would have
22 to get a big conference room because there was over a hundred
23 people they had hired, field workers to go out and interview
24 these people. It is a big process. It is something you can't
25 imagine if you are not involved in it. But David Watts had the

1 experience in doing this. What the evidence is going to show
2 he did not have experience in is receiving scam data. He
3 lacked that kind of experience and recognizing when you are
4 getting a name and a social security number, it may not be the
5 real social security number. He had never been exposed to
6 that. The evidence will show he never had experience dealing
7 with people of deceit and who would switch numbers and give
8 fake numbers and lie about certain people. He never had in all
9 of these other cases. Didn't recognize it when it came to him.
10 How could you? We will show you evidence of how they spent the
11 money. He had no idea that with this \$10 million going out
12 there, that it's not being spent on the project that it is
13 designed to do. When you hire an independent contractor 20 do
14 their job, why didn't they do it? They had had so much
15 success. Watts firm had their own validation people in place
16 to check the files and see what was right and what was wrong.
17 The firm's success had depended on people not stealing from
18 them, not lying to them, and it had done well in the past. But
19 this is what you are going to see. We are going to introduce
20 evidence that out of this \$10 million plus that came in, there
21 were \$5 million spent on personal expenses, half of that money.
22 \$5 million. \$2 million just went out to people we can't even
23 recognize, had nothing to do with BP. A million seven was in a
24 bank account just sitting there in 2011 of one of these folks.
25 Out of that \$10 million that went out there, \$2,300,000 was

1 spent on this project, less than a third. We will show you
2 evidence of how this money was spent. Greg Warren, through his
3 accounts, we are going to show you, money spent on hotels, on
4 gentlemen's clubs, buying \$65,000 in clothes, spending \$5,000
5 on cigars, buying new Audis, new cars, eating at the most
6 expensive places. We are going to show you the accounts of
7 Kristy Warren, how she is spending so much money at all of
8 these casinos, Trump Tower, Cosmopolitan, Mandolin Bay,
9 spending money like anything at these different places, these
10 retail places. So when you look at their bank accounts, which,
11 by the way, we are thinking again, what is David Watts and
12 Mikal Watts and others thinking in 2010 and 2011, they didn't
13 have access to these bank accounts of these independent
14 contractors. We didn't find out until after the indictment,
15 you are going to see --

10:28 16 **MR. RUSHING:** Your Honor, that is argumentative.

10:28 17 **MR. MCCRUM:** Let me rephrase --

10:28 18 **THE COURT:** The jury has been instructed that opening
19 statements are not evidence, but let's try to focus on what you
20 intend the evidence to show.

10:28 21 **MR. MCCRUM:** You will see the evidence that we got
22 from the government after the case was filed included the bank
23 records of these folks, and at that time you are going to see
24 all of this money that was being spent on these other purposes.
25 We are also going to show you a plan. We are going to go

1 into -- I'm not going to go into it too deep. I just want to
2 show you just a flash of all of these e-mails they are showing.
3 On the left-hand column, there's just dozens of e-mails we are
4 going to show you, of the plan to prove income loss, the plan
5 by David Watts and others at his firm was not just to get a
6 name and a social security number and submit it and ask -- give
7 us money. There was actually a plan to say what information
8 they wanted. They wanted tax returns, they wanted fishing
9 licenses, they wanted this or that. All right? And we are
10 going to introduce also e-mails, such as on that right side of
11 what is being told to them by Eloy Guerra and others saying we
12 are verifying all of this stuff, we are getting all of this
13 stuff. You are going to have these social security numbers and
14 soon. You are going to have all of this stuff. In the first
15 months, summer months of 2010, this is the kind of
16 conversations going on. We will have to go through that to
17 show you the evidence of what they were thinking. We were sent
18 pictures by these folks. You are going to see evidence of how
19 they sent us pictures of town hall meetings. These are
20 different town hall meetings they would have with these
21 pictures, these are pictures of other cases, but it's that kind
22 of pictures that we would receive from these contract workers.
23 You will see evidence where they sent a video, it was this
24 field team, and they had all of these Vietnamese people that
25 said we are fishermen, and they are interviewing them, and that

1 is what they are sending to us. They are sending pictures of
2 this stuff. That's why when these folks over here are getting
3 pictures of that, they are really believing they are talking to
4 these people. In September of 2010, these folks went out to
5 Mississippi and picked up all of these signed client contracts
6 that were obtained. That is an sample of an employment
7 contract, where these field workers met people and got with
8 people and you actually had a signature on that client
9 contract. You will see all of those client contracts they
10 received, that they obtained tax authorizations. You will see
11 these where people would fill out these authorizations and say
12 yes, you can go look at my taxes to get this proof of
13 income loss. You will see all of these different things, all
14 of this different information obtained from these folks, they
15 took it back to Corpus, scanned it in, because this is a
16 paperless office, they don't keep all the records. They scan
17 it in and put it in a warehouse. Based on that information,
18 they filed lawsuit. I said 15 different federal court judges.
19 They filed lawsuits in ten different federal court judges and
20 11 different state court judges. Now, Mr. Rushing said the
21 evidence is going to show that they knew these were false
22 identifications. That is what they have the burden of proving.
23 And yet you will see evidence that they filed cases before all
24 of 21 different judges, 21 different courts, each one that is
25 subject to a review, analysis, attack, question. Before this

1 multi-district litigation was started, 21 different courts.
2 You are going to see evidence that David over and over would
3 see mistakes and gaps, that it's a normal part of the process,
4 and he would winnow it down. You will see evidence that
5 initial 52,000 names came into the custody of Mr. Guerra and
6 Mr. Warren, and they only gave us 41 of those 52, and out of
7 those 41, you know that deadline that had to be filed, we had
8 to file plaintiff fact sheets, we winnowed it down to 25,000,
9 saying we only have 9-digit social security numbers for 25, and
10 so that's all we are going to do. We are not going to submit
11 incomplete information. That's what the Watts firm did.
12 That's what David Watts did. That's what Mikal Watts did as a
13 lawyer. You will see there was a constant noticing to the GCCF
14 that we had told you we had 41, because that's what had been
15 told to us, but we are still collecting information so we are
16 only going to file a 25 at this time. You are going to see the
17 evidence show that the Watts firm did not have access to any
18 social security databases, social security administration.
19 They didn't have those questionnaires in hand until September
20 of 2010. And so because there was incomplete information, they
21 put in a procedure. We will show evidence of that. They said
22 they needed information, so they filed all of these plaintiff
23 fact sheets on the left-hand side, and they were told by
24 Mr. Feinberg that I need more information. Okay. You are
25 going to see evidence that the Watts and its partners, the

1 investors, they put in a plan to put 1.5 million more dollars
2 to get that additional information. So in November and
3 December they wired half it, \$750,000 in two increments, that's
4 that middle block there, and they went and trained and equipped
5 the field team to go ahead, look, we are missing some
6 information on that stuff, go get this missing information. We
7 will give you more money to do it. And what they didn't know,
8 and what you will see the evidence that they didn't find out
9 until after this case, and they could see the bank records, is
10 that out of that \$750,000 that was -- you are going to hear it
11 was their intent, the Watts firm intent, you are supposed to
12 spend this money and go and interview people and get this
13 missing information that is still missing, out of that
14 \$750,000, you will see evidence that \$605,000 were spent on
15 personal spending. They had no idea. You are going to see
16 evidence that Mr. Warren spent, out of that money, \$2,500 on
17 cigars, \$3,000 salon and spas, \$65,000 on clothes, \$77,000 on
18 clothes, that's Mr. Warren alone, went and bought a new Audi, a
19 brand new Audi, for \$75,000, ran up credit cards, \$80,000.
20 This is just out of that 750 that was sent. Had no idea. You
21 will see evidence that the Watts firm had no idea that the
22 money was not being spent. And all the time you are going to
23 see evidence during this same time period, and this is not how
24 it is going to be presented to you. I just want to show
25 you just to -- there's a lot of e-mails that will be from David

1 Watts where he is sending out information to these folks. I
2 will just give you examples. Mr. Rushing said there is one
3 that doesn't pass the smell test early on. We are going to
4 show you a lot of other e-mails where David Watts is sending
5 e-mails, We have got to immediately fix this social security
6 issue. The last four digits only creates a huge amount of
7 work. That's in one e-mail back in May of 2010.

10:36 8 Another example, David Watts to Eloy Guerra, we are
9 planning to file lawsuits on behalf of 12,000. This is in June
10 of 2010, attaches a spreadsheet of 865 clients out of that
11 12,000 that have incomplete info. I need it. He would send an
12 e-mail that has current client issues, and he would go one by
13 one on the claims. This only has a first name, this only has a
14 last name, this only has four digits, the address is
15 incomplete, I need a better spelling. The detail that this man
16 went through out of 12,000, one by one, saying these are the
17 errors that I need fixed.

10:37 18 All the while, e-mail after e-mail, and that's why we are
19 going to ask for your patience because we are going to have to
20 introduce all of these e-mails to show you what he was thinking
21 back then, because it is back then we are going to focus on.
22 So this plan to put in a million and a half to go, this is all
23 the work that was done before that first \$500,000 was sent, and
24 there was planning going on. We are going to show you all of
25 these e-mails, they are finalizing documents, they are meeting

1 with leaders telling them what to do. Mikal Watts, back in
2 September, orders this document collection program. We are
3 going to show you there at the top. This is -- we've got to go
4 collect documents to prove these people really suffered injury.

10:38 5 Before the \$250,000 was sent in December, we will show you
6 e-mails of what led up to that, instructions, an e-mail from
7 David there at the top, go photograph the client, get his
8 fishing license, his social security card, do all of this
9 stuff, require a case number on a card be photographed, sending
10 out cameras, meeting with the field leaders there in November
11 of 2010, training them. This is why we are sending you all
12 this money, to go get all of this documentation. And they get
13 e-mails back from Eloy Guerra saying, We are getting social
14 security verified with the Social Security Administration,
15 quote-unquote.

10:38 16 What came back? What would you expect? We are going to
17 show you e-mails and products of how there was an insufficient
18 production by that field team. Down there in the bottom two
19 e-mails up, you will see in December of 29, 2010, the field
20 team says they are having troubles in the field, and you will
21 hear evidence that they were saying that because this is a
22 Vietnamese people, said they are very transient, they are not
23 here, they have moved away, they can't fish, so they are going
24 to go to other waters to fish. They said they were having
25 trouble reaching some of these people. They are telling them.

1 You will hear the evidence. That is what they were telling the
2 Watts firm. Again, the evidence of the money.

10:39 3 What they were told after the second part, 250, says, Mr.
4 Guerra says, It's a lot more difficult than I expected, but we
5 are going to get it done.

10:40 6 Now, so what happened? What happened during this Phase II
7 part? Because spreadsheets were returned with different social
8 security numbers, which led to a second filing in January of
9 2011. Remember those 17,000 were filed? We are going to show
10 you some records that we obtained after this case was indicted
11 that we went out and subpoenaed, that we found out about a
12 company called Denspri and a company called IRBSearch. We
13 didn't know about it back then, we were thinking about who knew
14 what back then. Nobody told the Watts people about these
15 companies. What happened was, when they sent this money out in
16 the field, the 150 that was spent, they went and -- Kristy Le
17 went and hired this investigator, Ryan Willis, and you will
18 hear -- he has been subpoenaed to testify here, and Ryan
19 Willis, because he is a private investigator, you are going to
20 hear, had access to this search company, Denspri, and
21 IRBSearch. These are companies that have data in them,
22 people's social security numbers, addresses, dates of birth.
23 Maybe y'all never heard of it. I know I hadn't. So you are
24 going to see how there were requests made for all of these
25 things that David said we need information on these folks, and

1 how they sent this information, these requests to these two
2 companies, and how these folks didn't find out until after the
3 indictment that when the results came in, sure enough, Denspri
4 and IRB was giving over information. But when we tracked it
5 through, we are going to show you charts where they would get a
6 social security number on a guy -- let's say he is Joe Smith.
7 They already had a number for Joe Smith. So you know what?
8 They'd take that social security number and give it to somebody
9 else. And so when they would get the number on that someone
10 else, Oh, we've already got that one filled out. Let's take
11 that social security number and give it to someone else,
12 someone else, and someone else. And they fill up these
13 databases -- these spreadsheets. They send them back and say,
14 we have now verified these social security numbers, these are
15 good numbers. But when Watts gets these spreadsheets, we will
16 show you experts' testimony of how they sent Kristy Le and her
17 folks, Abbie Nguyen may be part of this, said these fuel
18 workers sent over to Kristy Le these spreadsheets, sent it on
19 Eloy Guerra and then to his partner, Chris DeLeon, and they get
20 these spreadsheets together. Eloy and Chris sent over to us
21 what they had received, spreadsheets of information, names and
22 social security numbers, and we have been told, okay, we get a
23 spreadsheet now. Everybody has got nine-digit numbers, nine
24 social security numbers, as they are supposed to, and that's
25 what we sent on. You'll see that's what the Watts firm sends

1 on. They got what they had received with the assurances it was
2 right information. Well, it wasn't right information, because
3 when these folks get it and they start analyzing it, you look
4 at Jo Smith, that's not her social security number. You look
5 at Sally Struthers, that ain't her social security number. But
6 you are going to hear evidence that these folks don't know.
7 They have been told that they are. They mixed up the
8 information without telling -- as far as we can tell, didn't
9 tell Eloy Guerra or Chris DeLeon, certainly didn't tell David
10 Watts or Mikal Watts. You won't see any evidence at all or any
11 e-mail that they told these folks that this mixing and matching
12 had gone on. You are going to see evidence that these folks,
13 Kristy Le and her folks, you know what, they got information
14 that there was all of these names of people that were deceased.
15 They would leave that information off and just send it on, had
16 no idea. You will see, as far as the transfer of
17 information -- Mr. Rushing talked about some deceased people.
18 You will see how that happened, because we get a spreadsheet
19 and we didn't have the notification. Kristy Le's folks get
20 notified of all of this stuff from Denspri that these folks are
21 no longer alive but don't pass on the information. You will
22 see another problem with those Denspri records, that they will
23 get a name for let's say it is Sally Struthers, and we had
24 asked for Sally Struthers with a date of birth from 1960.
25 Denspri result comes up with a Sally Struthers but with a date

1 of birth of 1942. They say, well, the names match, so let's
2 give them -- that Sally Struthers has that number. So we get a
3 spreadsheet from them that says Sally Struthers with this
4 number, It's been verified. Sally Struthers has this social
5 security number. But we didn't know they had not even bothered
6 to check that it may be a different person, or a daughter or a
7 parent. Now, of course, this is all information that we
8 find -- you will see the evidence it is found way after the
9 fact, way after these folks are charged, where the government
10 hadn't even analyzed these records. We went out and subpoenaed
11 them and found out. So was all of this a mistake? We will
12 bring you a statistician. His name is Gerald McGwin. He has a
13 Ph.D. in statistics and everything. He analyzed all these
14 Denspri records and IRB, matched them against the Social
15 Security Administration and the mass tort database that was in
16 the law firm. You will see his testimony of these ones that
17 are made-up numbers that Mr. Rushing talked about. That
18 couldn't have happened by chance. It's more of a chance that
19 you would get struck by lightning than that it's just an
20 accident. You will see these ones that are stolen that belong
21 to somebody else, there is more of a chance that you will win
22 the lotto than that was by accident. He's going to tell you
23 about all of these people in column D, that Kristy's folks,
24 they created a spreadsheet that said deceased, that was not
25 transferred over to the Watts firm. He is going to tell you

1 about that. The evidence is going to show that these folks,
2 that Mr. Guerra and his operation, Mr. Warren, they did not do
3 their job. But they were assuring David Watts and everybody
4 else that they were.

10:47 5 So there was a problem in 2011 with some of these names.
6 Some of these names had social security numbers. So we are
7 going to go through, then, 2011 and 2012, and say what happened
8 during that time period, and we are going to show you evidence
9 that Ken Feinberg and GCCF were having problems with different
10 claimants on settling cases, and how it was difficult, and he
11 was putting on requirements of people to not have to pay out
12 from BP. And you are going to hear all of that. So John
13 Cracken, one of the investors in this thing is going to come
14 testify to you. He came in and said, you know what? I'm going
15 to go out and see what the problem is on this field team. So
16 he goes out and he meets with Kristy Le and her folks and comes
17 up with a plan. You are going to hear evidence that even John
18 Cracken thought that these people could still go out and find
19 the real information from these real clients. You will see
20 e-mails through the course of 2011 where they were talking
21 about investing another \$3 million to go and get the
22 information from these folks that was really needed, putting
23 more money into it because that was what was needed, that
24 Mr. Watts was considering that, that his investors were
25 considering putting more money into it. You will hear

1 testimony that they went and hired an expert to go out into the
2 Vietnamese community to try to figure out why can't we find
3 these folks to get their information? What has happened? The
4 expert comes back and said, Well, they have moved away, they
5 don't trust things. GCCF came up with a plan, saying, you know
6 what, if you tell us that you don't have a lawyer, we'll give
7 you \$5,000 right now. A lot of people took advantage of that
8 and said, no, I don't have a lawyer, I will take my \$5,000. A
9 lot of Vietnamese fishermen did that. There was a lot of
10 reasons that that expert came back and said. But as far as the
11 mindset of what David Watts and Mikal Watts and others had over
12 at the Watts firm of what their intent was at the time, we
13 still believed we had real clients, and we can't just abandon
14 it, with real people. That's what you are going to hear
15 testimony on. We cannot just abandon lawsuits or claims
16 because -- until you know that it's not a real person. The
17 minute you abandon it, it is gone. And what if it belongs to a
18 real person?

10:49

19 And so that's why Mr. Cracken, you are going to hear his
20 testimony, how he tried so hard to get the information that was
21 needed as late as 2011, 2012, working on it all the while.
22 Mikal Watts said, you know what, GCCF, you will hear testimony,
23 is not going to pay us, they are putting all kind of stringent
24 requirements on us. We don't have to follow that route. Let's
25 just proceed with the lawsuit. They aren't being fair. You

1 will see orders of how GCCF was doing some things that was
2 impeding the process of a lot of claimants, and as far as his
3 mindset of why he couldn't proceed with GCCF. You are going to
4 see orders of why he decided to work so hard, and said, you
5 know what, we are not going to settle with GCCF. They are not
6 going to pay out. They are doing some things they shouldn't be
7 doing, so we are going to proceed with the lawsuit. So he
8 works on proceeding with a lawsuit. And that's -- you are
9 going to see it through the course of 2011, through 2012. So
10 when the government brings evidence to you of this doesn't pass
11 the smell test, what Mr. Rushing didn't tell you, that's an
12 e-mail he was referring to in August of 2010. That's when that
13 e-mail happened. But you are going to see all the other
14 e-mails that we are going to bring in to surround that.
15 There's an e-mail that same day that Mr. Rushing didn't tell
16 you about. It said of 2477, that the social security numbers
17 are changing, there was an e-mail just an hour later, David
18 said, oh, no, I made a mistake. I was looking at the wrong
19 database. And there were several e-mails later that day that
20 said, no, that's even less than that, I was making a mistake.
21 We are going to show you the context of e-mails surrounding the
22 ones that they cherry pick out and pluck. They are going to
23 introduce evidence of an e-mail in January of 2007 where David,
24 in his blunt style, says, I don't trust the social security
25 number or date of birth information. But we will show you the

1 e-mails around it, what he is talking about, what segment, out
2 of the 41,000, what portion he is talking about and what effort
3 he is doing to try to get it fixed, the errors that are part of
4 the normal process.

10:52 5 You will hear evidence that there was deceased people, as
6 Mr. Rushing said, that we were notified of five people who had
7 been deceased that had claims that had been filed. You will
8 see evidence of the overwhelming work that we did that before
9 we could dismiss this claim, that the Watts firm said, we have
10 to verify this person was deceased and didn't have a legitimate
11 claim. You are going to see all the calls, the letters,
12 everything else. You are going to see the -- the witnesses
13 that the government is going to bring are some employees that
14 say that we weren't following the same procedures in this case
15 as we had in others. But you are going to see that of the
16 level that they were, all of the things that they are talking
17 about, we are going to show you e-mails and movement by
18 management that they were following the same procedures. It is
19 just they were doing it in Mississippi where the line employee
20 couldn't see it. They are going to bring you evidence of some
21 former employees that are on the line that said, I was
22 suspicious about some of these things. We are going to show
23 you e-mails that David Watts was suspicious about them. That's
24 why he was pushing so hard to get it fixed. You are going to
25 hear some of these employees say, they should have dismissed

1 some of these cases, and they didn't dismiss it. They did not
2 have a policy. I believe they are going to bring a witness
3 saying we didn't even have a policy to dismiss these cases. We
4 are going to bring you evidence of dismissals, 513 dismissals,
5 where we received a letter of no interest, or we received
6 permission or written notice to dismiss, that cases were
7 dismissed, but only after it could be verified.

10:54 8 The indictment in this case refers to 41 people, and I
9 suspect the government is going to bring some of these 41
10 Vietnamese people that say that wasn't my name, I don't know
11 why they filed a claim for me, that wasn't me. But to get to
12 the mindset of David Watts or Mikal Watts or others back in
13 2010 of why a claim was filed, of these 41 people, 31 of them
14 never contacted the Watts office to say, that ain't me. We are
15 going to show you that three of the 41 were closed. We did
16 close those after we received notice that we weren't -- that
17 Watts wasn't representing them. Three of them were contacted
18 once, but they could not be reached again to get written
19 confirmation of what they wanted. Four of them we are going to
20 show you, out of the 41 that they say were victimized, four of
21 them wrote in and said, we actually want you to represent us
22 and proceed with settlement.

10:55 23 I will show you the rest of the story. They are going to
24 bring in evidence to show that there was so much return mail in
25 this case, boy, they should have known something was going

1 wrong, we are getting a lot of return mail. It is different
2 than all the other cases, and nobody is doing anything about
3 it. You know when they send out all of these letters, the firm
4 sends out all these letters to all these clients, and all of
5 this mail is coming back, you are going to hear employees that
6 they are going to bring say, wow, that was a problem. Why
7 didn't anybody do anything about that? Well, we are going to
8 show you the steps, we'll go over through it in detail during
9 the trial of all the steps that were taken to verify and try to
10 get correct addresses. We are going to show you that the rate
11 of percentage in BP on that green of returned mail is on the
12 low end of every other case that they've worked, that it's a
13 normal procedure to get returned mail. That is just a normal
14 thing. We will bring you an expert in postal stuff to show you
15 from a management standpoint, and their intent in 2011, 2012,
16 how it didn't stick out like a sore thumb to them. We are
17 going to show you these statistics of other mass torts and
18 class actions of how it is just a normal course of business to
19 get these return calls. We are going to show you the effort
20 they went through to reach out to these folks. 422,000 mails
21 and all of these live calls and auto calls. The evidence is
22 going to try to say that this is a secret conspiracy, that
23 there were problems in this database that were secret, and they
24 didn't tell anybody, and GCCF didn't know about it, and BP
25 didn't know about it. We are going to have to bring in

1 evidence to show you this, that Watts firm disclosed issues
2 with all of these different areas about the issues with the BP
3 cases, the GCCF. We are going to bring in e-mails as early as
4 October of 2010, that first year. Six months after this spill
5 happened there's an e-mail written to the GCCF, Mikal doesn't
6 yet have the data to evaluate their claims, Mikal cannot vouch
7 for which workers were hurt by the spill or how badly, telling
8 them, we are putting our place in line because we think these
9 people have a claim, but we are not vouching for them yet, but
10 we have to meet a deadline, so that's what we are doing.
11 That's not fraud. We are going to show you all of these
12 letters that were written to the GCCF that said we expect there
13 is going to be an attrition that can't be proved, telling the
14 GCCF that's a normal part of the way these cases work. It is
15 nothing secret. Meetings with Kenneth Feinberg, telling him,
16 we are going to go into more detail, telling them of the issues
17 we are having with the identification data and the documents
18 and the proof. Disclosure to BP itself, when they submitted
19 the spreadsheets to BP, if they didn't have a complete social
20 security number, they would put zeroes or Xs to show they
21 didn't have the complete social security number, telling BP, we
22 don't have the whole social security number. There are some
23 issues with these things.

10:58 24 **THE COURT:** How much longer do you think you will be
25 in your opening?

10:58 1 **MR. MCCRUM:** Judge, I think I will be about 20 more
2 minutes.

10:58 3 **THE COURT:** Ladies and gentlemen, I'm going to let
4 you take a break. You have been listening to opening
5 statements for over two hours now. You may go back to the jury
6 room and refresh yourselves.

10:59 7 **(JURY OUT AT 10:58 A.M.)**

10:59 8 **THE COURT:** I apologize, Mr. McCrum, for having to
9 interrupt you, but I sometimes tend to forget also that the
10 court reporter has been diligently at work for almost two
11 hours. Let's take about ten-minute recess.

10:59 12 **(RECESS TAKEN AT 10:59 A.M. UNTIL 11:14 A.M.) .**

11:14 13 **THE COURT:** Mr. McCrum, are you ready to resume your
14 opening statement?

11:14 15 **MR. MCCRUM:** I didn't hear the last statement, Judge.

11:14 16 **THE COURT:** Are you ready to proceed?

11:14 17 **MR. MCCRUM:** Yes, sir.

11:14 18 **THE COURT:** Mr. Rushing, is the government ready to
19 proceed?

11:14 20 **MR. RUSHING:** Yes, Your Honor.

11:14 21 **THE COURT:** Please bring in the jury.

11:14 22 **(JURY IN AT 11:14 A.M.)**

11:16 23 **THE COURT:** Thank you. Please be seated.
24 Mr. McCrum, you may resume your opening statement.

11:17 25 **MR. MCCRUM:** Thank you, Your Honor. May it please

1 the Court. Ladies and gentlemen, I apologize for this taking a
2 long time, but this is going to be a long trial and there is a
3 lot of evidence we are going to present to you, and I want to
4 give you a blueprint of what is coming on all of these issues
5 so it will put you at least in the best position possible going
6 forward to get some perspective on this.

11:17 7 We had left off with there was an issue of these
8 conspiracies. They are being charged with conspiracy, which by
9 its very nature, a criminal conspiracy the government is
10 charging is secret. You are not going to tell people you are
11 involved in a criminal conspiracy. That is what they are
12 charging us with doing, that we are doing this secretly. I had
13 talked with you about these disclosures, open disclosures to BP
14 and GCCF, that there were some issues with these clients.
15 There were also disclosures to the Court itself that there was
16 some problems with the docket, that there was issues with
17 those. The Watts firm was filing things in 2011, as late as
18 2013, disclosures of the issues with these, that there was some
19 issues on the documentation for proof. There was some
20 disclosures to -- Mr. Rushing referred to the Plaintiff's
21 Steering Committee, which is a committee of lawyers I will tell
22 you a little bit about, who head up this multi-district
23 litigation. We are going to introduce evidence of 2011, 2012,
24 showing that there are issues that we may not be able to
25 document all of these people because they are Vietnamese

1 fishermen. They live by a cash system, a barter system, so you
2 don't have tax records, you don't have receipts. That's just
3 not the way these folks live, a lot of them. So we were
4 disclosing the issues with that. As far as social security
5 numbers, they were being disclosed right up front. If we don't
6 have a full social, you are going to see the spreadsheets with
7 notes on there, we don't have a full social. We don't have
8 that yet. So you are going to see all of that evidence of
9 these full disclosures all the day along. You will see we will
10 introduce a lot of e-mails about the issues that were present
11 in this docket with the Plaintiff's Steering Committee that was
12 governing all of this stuff. There is a seafood fund
13 administrator you will hear came along once Mr. Feinberg was
14 taken out of this, GCCF was taken out of it, because in 2012,
15 they said GCCF just is not going to do this anymore. There was
16 a different way put in place, and there was a seafood fund
17 administrator put in place in 2012. So you will see some
18 issues and correspondence we are going to introduce, telling
19 him also, the administration, there was some issues with these
20 cases that we have. Again, we are going to introduce evidence
21 of these presentments, and these forms are not just actually
22 making the claim, but rather you are going to hear evidence
23 from these lawyers that you put a place holder in place, saying
24 you are giving notice of intent to file a claim assuming we can
25 get information about all of these folks. We will introduce

1 that evidence to show the mindset of Mr. Watts, both Mikal
2 Watts and everybody else at that law firm. You will see we are
3 going to introduce a bunch of letters, client letters that were
4 sent out to the people on the spreadsheets to addresses, and
5 people would call in saying, I got this letter that you
6 represent me. You don't represent me. Well, we are going to
7 show you evidence the government has charged that this was some
8 secret conspiracy, that they were using people without them
9 knowing, that we are using their names and numbers, and yet we
10 are going to have to introduce evidence to show you we are
11 sending letters to addresses, and people are getting letters,
12 putting in those letters that if you have an issue, call us up
13 or write an e-mail or fax us or contact our office. That is
14 what the Watts firm is saying in all of these letters. And you
15 will see these different letters come through of these
16 disclosures. We are going to introduce to you a bunch of
17 letters of auto calls, and what is being said in there, that it
18 is important for you to collect documentary evidence, and
19 important for you to give us tax returns and all of this
20 information, sending this out to the tens of thousands of
21 people that the Watts firm believed were their clients at the
22 time or had suffered injury.

11:21 23 So the amount -- before I get to that, we are going to
24 introduce evidence of some e-mails where the Watts firm writes
25 an e-mail -- I think it's an e-mail, could be a letter, but I

1 know it is written documentation we are going to show you --
2 and saying, you know, we have some issues coming up with
3 documentary proof of these fisherman because it is a cash
4 barter system. But what we want to do, and they suggested to
5 GCCF to allow them to do, is let's get with IRS, the Internal
6 Revenue Service, let's give them all of our names of all of our
7 folks, and let's ask the IRS to check these people out and see
8 what records they have for income. The Watts firm is
9 suggesting that. They are inviting review by the Internal
10 Revenue Service of this list that supposedly has all of this
11 fake information. We are going to introduce that. The
12 government, I don't suspect, is going to introduce that e-mail
13 or letter. It is on our exhibit list, and we are going to
14 introduce it to you to show you that that is the type of
15 scrutiny these folks were inviting on their client list.

11:22 16 We are going to introduce evidence that during the course
17 of this, the GCCF sent checks in the total amount of \$475,000
18 to the Watts firm saying these are checks of some of your
19 clients, that there's been a settlement now, and we are going
20 to give you this money, 475 -- half a million dollars. And
21 these people who are accused of trying to defraud people to get
22 money, we are going to show you documentation that say, well,
23 but the names that they are sending it to us don't exactly
24 match, or we have five people with that name. You will see in
25 the Vietnamese community, there are a lot of similar names. A

1 lot of people have the same names. You say, well, tell us
2 which one of these this belongs to, and they would e-mail back
3 to the GCCF, give us the client number, because there are five
4 people that have this name. When they couldn't get
5 verification of which one it was, they sent the money back.
6 These people, who are supposed to be trying to steal money,
7 sent a half a million dollars back.

11:24 8 Mr. Rushing said that they did this in part so that Mikal
9 Watts could get on a Plaintiff's Steering Committee, because he
10 was going to make a lot of money on this Plaintiff's Steering
11 Committee. Mr. Rushing said it is \$600 million, and there are
12 only 15 lawyers going to take a part in that \$600 million. So
13 when he got on that committee -- that's why he filed all these
14 40,000 names, so he can get on this committee, so that's where
15 is going to make his money. That is the allegation. That's
16 what Mr. Rushing said.

11:24 17 The Plaintiff's Steering Committee, we are going to
18 introduce evidence, there are a lot of reasons for wanting to
19 be on a Plaintiff's Steering Committee, to try to direct on how
20 this happens. There is a lot of -- you'll hear evidence that
21 on other mass injury cases, there are some lazy lawyers that
22 get on those committees and try to stretch it out so they can
23 make a lot more money, stretch this out for five, six, seven
24 more years. You can imagine how that happens. We are going to
25 show you evidence on how Mikal Watts has had a career of

1 fighting against Plaintiff's Steering Committee trying to make
2 that money in that way. He has fought against it. We are
3 going to show you evidence of all of these different cases,
4 Vioxx, Guidant, Stand and Seal, and where all of these cases,
5 Watts Guerra has fought against a common benefit fee, a
6 plaintiff's steering fee, all of these cases. We will bring
7 you Mr. Roddy. Somebody asked me what is that picture up there
8 on the right. That's Mr. Kevin Roddy. We are going to bring
9 him, an expert, to testify. That is what he is going to tell
10 you. All of these different common benefit fees, these
11 witnesses -- in Vioxx, the Watts group spent nearly a million
12 dollars challenging the Plaintiff's Steering Committee from
13 getting all of that money. In GMO Rice, mass litigation, mass
14 injury, the Watts firm spent over a million dollars challenging
15 the Plaintiff's Steering Committee and that money. In the
16 Pradaxa case, same thing. These are complicated settlement
17 processes that involve a lot of things. I'm going to move
18 forward just to show you there is a lot of information they are
19 going to give you about why it doesn't make sense that
20 Mr. Watts would want to make money on this, on the Plaintiff's
21 Steering Committee.

11:26 22 First of all, we are going to show you evidence that if
23 you are on the Plaintiff's Steering Committee, and you are
24 earning your fee, you are getting paid an hourly fee, you are
25 not going to get any money until the very end of the case, very

1 end of the case. Common benefit fees, those are the monies
2 that go to the Plaintiff's Steering Committee, you don't get it
3 until the green -- until everybody else has been paid in the
4 case. Anybody that has a claim that's going to get some money,
5 in a multi-district litigation, all the businesses and people
6 that have been injured, they get paid first; you get paid last.
7 So if anything is discovered fraudulent during that time
8 period, you are not going to get your money on a Plaintiff's
9 Steering Committee. The average time to get money is several
10 years. We are going to show you that. Until everybody is
11 paid.

11:27 12 So what we are going to show you, then, is if he is doing
13 this to make money off the Plaintiff's Steering Committee and
14 he has submitted a bunch of fraudulent claims that are never
15 going to get paid, that is going to be a fact we are going to
16 show you, is going to be known well before a decision is made
17 of whether to pay him money for the Plaintiff's Steering
18 Committee. And the timing is very important to show his intent
19 of whether or not he is doing all of this to get money on a
20 Plaintiff's Steering Committee. We are going to walk you
21 through that timing with the evidence.

11:28 22 Also, Mr. Rushing said there was \$600 million to be
23 divided by 15 lawyers on the committee. We are going to show
24 evidence that that was approved, \$600 million for the
25 Plaintiff's Steering Committee, but there is 95 law firms that

1 are going to split up that money that worked on this
2 Plaintiff's Steering Committee, 95 law firms, each of which
3 have hundreds of lawyers putting in time. It is not 15
4 lawyers. Somebody thought that. They are going to sure
5 introduce evidence that some of these line employees heard that
6 that's what Mikal wanted, that there was only 15 people that
7 are going to split up 500 or \$600 million, because that's what
8 people that don't know would say, but we are going to show you
9 hard evidence to show that that's not the case.

11:28 10 What's more, we are going to show who decides who gets
11 money at the end, after all of these claims have been
12 evaluated, this timing, and if you have fraudulent cases and
13 you are 40,000 people, your whole docket falls to nothing
14 because it was fraudulent, who decides at the end is a Federal
15 District Judge, Judge Barbier. He is the one who decides who
16 is going to get a dollar.

11:29 17 Mr. Watts performed substantial work on this Plaintiff's
18 Steering Committee. We are going to show you all of this, all
19 the work he did, the 83 million pages of documents exchanged,
20 the depositions that were taken, the boxes and boxes of outline
21 that he created over the course of 2011, 2012, once they
22 decided to proceed with litigation, the work that he put into
23 this case, the fact that he was appointed this because of all
24 of his experience in handling all of these mass injury or mass
25 tort litigations. We are going to bring you evidence and

1 witnesses to say he didn't get on this thing because he had
2 41,000 clients. He would have got on it with just 4,000
3 clients because of his experience in doing this. You will hear
4 witnesses say that. It wasn't necessary for him to
5 fraudulently put in 41,000 clients or claims to get on this.
6 I'm going to try to go through this. I'm going to cut out some
7 of this stuff to give y'all a break from me.

11:30 8 We are going to ask for your patience in this case, folks.
9 We are going to show you the people that worked in this case,
10 for Watts Guerra, that it wasn't just a matter of filing
11 claims. These are lawyers in Watts Guerra firm at the time who
12 worked on this case. Out of his firm, all of those names
13 highlighted in yellow were the amount of an investment that the
14 Watts Guerra employees worked on on this case. With all of the
15 e-mails and all of the letters and all the memos, believing
16 that they had legitimate people or at least potential
17 legitimate people to preserve their claim that they could not
18 dismiss until they were sure that it wasn't a real body who had
19 suffered real damage. That is what you would expect from a
20 lawyer. Don't throw away my claim unless you are sure.
21 Preserve it. We are going to show you these government agents,
22 with all good intention, investigated this thing. We are going
23 to bring out evidence of things that were not done. They
24 searched all of these things. They are going to bring you
25 about ten e-mails to prove, out of a half a million e-mails

1 what it meant. So we will ask for your patience to walk
2 through this, folks, to show -- because their burden is to show
3 what their intent was in these years, of whether or not they
4 knew these people were false, and they were lying to try to get
5 money. We will show you that wasn't the case at all on behalf
6 of David Watts, Mikal Watts or even Wynter Lee, who was in that
7 law firm. We are going to ask you to look at it patiently, and
8 to not reach any conclusions with the benefit of hindsight, but
9 to go back and figure out what did they think back then. We
10 are confident, we are confident that at the end of this case,
11 after you have heard the whole story, you are going to find
12 that these folks believed or at least believed that these were
13 names they couldn't dismiss, that there was no fraud going on,
14 intentional fraud by any of these folks over here, not on
15 behalf of the Watts firm, not based on all the traffic in the
16 e-mails. That's why at the end of this case, I'm going to
17 stand up, and I'm going to plead with you to find these folks,
18 at least David Watts, on behalf of my client, not guilty on all
19 of these things because of a lack of proof to show intent to
20 commit any crime. That's not David Watts. I thank you for
21 your attention, folks.

11:33 22 **THE COURT:** Thank you, Mr. McCrum. Mr. Hightower,
23 you may make your opening statement on behalf of your client.

11:34 24 **MR. HIGHTOWER:** Good morning, ladies and gentlemen.
25 Can y'all hear me? I'm not going to have any slides, and I

1 just want to visit with you a little bit this morning and
2 remind you, I'm K. C. Hightower, and I represent Wynter Lee.
3 Wynter Lee, the proof is going to show, is about a 38 year old
4 lady who has got about a two and a half year old little girl
5 and a husband. She has been working for this law firm for
6 about 12 or 13 years, and she trusts the people she works with.
7 She knows the people she works with, they are her friends, they
8 are her Facebook friends, are the people she sees around town.
9 Her dealings have always been good. And Mr. McCrum's slides
10 were beneficial in one way for me because when the government
11 takes a poster and puts it in front of you and draws a vertical
12 column and connects everybody, that doesn't look very good. I
13 mean, it just doesn't. Anybody's picture can go on a piece of
14 white poster board, and it never going to look good. I ain't
15 found too many pictures of me that looks good in any set of
16 circumstances, certainly not that way. There are lots of
17 lawyers in this firm that she works with and lots of other
18 people that she works for and gives direction to. She is not a
19 paralegal. She is not a lawyer. Wynter Lee is a processes
20 person. She facilitates, for efficiency's sake, the directives
21 and orders given by lawyers. That's what the proof is going to
22 show in this case with respect to Wynter Lee.

11:36

23 Nobody is going to dispute that under the principles of
24 professional conduct, lawyers act independently, and they
25 cannot be dictated to by anybody. They are held accountable.

1 Wynter Lee knows that.

11:36 2 Wynter Lee's title is mass tort coordinator. Her job, in
3 a nutshell, is to make the ingoing and outgoing paper of their
4 law firm efficient, because Watts Guerra is not a law firm like
5 what a lot of you may think about law firms. It's not the kind
6 of law practice I have, which is probably closer akin to a
7 doctor's office, where if you have a problem, you come in and
8 sit down and we talk about it, and I decide whether or not I'm
9 going to represent you. Their goal is to help injured people
10 in mass, and through that process, they have devised ways,
11 which is why they are used nationwide, to do it efficiently and
12 to do it expeditiously, and they have been very successful.
13 That success is attributable in part to people like Wynter Lee
14 who have figured out, unlike I have, unlike me, that when you
15 send out 2500 letters, there's a better way to do it than
16 sitting down in front of your keyboard and using Word to type
17 2500 addresses. She manages the database. She knows how to
18 send out 2500 letters by hitting a button and plugging in all
19 2500 addresses at a time. She is a processes person. She
20 doesn't develop substance of letters unless it is ministerial
21 in function, like please send me something, or a lawyer tells
22 her send this to somebody and please find enclosed. Her job is
23 about form. It is about form.

11:38 24 Wynter Lee, in this BP case, was not involved in client
25 acquisition. She did not come to Mississippi to acquire any

1 clients. And her job was limited to handling the mass volume
2 of paper generated by this lawsuit. I have been in this court
3 on numerous occasions, and Judge Guirola has a tendency
4 sometimes to say things sometimes like "This is all very
5 interesting," which usually means that he is about to tell you
6 what is coming up doesn't have anything to do with what we are
7 talking about. A lot of the details you will hear about from
8 the government and from co-counsel doesn't have anything to do
9 with Wynter Lee. Wynter Lee goes to work every day and tries
10 to do a good job and please the people that she works for. Mr.
11 Rushing I have known for a while, and I -- Mr. Rushing was my
12 friend before we got here, and he will be my friend when we
13 leave, but he said three principal things about Wynter Lee that
14 I don't think the evidence is going to show. Two of them. It
15 is going to show that she is involved in the tort division. It
16 is undisputed. My defense is not that Wynter Lee didn't work
17 at Watts Guerra. She did, and she's proud of the fact that she
18 has been there, and she's proud of the job she tries to do for
19 any lawyer that she works with. But for Wynter Lee, the
20 evidence is not going to show that Wynter Lee falsified records
21 and that she used false numbers.

11:40

22 Opening statements are just that. They are an outline,
23 like Judge Guirola said. That's Mr. Rushing's theory. That's
24 what he wants to be able to show. He also used the word
25 "claim." The evidence is going to show that these claims are

1 like lawsuits. If there's two sides to every story, one of
2 them is going to win, and one of them is going to lose. And
3 the evidence is going to show that just because you lose
4 doesn't mean you intended to commit fraud. It means you made a
5 claim. And if you can support it later, you get paid. If you
6 can't, you don't. But the evidence is going to show that
7 Wynter Lee doesn't even get involved in those decisions about
8 what gets paid, what gets dismissed.

11:41 9 She carries out those orders and does what she is told to
10 do. Wynter Lee, the evidence is going to show, does not have a
11 bar number, does not have ECF credentials, does not have the
12 authority to dismiss anything. What she has the authority to
13 do is to follow directions and to explain to those who work for
14 her and with her how to carry out the instructions of lawyers,
15 how to handle the correspondence of that law firm with its
16 clients in an efficient way, such as, hey, I notice there's not
17 an authorization in this file to allow us to get the tax
18 returns to prove your case. Please send that within ten days.
19 You can imagine with 40 some odd thousand claims, there's a
20 bunch of folks that didn't send that back, and there's a bunch
21 of letters that have to go out that say that very thing. And
22 it wouldn't shock you, and you will see the proof in this case,
23 it will not shock you that they used the same letter every
24 time. The proof is going to show there's not somebody in the
25 back just writing these letters out, Oh, Lord here comes

1 another person who didn't send in their tax stuff, please send
2 it. It's a mass production, and that's her job.

11:42 3 Any procedure you are going to see that Wynter Lee follows
4 has its origins in the direction of lawyers. When the lawyers
5 decide that certain cases are going to get dismissed because
6 perhaps a judge has indicated how that is going to be done,
7 that filters down, and everybody tries to carry out that
8 function and that job. She doesn't do legal research. The
9 evidence is going to show she doesn't decide what claim to take
10 in the sense of whether or not it is good. She decides that
11 some lawyer has put ten boxes here, and we've got to check all
12 of these boxes. Now, this sounds -- this is going to sound
13 bad, but the evidence is going to show that when you boil it
14 all down, Wynter is a box checker. Now, she works real hard to
15 check those boxes, and she is under a tremendous amount of
16 pressure from the people she works for, the proof will show, to
17 do a good job. And sometimes, when you are working for a boss
18 man that expects a lot of you and that you want to please, you
19 are hard on people under you. And I fully expect the proof in
20 this case to be they are going to bring in some employees, who
21 I think the proof will show are not happy, that talked to the
22 government and are going to testify that Wynter Lee sometimes
23 was a micro manager. She is a Post-It note person, and she has
24 got them all over the place, and that she rides you, and that
25 sometimes she is not very nice, and they said some ugly --

1 there are going to be some ugly things that are going to be
2 said about Wynter. But I'm telling you, at the end of this
3 case, it is going to be readily apparent to everybody, I
4 believe, that Wynter Lee is not a fraudster, Wynter Lee does
5 not intend to conspire with anybody to do anything other than
6 to go to work, do her job, be a mama, be a wife. That's what
7 Wynter Lee has conspired to do. She hasn't intended to defraud
8 anybody. All of these crimes that are charged against these
9 folks, and Wynter included, are going to require specific
10 intent, and the evidence is that it ain't going to be there for
11 Wynter. It just is not. You are going to see words like
12 purposeful, and with intent and knowingly and all of these
13 things. There's not going to be any evidence to support that
14 with respect to Wynter. There's just not. There's not going
15 to be any evidence that she got up and said, Ooh hoo, who can I
16 defraud today? It ain't there because it didn't happen.
17 There's going to be lots of evidence that she is under lots of
18 stress all the time to make sure that the paper gets out and
19 the paper gets in, and that we have gone to paperless office
20 and make sure that everything gets scanned before it gets
21 disposed of so that when some lawyer says, I need that file for
22 John Doe, that when they open it up, it's not paper scanned in
23 this way and cattywampus, and half the pages missing and the
24 documentation is not there. That's the kind of things you are
25 going to hear about Wynter. And at the end of the case, I'm

1 going to ask you to send her home, because I'm telling you,
2 there ain't no proof beyond a reasonable doubt that Wynter Lee
3 did anything other than go to work every day and try to do a
4 good job. Thank you.

11:46 5 **THE COURT:** Thank you, Mr. Hightower. Mr. Lewis, on
6 behalf of your client, you may make an opening statement.

11:47 7 **MR. LEWIS:** May it please the Court. Ladies and
8 gentlemen of the jury. Ironically, we agree with the
9 government. The proof in this case will reveal massive amounts
10 of fraud, but more ironically, it will be us, through Mr.
11 Guerra's team, who will reveal the real fraud, because the
12 government missed it. And you are going to see with
13 painstaking detail what we uncovered piece by piece by piece,
14 with your own eyes and the documents that prove it beyond any
15 doubt.

11:47 16 Now, we all know it is the government's burden in this
17 case, but this is such an unusual case in which the very, very
18 hard work of many people who were very concerned about quite a
19 few innocent folks who have been drug into a federal courtroom
20 facing potential rest of their life in federal prison, and
21 these dedicated people, the evidence will show you, are the
22 reason we are going to be able to demonstrate, not just hide
23 behind the burden of proof, but show you through our evidence
24 where the real fraud lies, and most importantly, you will have
25 no doubt when you review that evidence that none of the fraud

1 lies with Eloy Guerra.

11:48 2 I want to tell you a little bit about the person that you
3 will judge. Mr. Guerra is a man who comes born and raised in
4 south Texas, a little bit south of Houston. He was a very
5 loved child but not with a lot of means. Tragically, his
6 father died when he was five years old. Being a man of
7 unparalleled work ethic, he started his working life at 13
8 years old. He worked all the way through graduation in high
9 school full-time and get evening his degree. From there Mr.
10 Guerra, he always had an entrepreneurial spirit, the evidence
11 will show, and he tried his hand at a number of businesses,
12 restaurant, kiosk at the mall that sold educational toys for
13 kids, a snow cone store, a poker room. He tried his hand at
14 several things, given his entrepreneurial spirit, and like many
15 folks, he tried many things. He was looking in the newspaper
16 to try to find something more steady to support his family and
17 came across an ad for a large law firm that needed some general
18 office work at night. He basically went to work at this law
19 firm as a janitor, and through a very, very impeccable record
20 with this company, hard work, loyalty, the managing partner
21 took him under his wing. He wanted Eloy to go to law school,
22 but you'll learn that Eloy had a different plan. This law firm
23 was also in the same arena that Mr. Watts' firm is, mass torts.
24 Now, they went at it from a different side, but it was the
25 general business model that he learned, from calling clients,

1 to hearing about their troubles, what they needed help, they
2 needed a lawyer to stand up for them. It reached a chord in
3 Mr. Guerra, and that's what he decided he wanted to do. So
4 instead of going to law school, he started researching ideas,
5 from mass catastrophe, to prescription drug recalls that hurt,
6 killed many people, and through very hard work, tirelessly
7 researching, he began pitching some of these ideas to very,
8 very prominent and successful mass tort lawyers. He quickly
9 earned a reputation as a great idea man. In the 15 years
10 leading up to BP, you will see -- please go back -- he brought
11 to these law firms his own words, his own creation, over
12 140,000 cases. Well, the evidence will show you, no one even
13 suspected or even hinted that he ever committed any type of
14 fraud. So we fast forward to other cases, and you will see
15 that his ideas have created, as I've told you, over 140,000
16 cases for some of those preeminent mass tort lawyers in the
17 country. He, in essence, became an Erin Brockovich on the Gulf
18 Coast. He is respected. You will hear these lawyers testify
19 about the quality of his work, about how hard he works and how
20 great the product is.

11:52 21 Not only has he been widely successful in this field. He
22 has maintained an impeccable life free of any allegations of
23 law breaking or the like until this.

11:52 24 Along the way, Mr. Guerra met Mr. Watts, and they
25 instantly hit it off. They shared a lot of common traits,

1 unmatched work ethic, fierce loyalty to their friends and
2 family, a gregarious love for the people around them, both came
3 from very humble beginnings to be very successful in their
4 chosen fields. So Mr. Watts had heard about Mr. Guerra's work.
5 They started working together. Mr. Guerra pitched Mr. Watts
6 and these other preeminent lawyers hundreds of ideas involving
7 mass catastrophes, prescription drugs, et cetera, and like with
8 many things, some were, as you've seen, accepted and very
9 successful, and some were just not viable, so they went by the
10 wayside.

11:53 11 A specific item of Mr. Guerra's expertise and success can
12 be seen in these six lawsuits. Most of y'all have heard about
13 some of these, if not all of these. Eloy Guerra initiated and
14 developed the litigation in these cases. He did so very
15 novelly. He would watch and research everything going on in
16 Europe and overseas, because their equivalent of the Food and
17 Drug Administration will allow a drug into the market much
18 quicker than we will here with the FDA. We require more
19 clinical trials, more studies, before we will let a person get
20 a prescription for a certain drug. So Eloy was way ahead of
21 the code in noticing European countries, for instance, were
22 starting to have problems with Celebrex or fen-phen or Vioxx.
23 He would go to the lawyers he knew were capable of protecting
24 citizens by filing lawsuits and give thme the evidence and the
25 formation they needed to spend millions and millions of dollars

1 to right the wrongs of several big corporations and the people
2 that were getting sick or dying because of these prescriptions.
3 All six of these prescriptions, very, very, very big
4 prescriptions, billions and billions of dollars, were recalled.
5 It is not a stretch to say Eloy Guerra's work saved many of our
6 fellow friends and loved ones' lives. His work is questioned
7 here by the government, starting back in 2010. As y'all have
8 heard, this BP case, the litigation underlying this criminal
9 allegation was the Deepwater Horizon explosion, April of 2010.
10 Eloy had just come off of FEMA. He had worked FEMA for
11 Mr. Watts and some other cases. His relationships on the Gulf
12 Coast, he learned that many of the workers who installed these
13 trailers, who got them set up, were getting sick. He started
14 researching as to why, found out there was formaldehyde in
15 them. So he was ahead of the curve in knowing that the people
16 who moved in and lived in these trailers were going to
17 essentially be poisoned. He hired Kristy Le, her field team.
18 They went out and developed 38,000 cases, 38,000 people who
19 were damaged and affected by the formaldehyde.

11:56 20 Now, I must toot his horn here. The evidence will show
21 you, and Mr. McCrum referenced this, the Court even
22 complimented their work in FEMA because they were 99.1 percent
23 accurate. That is the initial claims that they told the Court
24 they had were proven up in Court and settled, 99.1 percent.
25 That's the evidence you will hear.

11:56 1 The evidence you will hear belies the fact that two years
2 later he was going to be involved in one of the most massive
3 frauds ever, but there was fraud, and I'm going to get there.

11:57 4 Eloy's role in BP, because of his work in so many cases,
5 because of his success and Mr. Watts' recognition of his
6 superior ability to find and to initiate these type of cases,
7 he became more of a liaison. He became the guy that pitched
8 the ideas, that had learned from so many of these successful
9 cases what it took to bring them to fruition, that the law firm
10 essentially said, all right, Eloy, we are going to run with
11 this. What budget do you need? Well, he would try to set a
12 budget, and he would hire the people he thought could do the
13 things in the field that had to be done to bring this to
14 reality.

11:57 15 The money, the decisions about how much this would take
16 were always done between Mr. Guerra and Mr. Watts. They had a
17 great relationship. They talked tens, if not hundreds of times
18 a day, when they were pitching these ideas and figuring out how
19 to do it. He always checked with Mr. Watts about the viability
20 of this claim because he pitched many, many claims, as I said,
21 that quite frankly, Mr. Watts and other lawyers said, Eh, I'm
22 not sure the return on that is worth it, I'm not sure we can
23 bring all these claims. So before he spent any money, before
24 he wrote a check he couldn't cash, he made sure Mr. Watts
25 agreed and supported it.

11:58 1 Now, as the liaison, he tried his very best, as we all do,
2 the evidence will show, to watch over his project. There were
3 some unusual circumstances in the BP project in that you you
4 will learn that he had some tragedy in his personal life. His
5 wife had a miscarriage. He is from -- he now moved to the
6 valley, as Mr. McCrum said, a little bit further south Texas,
7 so he went home for an extended period of time. In his stead,
8 he sent one of his most trusted employees, Chris DeLeon, to
9 Biloxi to be here in the field office. Mr. DeLeon is an expert
10 in the IT, much like Mr. David Watts masters in data,
11 processing that data, the same function Mr. DeLeon served under
12 Mr. Guerra's employment. So while Eloy didn't have his eyes,
13 ears and hands on this project as he probably -- well, as he
14 most certainly wishes now he did, he had his man on the ground
15 there. They talked every day. The communication between the
16 law firm to Mr. Guerra as we live in this electronic age, was
17 readily remote. He didn't need to be in Biloxi to contact the
18 people that were working and find out what is what. So he did.
19 He did attend, before he was called home, one of the town
20 meetings early on that the field team arranged to gauge the
21 interest and sign up these Vietnamese fishermen who were
22 drastically affected by the spill. He also had other projects
23 going on. As you will hear, some of these preeminent lawyers,
24 some of these take years upon years. BP is actually one of the
25 shorter ones you will hear about. So Mr. Guerra serving as the

1 liaison thought he had a team that he could count on. The
2 evidence will show you this begins to go south. You will learn
3 that -- and you will see e-mails where the lawyers funding this
4 project, Mr. Watts, both Michael and David became very, very
5 concerned that the information they were getting transmitted
6 through Mr. DeLeon -- let me back up. So the information goes
7 like this. Initially, the field team signs somebody up,
8 handwritten form, name, date, occupation, where did you work,
9 what was your position. They sign it. The information on
10 those questionnaires, contracts, initial intakes, whatever we
11 want to call them, are then put into an electronic list by the
12 field team, sent to Mr. DeLeon. Mr. DeLeon in turn runs his
13 internal checks, makes sure they line up, there's not one
14 missing. It's all done properly and formatted, and sends it on
15 to the Watts firm. As the Watts firm is analyzing, they are
16 seeing problems, and you will see a ton of e-mail traffic
17 where, as the liaison, he is taking all the questions, all the
18 heat, what's wrong here, what's the problem.

12:01 19 Mr. Guerra reaches out to his field team to get answers.
20 And what you will see, and I've seen a little bit of it this
21 morning, but what the evidence will show you is any blame on
22 Mr. Guerra for bad information, for misinformation or for
23 fraud, is directly attributable to what he is being told, and
24 we will prove it to you over and over again. He is reporting
25 back to the Watts firm what the people he's hired to do this

1 job are telling him. And once he has that information, he,
2 like many for example above him tries to fix it. Well,
3 luckily, very luckily, Chris DeLeon came up with a checks and
4 balance, and this is where the beginning of the fraud is
5 revealed. The evidence will show you that Chris DeLeon decided
6 he was going to start going to those boxes, those hard copy
7 questionnaires I told you about, and he would take a random ten
8 or so at a time, and then he would go to the list he was being
9 sent by the field team, and he would compare them. When they
10 didn't match up, he would reach out to Kristy Le's team, or to
11 Greg Warren and say, hey, we have a problem here.

12:03

12 Well, eventually, the Watts firm and Mr. DeLeon's
13 complaints resulted in the field team hiring a PI, a private
14 investigator out of New Orleans whos Ms. Le knew from a prior
15 unrelated project, and she tells Mr. Guerra, we are going to
16 fix it. She tells everyone who he reports to up the chain, we
17 are going to verify these social security numbers, we've got a
18 PI who has access to the Social Security Administration
19 database. The problem is going to be solved. Okay.

12:04

20 Well, this is where the evidence becomes overwhelmingly
21 clear that the fraud started. In June of 2010, when Mr. will
22 list is hire, he begins submitting searches to the company out
23 of New Orleans called Denspri. We subpoena the owner, the
24 employees of Denspri to make sure hear the whole story, and all
25 of the records that reflect these searches. They start with

1 Denspri for a couple of months. The evidence will show you
2 they were getting some numbers generated, but they were up
3 against a deadline, and there were many, many errors that had
4 to be corrected. So they hired another outfit called
5 IRBSearch. IRBSearch was much more adept. They could do a
6 much better job of taking partial information, a name, part of
7 a date of birth, name and an address, and generating a full
8 social security number. And what you will learn, that in a
9 very, very short time frame, through the IRBSearches, the field
10 team generated tens of thousands of identifiers, full names,
11 date of birth, social security numbers. There are incredible
12 numbers of how much they generated in such a short time. And
13 we will admit each and every one of those records for you to
14 see. You will be able to see yourself the searches they were
15 doing, the names they were putting in, partial names, C. Lewis,
16 Chip Lewis, Texas, when that is all they had. But this system
17 was so good, the evidence will show you it allowed them to
18 generate complete social security numbers, addresses, full date
19 of births. From there it went into their lists. From their
20 lists it went to Chris DeLeon, from DeLeon it went to Watts.
21 From Watts it went to the fund. This is where we go back to
22 what I told you, the most fortunate part of this entire case
23 for Eloy Guerra is what Chris DeLeon decided to do. When he
24 would go back to those hard copies and check, and when he had
25 problems, he would let them know. Inevitably you will hear

1 from Chris DeLeon, whenever he mentioned there was a problem to
2 Kristy Le or her field team, he would get an immediate call or
3 visit from Greg Warren. That is going to become very telling
4 down the road. I invite you not to spoil the surprise, to wait
5 and hear from Chris DeLeon. So the field team is aware,
6 everyone is aware in the Biloxi office that Mr. DeLeon is doing
7 his own check of the hard copies.

12:06 8 So after spending almost \$300,000, that's what the field
9 team spent on generating these numbers, they then put the nail
10 in the coffin. What the evidence will show you, all the while
11 Ms. Le is reporting and her field team is reporting, we are
12 going to get this fixed. You will see a ton of these e-mails
13 back to Eloy. We will get it corrected. We have a PI that is
14 going to verify. All the while they are doing that, you will
15 learn they were going back to those questionnaires that Chris
16 DeLeon was checking. They were whiting out the bad
17 information, and they were writing in what they got back from
18 Denspri and IRB that were true social security numbers. You
19 you will see it with your own eyes. Much more than the sheer
20 numbers, you will see the overwhelmingly clear evidence of the
21 fraud, and we will go through in much more detail and show you
22 how the numbers, the names, the identities change, but what
23 goes to DeLeon, what goes to Watts, what Eloy sees is pristine.
24 Another glaring example you will see, IRB would return the
25 searches to the field team and say here's the number, here's

1 the name, here's the address, deceased. Guess what wasn't
2 there when the list was sent to Chris DeLeon? Deceased. They
3 not only white washed the actual questionnaires. They white
4 washed the lists. Thank God for Chris DeLeon.

12:08 5 Given the length of these opening statements and what you
6 have bore already, I'm going to stop there. I only ask one
7 thing of you ladies and gentlemen. As this evidence comes in,
8 much of it is going to come in through cross-examination before
9 we ever put on our case. Do be patient. Hold me to what I
10 have told you this morning. I assure you you are going to have
11 absolutely no doubt where the fraud lies in this case, and you
12 will have no doubt that it does not lie in one bit, one iota,
13 with Eloy Guerra. And as a result, when you apply this
14 evidence to the law Judge Guirola gives you, you will happily
15 find Eloy Guerra not guilty of all charges. Thank y'all.

12:09 16 **THE COURT:** Thank you, Mr. Lewis. Ladies and
17 gentlemen of the jury, I think this is an opportune time to
18 take our noon recess and give you an opportunity to go on to
19 lunch. This is the first actual recess that we have taken, and
20 I want to be sure that you understand the Court's instructions
21 from before. When you are outside of this courtroom or even
22 inside the courtroom, inside the building, do not talk with
23 anyone about this case. Do not allow anyone to talk with you
24 about it. If anyone attempts to approach you concerning this
25 case, you should report that to the Court immediately. Please

1 don't make any independent investigations on your own. Do not
2 visit any of the locations involved in this case. I don't want
3 anybody to get on the Internet and start looking up any of
4 these companies or looking up information on your own. You are
5 to be guided solely by what you see and hear in the courtroom.
6 If this case is reported in the media, please do not read about
7 it and please do not listen to any radio or television newscast
8 concerning it. I will ask that you return at 1:30, at which
9 time we will take up the remaining opening statements. Thank
10 you, you may be excused.

11:11 11 (JURY OUT AT)

12:11 12 THE COURT: Is there anything else we need to take up
13 on behalf of the government before we recess for the noon hour?

12:11 14 MR. RUSHING: No, Your Honor.

12:11 15 THE COURT: Anything else on behalf of the
16 defendants?

12:11 17 MR. MIKAL WATTS: No, sir.

12:11 18 MR. LEWIS: One thing, Your Honor, I have come to
19 know and rely on K. C. Hightower too. He told me early on the
20 protocol is not to stand up when the jury comes in, but when
21 everyone stands up, I don't want to be the guy everyone says,
22 what is he doing.

12:12 23 THE COURT: I have always taken this approach, and
24 that is when the lawyers stand as a courtesy, I suppose, and
25 as -- out of respect to the jury, I don't discourage that. So

1 I will leave it up to the lawyers to decide whether that is
2 what they wish to do or not. I know that some judges take a
3 different approach, but I've always put a premium on courtesy
4 and respect and I don't tend to try to discourage it under any
5 circumstances. I will leave it up to the lawyers. Mr. Weber,
6 you will be next on the opening statements, or have you did
7 decided to change that order.

12:12 8 **MR. WILSON:** No, Your Honor, we will go next.

12:12 9 **THE COURT:** Oh, Mr. Wilson will go next. And Mr.
10 Weber you will follow.

12:12 11 **MR. WEBER:** Yes, Your Honor.

12:12 12 **THE COURT:** Mr. Orozco, I believe that you have
13 decided you will waive it at this time and take up your opening
14 statements at the time you put on your case-in-chief.

12:13 15 **MR. OROZCO:** Yes, sir, we will reserve it until our
16 case.

12:13 17 **THE COURT:** So we have two more openings to go. I
18 will see everyone at 1:30. Test test

12:20 19 **(RECESS TAKEN AT UNTIL)**.

13:43 20 **THE COURT:** Is the government ready to proceed?

13:43 21 **MR. RUSHING:** We are, Your Honor.

13:44 22 **THE COURT:** Mr. Wilson, I understand you are next
23 with the opening statements to be followed by Mr. Weber.

13:44 24 **MR. WILSON:** Yes, Your Honor.

13:44 25 **THE COURT:** Are you ready to proceed?

13:44 1 **MR. WILSON:** I am, Your Honor.

13:44 2 **THE COURT:** Please bring in the jury.

13:44 3 **(JURY IN AT 1:45 P.M.)**

13:45 4 **THE COURT:** Thank you. Be seated, please. Ladies
5 and gentlemen, the lawyers have indicated to the Court they are
6 ready to proceed. Mr. Wilson, you may begin your opening
7 statement on behalf of Mr. Warren.

13:46 8 **MR. WILSON:** May it please the Court. Ladies and
9 gentlemen, what the evidence in this case is going to show is
10 that there are three questions to answer. Who knew what? When
11 did they know it? And what did they do about it? Well, for
12 Mr. Greg Warren back here, those answers start at the
13 beginning. Mikal Watts and his law firm hired Greg Warren and
14 Eloy Guerra to bring in folks, bring me folks to the firm, but
15 not just any folks. Mikal Watts wanted Vietnamese folks. That
16 presented a problem for Greg. Greg doesn't speak Vietnamese.
17 Greg has no connections within the Vietnamese community. So
18 Greg hires Kristy Le. Kristy Le speaks the language. Kristy
19 Le has the connections. Once he hires Kristy, Kristy sets
20 about building her team. She hires scores and scores of field
21 workers to go out and meet clients. She hires people to manage
22 those field workers. She hires family members to help run the
23 business. And what the evidence will show you is that at that
24 point, Greg Warren's role was two things. Cut checks and try
25 to make sure the process goes smooth, and that's what he did.

1 If Kristy needed money for payroll, Greg cut the check for
2 payroll. If the rent needed to be paid, Greg cut the check for
3 the rent. If Eloy Guerra needed his money, Greg cut the check
4 for the money. That was his role in the entire thing.

13:48 5 Now, at the end of about 80 days, Kristy's team had
6 brought in about 44,000 Vietnamese folks, and as Mr. Rushing
7 alluded to earlier today, there were hiccups in that process.
8 All right? But as Mr. McCrum alluded to earlier today, those
9 hiccups that Mr. Rushing alluded to were nothing unusual for a
10 mass tort situation. It was to be expected. It happens in
11 most of them.

13:48 12 Now, those hiccups, you are going to hear about the
13 evidence of what were done to try to solve those hiccups, try
14 to correct those issues. That whole 80 day process, that
15 44,000 clients, that's what the firm called the acquisition
16 phase. That's the bringing me the folks phase. Then the gears
17 shifted. Now we are talking about what they called Phase II.
18 Phase II, you have already got the folks. Now let's what is
19 called mature the claims. Mature the claims meant nothing
20 more than let's gather all the information we need to make sure
21 we can properly make a claim, tax returns, boat captain
22 affidavits, proper contact information, that kind of stuff.
23 That's the Phase II. What you will hear is that the law firm
24 sent Kristy Le's team back out to do Phase II. What you are
25 also going to hear is that Phase II started and stopped, and

1 then started and stopped, until finally we get to -- and this
2 is an important date, September 2012. September, 2012, the
3 firm calls off Phase II, at least as it applies to Greg Warren.
4 The firm says, we are done with Phase II. You are no longer
5 part of it. Greg, thank you very much, have a good day.
6 Remember, that's September of 2012. And ladies and gentlemen,
7 that's the entire case. It's going to show that Greg was hired
8 to do a job, he did a job, and he did the job to the best of
9 his ability. What the evidence is not going to show, at no
10 time is that Greg Warren had any reason to know that four
11 levels below him there were field workers out in the rural
12 parts of Mississippi bringing in people, allegedly bringing in
13 people that it turns out they never contacted in the first
14 place. What the evidence is not going to show is that Greg
15 Warren had any knowledge of what was going on four levels above
16 him at a law firm hundreds and hundreds of miles away.

13:51 17 Greg was hired to do a job, he did that job, and he did it
18 to the best of his ability. Based on that, ladies and
19 gentlemen, we are going to ask you at the end of this
20 proceeding to come back and find Greg not guilty of the charges
21 that the government has leveled against him.

13:51 22 **THE COURT:** Thank you, Mr. Wilson. Mr. Weber, you
23 may make an opening statement on behalf of your client, Ms. Le.

13:52 24 **MR. WEBER:** Mr. McCrum said we need to go back, and I
25 agree. We need to go back and put these facts in the context.

1 We need to go back to 1998. It's the opening day of shrimp
2 season. Here on the coast around June 1st is right around the
3 time that shrimp season starts. Up until that time the
4 shrimpers, the Vietnamese shrimpers, all along our coast, from
5 Pascagoula to Waveland, Pass Christian, are getting their boats
6 ready and getting their nets day for opening day of shrimp
7 season. And in 1998, there is a six-year-old little girl, and
8 she and her little brothers are on the deck of her father's
9 shrimp boat off the coast of Pascagoula, much like our pictures
10 up here on the walls of our courtroom. And as the sun sets and
11 as you look across the Mississippi Gulf Coast, the Mississippi
12 Sound, it looks like there are hundreds of stars on the water,
13 and those are the shrimpers. Those are the shrimpers dragging
14 their nets in anticipation of the first harvest. A six year
15 old little girl and her brothers and her father anxiously
16 awaiting the catch of the first drag because that's going to
17 indicate, that's going to dictate the success of the season,
18 the hope in the little girl and her brothers rest in pulling up
19 that net. And in 1990, that little girl and her family moved
20 to Dallas, where her family works in the garment industry, and
21 she and her brothers and her mom and her dad are busy working,
22 sewing clothes to sell to J. C. Penney, and that's how the
23 community, that's how the family worked. They worked together.
24 They worked hard together. And fast forward in 1994, they move
25 back to Pascagoula so her father can continue to shrimp. And

1 while in Pascagoula, you are going to hear that this girl
2 worked since the age of 12 bussing table at the China Garden
3 restaurant, being a hostess. At the age of 20, enters college,
4 working two jobs at the State Farm and the Ryan's Steakhouse,
5 while taking care of her first child. At the age of 23, you
6 are going to hear that Kristy Le had a video store, and this
7 store was important to the community because she rented videos
8 to the elder folks in the community. Mind you, that her
9 parents immigrated to the United States in 1979, and Kristy was
10 born in Kansas in 1982. And so the Vietnamese community was
11 relatively new to our society. But they looked for the
12 comforts of home, and Kristy provided that with the videos and
13 the music that reminded them, the older folks in the community,
14 of Vietnam where they had lived the majority of their life. In
15 2007, you are going to hear that Kristy got involved in the
16 FEMA litigation, and she went to work with Eloy Guerra and Greg
17 Warren, and they helped find people, they helped verify
18 information for Mikal Watts and the Mikal Watts and his law
19 firm. And they were successful. And you have already heard
20 they were successful in doing that. This was an opportunity
21 for Kristy, you'll see, to help her community and to provide a
22 service which she had done her entire life.

13:56

23 When the oil spill occurred in April of 2010, April 20th,
24 a devastating impact on Kristy's community. You heard that the
25 gulf waters were shut down. The source of income for her

1 community did not exist. And Kristy went to work, and Kristy
2 was asked to go to work and to help her community. And she
3 went to work for a lawyer that she knew would be successful in
4 helping her community. That lawyer is Mikal Watts. She knew
5 that he was going to be successful because of his past history,
6 his experience. She knew that he could bring them the
7 necessary money, essentially, so that they could continue to
8 take care of themselves and their family. And she put herself
9 in that position to help her community.

13:57 10 Now, going back to this video store, it was a source or an
11 important part of the community for the elders, and they got a
12 chance to know Kristy and who she was. You are going to hear
13 that she routinely helped those members of the community that
14 had trouble reading or writing English. She routinely helped
15 translate documents and important forms. She frequently went
16 with those community members to doctors' appointments and to
17 help translate and to communicate with the doctors and the
18 medical staff. And so when asked to participate in this effort
19 to reach out to the community, to offer her community a source
20 of help, she readily did so. I think the testimony and the
21 evidence is going to show you Kristy's obligation, Kristy's
22 devotion to her community, that she was motivated and committed
23 to helping her folks, her family, her relatives, her close
24 friends. So the question is, how does this happen? How are we
25 here? There are two reasons. The first one is inexperience.

1 Kristy Le was 28 years old at the time that she was enlisted to
2 assist in this effort. She was in cosmetology school raising
3 her children. She had no experience, the evidence will show
4 you, none, no experience managing a hundred plus employees,
5 much less one employee. She had no experience managing this
6 information. She had limited experience in the mass torts
7 business. Her only experience you are going to hear was
8 working in the FEMA litigation, and her only experience in the
9 FEMA litigation was going out and verifying information.

13:59 10 She was also inattentive. She had a number of things
11 happening in her life. Her marriage was falling apart. Her
12 family was struggling because they had no income. And all of
13 this seemed to fall on her shoulders as these lawyers told you
14 today that it was Kristy Le that gave you these names, Kristy
15 Le's fault. I don't believe it. The evidence will show you
16 that Kristy Le made a good faith effort to reach out to her
17 community, to advise them and to help them get the resources
18 they need to overcome this disaster. Her good faith belief,
19 the evidence will show you, is that any missing or incorrect
20 information would be later verified by the law firm and the
21 lawyers and the mass tort experts, will be vetted by the
22 lawyers and the law firm and the mass tort experts.

14:01 23 There was a system, and there were people in place. She
24 had no idea about mass torts law. She is in cosmetology
25 school. And it's reasonable, ladies and gentlemen, and you

1 will find that it's reasonable for her to believe that this
2 information would be verified and vetted by the lawyers, the
3 experts.

14:01 4 That little girl on that shrimp boat standing there
5 watching her brothers work and her dad drive the boat, sat
6 there in anticipation and hope of a good harvest, she comes to
7 you today and over the course of this trial with that same
8 hope, the same hope that you will sit here and keep an open
9 mind, that you will put these facts and this horrible disaster
10 in context, and that you will follow the law. And at the end
11 of the case, at the end of the evidence, you must find Kristy
12 Le not guilty because the facts require it, the law requires
13 it, justice demands it.

14:02 14 **THE COURT:** Thank you, Mr. Weber.

14:02 15 **THE COURT:** All right. Mr. Orozco, I'm understanding
16 that you wish to reserve your right of making an opening
17 statement.

14:02 18 **MR. OROZCO:** That is correct, Your Honor.

14:02 19 **THE COURT:** Ladies and gentlemen, I'm going to let
20 you -- ladies and gentlemen of the jury, go back to the jury
21 room for a very short break. Don't get too comfortable,
22 because when you return from your break, we will begin to hear
23 the evidence in earnest in this case. You may go back to the
24 jury room.

14:03 25 **(JURY OUT AT)**

14:03 1 **THE COURT:** Thank you. Be seated, please. Mr.
2 Rushing, who will be your first witness.

14:03 3 **MR. RUSHING:** It will be Kenneth Feinberg, Your
4 Honor.

14:04 5 **THE COURT:** My recollection from the pretrial
6 conference that we had earlier is that the government intends
7 to invoke the rule of sequestration.

14:04 8 **MR. RUSHING:** Yes.

14:04 9 **THE COURT:** If there are any witnesses who intend to
10 testify as a witness in this case, you must be excluded from
11 the courtroom. If a witness has testified, they may not
12 discuss their testimony with a prospective witness. I expect
13 that the government will assist me, as well as all counsel for
14 the defendants, in enforcing that rule, since I don't really
15 recognize anybody.

14:04 16 **MR. RUSHING:** Your Honor, we do have a case agent,
17 Allen Bryant, that we will be sitting in with us. We ask for
18 him to be excluded from the sequestration.

14:04 19 **THE COURT:** He is exempted as a representative of the
20 government. Will we need to take up anything else on behalf of
21 the government?

14:04 22 **MR. RUSHING:** We talked about stipulation of
23 documents. There are a number of them. We might want to do
24 that later rather than right now.

14:05 25 **THE COURT:** I was going to take that up. I notice

1 you have entered into a stipulation regarding objections on
2 authenticity and hearsay but not relevance. I'm not sure how
3 helpful that will be to me. Have you had an opportunity to
4 discuss that in more detail among yourselves?

14:05 5 **MR. MIKAL WATTS:** I think the way it will practically
6 work is the way it did for Mr. Feinberg. They sent us a list
7 of exhibits last night, and I told Mr. Rushing we don't have an
8 objection. So on a witness by witness basis, since we don't --
9 we will look at them the night before, let them know the night
10 before, and if there are any objections, we will tell them.

14:05 11 **THE COURT:** Are you reserving the right to object on
12 the grounds of relevancy?

14:05 13 **MR. MIKAL WATTS:** Not as to the ones he identified
14 for Mr. Feinberg.

14:05 15 **THE COURT:** That takes care of Mr. Feinberg. What
16 about the next witness? I don't know who that will be.

14:05 17 **MR. RUSHING:** I will talked to you about the records
18 themselves.

14:06 19 **THE COURT:** We will go through them witness by
20 witness.

14:06 21 **MR. RUSHING:** Yes, sir.

14:06 22 **THE COURT:** How many exhibits do you have for Mr.
23 Feinberg?

14:06 24 **MR. RUSHING:** I have one.

14:06 25 **THE COURT:** That you intend to offer as an exhibit.

14:06 1 **MR. RUSHING:** Yes, sir.

14:06 2 **THE COURT:** What is that number?

14:06 3 **MR. RUSHING:** It is going to be exhibit 119, Your
4 Honor.

14:06 5 **THE COURT:** Then without objection -- I presume,
6 Mr. Watts, that while you are speaking obviously for yourself,
7 that all of the remaining counsel have no objection either is
8 that correct.

14:06 9 **MR. MIKAL WATTS:** Correct.

14:06 10 **THE COURT:** Without objection, Government's Exhibit
11 119 will be marked and admitted into evidence.

14:06 12 **(EXHIBIT G-119 MARKED)**

14:07 13 **THE COURT:** Have counsel for the defendants decided
14 among themselves how cross-examination will proceed?

14:07 15 **MR. MIKAL WATTS:** I'm going to begin.

14:07 16 **THE COURT:** Just give me a batting order.

14:07 17 **MR. MIKAL WATTS:** Same order.

14:07 18 **MR. OROZCO:** We are going by order of indictment.

14:07 19 **THE COURT:** Very good.

14:07 20 **MR. WILSON:** Order by indictment, except for Mr.
21 Guerra and Mr. Weber have flipped the order.

14:07 22 **THE COURT:** Let's start over. Mr. Watts, Mikal
23 Watts, I presume you will go first?

14:07 24 **MR. MIKAL WATTS:** Yes, sir.

14:07 25 **THE COURT:** Mr. McCrum -- y'all have to excuse me. I

1 have an awful cold, so if I seem a little out of it, that's the
2 reason. You will go next?

14:08 3 **MR. MCCRUM:** Yes, sir.

14:08 4 **THE COURT:** Mr. Hightower you would go next, Mr.
5 Lewis, who would go after Mr. Lewis. Mr. Wilson? After
6 Mr. Wilson, Mr. Weber and then Mr. Orozco. I think I have that
7 straight in my mind. Is there anything else on behalf of the
8 government that we need to take care of before we hear the
9 first witness?

14:08 10 **MR. RUSHING:** No, Your Honor.

14:08 11 **THE COURT:** Anything on behalf of the defendants?
12 Very good. Please bring back the jury.

14:10 13 **(JURY IN AT)**

14:10 14 **THE COURT:** Thank you all. Please be seated. Mr.
15 Rushing, you may call your first witness.

14:10 16 **MR. RUSHING:** Your Honor, the government calls
17 Kenneth Feinberg.

14:10 18 **THE COURT:** Mr. Feinberg, please come around and be
19 sworn.

14:10 20 **KENNETH FEINBERG,**
14:11 21 **having first been duly sworn, testified as follows:**

14:11 22 **THE COURT:** You may proceed.

14:11 23 **BY MR. RUSHING:**

14:11 24 Q. Would you state your name for the record, please, sir?

14:11 25 A. Kenneth R. Feinberg.

14:11 1 Q. Could you spell your last name for us?

14:11 2 A. F -- as in Frank -- E-I-N-B-E-R-G.

14:11 3 Q. Mr. Feinberg, what type of business are you involved in?

14:11 4 A. I'm a lawyer.

14:11 5 Q. And how long have you been an attorney, sir?

14:11 6 A. Since 1970.

14:11 7 Q. And where is your practice located?

14:11 8 A. Washington D.C.

14:11 9 Q. I want to call your attention I believe to the BP oil
10 spill. Are you familiar with the BP oil spill?

14:11 11 A. I am.

14:11 12 Q. Prior to that time period, have you you done anything as
13 far as assisting victims of certain type of crimes -- not
14 crimes but certain type of events to collect money?

14:12 15 A. Yes.

14:12 16 Q. And if you would, tell the jury what you have done in the
17 past, sir?

14:12 18 A. I designed and administered the September 11 victim
19 compensation fund of 2001 at the request of the President Bush.
20 I designed and administered the Boston marathon bombing, One
21 Fund Boston, at the request of the governor and mayor of
22 Boston. And next month I travel to Orlando, Florida, where I
23 have designed and will administer the One Fund Orlando arising
24 out of the terrorist attacks at the nightclub a few months ago.

14:12 25 Q. Have you done any other types of funds besides those funds

1 there?

14:13 2 A. Yes, probably ten to 12 other similar funds where money is
3 available from whatever source so distribute to eligible
4 victims.

14:13 5 Q. When you actually did the 911 fund and the other funds you
6 talked about, the Orlando fund also, were you paid for those
7 particular, I guess, actually paid to conduct the passing out
8 of those funds for those accounts?

14:13 9 A. No. 911, Boston marathon, Orlando, I do those pro bono
10 without compensation as a public citizen.

14:13 11 Q. I believe you got a call after the oil spill to assist BP;
12 is that correct?

14:13 13 A. That is correct.

14:13 14 Q. And for what purpose, sir?

14:13 15 A. BP contacted me and asked if I would design and administer
16 a compensation program to compensate victims of the BP oil
17 spill in the Gulf of Mexico arising out of the Deepwater
18 Horizon oil rig explosion.

14:14 19 Q. Did you agree to do that, sir?

14:14 20 A. I did, with the consent of the Department of Justice, the
21 White House, and BP.

14:14 22 Q. When did you first begin to endeavor to assist BP and
23 those victims in that fund to get them the relief they were
24 needing?

14:14 25 A. About four months in the late summer of 2010, we designed

1 the protocol that would be used to compensate victims and begin
2 the process of reaching out to the victims and their lawyers to
3 compensate eligible claims.

14:14 4 Q. Was there an actual name for that facility?

14:14 5 A. Yes. The Gulf Coast Claims Facility.

14:14 6 Q. And if you would, just tell the jury how big a facility it
7 was and where it was organized at?

14:14 8 A. That was quite an undertaking. We had, in the first 16
9 months, 1,250,000 claims from 50 states and 35 foreign
10 countries. We set up 35 claims offices from Mobile bay all the
11 way to Galveston, Texas so that individual fishermen, oyster
12 harvesters, victims, could come in and file a claim, and we had
13 at one point about 4,000 employees under my leadership
14 processing claims.

14:15 15 Q. Now, can you tell the jury the procedure if someone had to
16 undergo to actually file a claim with the GCCF?

14:15 17 A. You could either file a claim electronically from your own
18 living room, you could plug in the web site and file a claim
19 alleging damage, economic damage caused by the spill, I
20 couldn't fish, I couldn't shrimp, I couldn't take my boat out
21 with touring, with the tourists, or you can go to any one of
22 the 35 offices in the gulf and file a claim in person. We
23 would then look at the claim, we would require proof of your
24 damage, your saying so didn't make it so, do you have a tax
25 return, do you have a checkbook, do you have trip tickets that

1 you are a commercial fisherman. We needed something to verify
2 the damage that you alleged, and that's really how the process
3 worked.

14:16 4 Q. While you were actually administering the funds of the
5 GCCF, did you come to know of Mikal Watts?

14:16 6 A. Yes.

14:16 7 Q. And how did you do that, sir?

14:16 8 A. Mr. Watts is well-known around the country, for one thing,
9 as a lawyer, and also, he contacted, or his law firm, both at
10 various times, contact us and explained that he represented
11 claimants who than wanted to file claims arising out of the
12 spill.

14:17 13 Q. And did you you talk to him about those numbers of claims
14 he wanted to file with --

14:17 15 A. Yes, he explained, his law firm, he, others, explained
16 that he had initially about 25,000 claims, representing
17 primarily Vietnamese fishermen in the gulf area that were
18 impacted adversely by the spill. And that was our first
19 contact -- Mr. Watts let it be known that he represented
20 thousands of fishermen who had been harmed by the spill, and he
21 contacted me and us, my firm, to discuss how best to process
22 those claims.

14:17 23 Q. Did you reply to him concerning the amount of claims that
24 he had?

14:17 25 A. Yes. We explained that there were so many claims that he

1 asserted, the 25,000 eventually grew to over 40,000 individual
2 claims. We were skeptical and just explained to Mr. Watts and
3 his people that we would need verification that he was in fact
4 representing all of these individual claimants in coming to the
5 GCCF, this facility, seeking compensation and that we would
6 need proof as to each of those claim's damage as well.

14:18 7 Q. How did you request that information, sir?

14:18 8 A. Well, we requested the information -- we told him that we
9 would need verification, individual retainer agreements. There
10 were so many claims that he asserted, that we simply asked him
11 to provide us with retention agreements that he did in fact
12 represent claimant number one, claimant number ten, claimant
13 number 100, so we would know in calculating the damages and
14 sending the checks out, we wanted to make sure that in fact
15 Mr. Watts and his law firm represented these thousands of
16 individuals that he purportedly represented.

14:19 17 Q. Did there come a time when you were looking at actually
18 the claims he was filing that something stood out to you?

14:19 19 A. On some occasions I would say probably maybe two dozen
20 occasions, when we processed the claim notifying the claimant
21 that we were processing the claim, the claimant would inform us
22 that Mr. Watts and his law firm did not represent him, that
23 whenever the firm was telling the Gulf Coast claims facility
24 and my people, in fact, the claimant, the individual fisherman
25 denied being represented by Mr. Watts' firm. And there are a

1 couple of occasions when the claimant submitted a claim, and we
2 notified the claimant, there's a discrepancy. We have a record
3 that you are already represented by this law firm. And the
4 claimant denied it and said, that's not true. I never signed
5 any retainer agreement. I am not represented by any lawyer,
6 Mr. Watts or anybody else, and I want the money sent directly
7 to me. And on a couple of occasions, the claimant would say,
8 somebody stole my name, or is using my name improperly, and
9 then we sent that claim and that complaint to the Justice
10 Department for investigation.

14:20 11 Q. Did there come a time in November of 2010 that you
12 actually sent Mr. Watts a letter concerning your uneasiness
13 about his claims?

14:21 14 A. Yes.

14:21 15 **MR. RUSHING:** Your Honor, at this time I would go
16 into exhibit 119, please, sir.

14:21 17 **BY MR. RUSHING:**

14:21 18 Q. Mr. Feinberg, there is a screen there by you, that you can
19 look at. Let me try to pull something out here. Can you see
20 that, sir?

14:21 21 A. Yes.

14:21 22 Q. What is that, sir?

14:21 23 A. That is a letter from me to Mr. Watts and the law firm,
24 November 10th, of 2010.

14:21 25 Q. I want to go to the body of that letter. Can can you read

1 that, sir?

14:21 2 A. Yes, I can.

14:21 3 Q. And in that letter, are you informing Mr. Watts about his
4 25,000 claims on that occasion?

14:22 5 A. I see that.

14:22 6 Q. In the third paragraph, I believe there, you are talking
7 about some things you were required to do and that you did do.
8 Is that correct?

14:22 9 A. Yes.

14:22 10 Q. What is that, sir, if you could read that for us?

14:22 11 A. Second, there is an important reason why I need such
12 formal individual confirmation. We have received notification
13 from claimants and from the Department of Justice hot line
14 concerning complaints of unauthorized use of their social
15 security numbers. These claimants have been unsuccessful in
16 filing a claim electronically with the GCCF because their
17 social security numbers have already been previously used to
18 submit a claim. It appears that 43 of these claimants involve
19 your law firm purporting to act on behalf of them. This is why
20 we seek such clarification concerning your representation.

14:23 21 Q. Do you recall after submitting that letter to Mr. Watts to
22 receive those confirmations he represented those persons, did
23 you receive those certifications for that?

14:23 24 A. I don't believe we did, no.

14:23 25 Q. Do you know whether or not any of the claims that

1 Mr. Watts submitted to you were actually paid?

14:23 2 A. I believe we paid some of those claims. I think of the
3 Watts inventory of claims, over a hundred claims, around 120
4 claims were paid, I believe.

14:23 5 Q. Out of the 40,000?

14:23 6 A. Out of the 44,000, yes.

14:23 7 **MR. RUSHING:** May I have a second, Your Honor?

14:23 8 **THE COURT:** You may.

14:24 9 **BY MR. RUSHING:**

14:24 10 Q. Mr. Feinberg, I want to touch on the actual claims
11 procedure at your facility. Were there any standards that you
12 established for people to file claims with the facility?

14:24 13 A. I'm sorry.

14:24 14 Q. Any standards that you --

14:24 15 A. Yes.

14:24 16 Q. That you filed?

14:24 17 A. We wanted verification of identification, name, social
18 security number, and we required proof when a claimant, a
19 fisherman or any claimant, alleged that they had been damaged,
20 they couldn't fish, they lost money, they weren't able to
21 shrimp because the oil resulted in the Coast Guard closing the
22 Gulf of Mexico fishing waters. We required some attachment,
23 some proof, was the damage \$10, a thousand dollars, a hundred
24 thousand dollars, a million dollars. We wanted to know on what
25 basis the claimant and/or his or her lawyer was asserting that

1 damage.

14:25 2 Q. Were you pretty strict in those standards?

14:25 3 A. I wouldn't say we were particularly strict. We bent over
4 backwards, I think, to accommodate claimants, innocent
5 claimants who had nothing to do with the spill. It wasn't
6 their fault. So we tried to accommodate as many as we could,
7 and I think we did an excellent job of doing that.

14:25 8 Q. Do you recall how much it was you paid out of that actual
9 program?

14:25 10 A. Yes. In 16 months that we ran the Gulf Coast Claims
11 Facility, we found eligible 550,000 claims, and we paid six and
12 a half billion dollars out in that 16 month period, from the
13 beginning of the Gulf Coast Claims Facility to the end of the
14 facility.

14:26 15 **MR. RUSHING:** I tender the witness, Your Honor.

14:26 16 **THE COURT:** Cross-examination, Mr. Watts.

14:26 17 **MR. MIKAL WATTS:** Yes, sir.

14:26 18 **CROSS-EXAMINATION**

14:26 19 **BY MR. MIKAL WATTS:**

14:26 20 Q. Good afternoon, Mr. Feinberg.

14:26 21 A. Mr. Watts.

14:26 22 Q. How are you?

14:26 23 A. Good. Thank you.

14:26 24 Q. Good to see you again. Your firm and my firm have some
25 history in terms of some of these funds that you take care of,

1 right?

14:26 2 A. That is correct.

14:26 3 Q. In addition to the very stand-up pro bono funds that you
4 talk about, you do a good deal of work for corporations
5 involved in litigation where guys like me come in on behalf of
6 tens of thousands of people in some instances, we will litigate
7 for a while, settle the case, and then we will come looking for
8 a settlement administrator to help distribute the funds?

14:27 9 A. Correct.

14:27 10 Q. Give the jury some examples of some of the mass tort
11 litigations for which you have served as a settlement
12 administrator on behalf of the corporate defendants who have
13 agreed to pay.

14:27 14 A. BP, of course.

14:27 15 Q. Before then?

14:27 16 A. General Motors after that. The General Motors Ignition
17 Switch Program, where we compensated. \$600 million went out to
18 victims of the auto accidents involving the ignition switch.

14:27 19 Q. Zyprexa?

14:27 20 A. Zyprexa involving Pfizer. I think it was Pfizer, and the
21 drug. Just recently Volkswagen and the allegations of
22 emissions, diesel fraud in that case.

14:27 23 Q. The Celebrex Bextra litigation?

14:27 24 A. Celebrex and Bextra.

14:27 25 Q. One of the reasons that you knew of my reputation is that

1 I had been involved in several of those litigations?

14:28 2 A. That is correct.

14:28 3 Q. Never good to ask a question like this, but I might as
4 well. Mr. Watts was the well-known around the country as a
5 lawyer?

14:28 6 A. Yes.

14:28 7 Q. Was I seen as a fraudster?

14:28 8 A. No.

14:28 9 Q. Had you ever heard one word that I would purposely submit
10 false or fraudulent claims prior to BP?

14:28 11 A. Never.

14:28 12 Q. Thank you. Now, in addition to myself, you said Mr. Watts
13 and others. During the time that you and I were communicating
14 in the BP matter, I had certain partners that were assisting me
15 because I was in trial constantly that year. Do you recall
16 that?

14:28 17 A. I do recall. In fact, I don't believe, Mr. Watts, that
18 you and I met on this matter. We may have had a conversation
19 or two in some e-mails. I met John Cracken on one or two
20 occasions, and maybe Bob Hilliard. That was -- and maybe some
21 of your paralegals and others in the firm.

14:28 22 Q. With respect to John Cracken, you had served as a mediator
23 in a piece of complex litigation for him all the way back in
24 the 1990s?

14:29 25 A. Correct.

14:29 1 Q. Is John Cracken someone you construed who purposely files
2 false claims?

14:29 3 A. No.

14:29 4 Q. Is he a lawyer that you know and respect?

14:29 5 A. Yes.

14:29 6 Q. Bob Hilliard, while you didn't know him until the BP
7 litigation, you had dealt with Mr. Hilliard in the GM Ignition
8 Switch litigation afterwards, correct?

14:29 9 A. Yes.

14:29 10 Q. Same high regard for Mr. Hilliard?

14:29 11 A. Yes.

14:29 12 Q. He is not known as someone who would purposely file false
13 claims, agreed?

14:29 14 A. Correct.

14:29 15 Q. Now, in addition to the three of us, because I was in
16 trial a lot that year, did we hire other people who you had
17 worked with in the past to assist us in working with you on a
18 claims process?

14:29 19 A. I don't recall.

14:29 20 Q. Can you tell the ladies and gentlemen who Charles Silver
21 is?

14:29 22 A. The name doesn't ring a bell.

14:29 23 Q. Professor of law at the University of Texas?

14:30 24 A. I may have met him and know him, but I don't recall.

14:30 25 Q. What about Francis McGovern?

14:30 1 A. Oh, yes, Francis McGovern at Duke, I know well.

14:30 2 Q. Ultimately, at a later point in time, Judge Barbier
3 appointed him as kind of a -- what was his title?

14:30 4 A. Special master.

14:30 5 Q. Professor Eric Green in Boston?

14:30 6 A. Of course.

14:30 7 Q. High reputation?

14:30 8 A. Very.

14:30 9 Q. Well known in the alternative dispute resolution field?

14:30 10 A. Yes.

14:30 11 Q. John Coffee?

14:30 12 A. Professor at Columbia Law School, well-known, highly
13 regarded.

14:30 14 Q. Professor Robert Jackson?

14:30 15 A. Worked for me while I was at the Treasury Department.
16 Well-known, highly regarded.

14:30 17 Q. Cathy Yanni?

14:30 18 A. From California, worked on various mediations, yes.

14:30 19 Q. She is with a group called JAMS out in San Francisco,
20 correct?

14:30 21 A. Correct.

14:30 22 Q. Francis McGovern, Eric Green, John Coffee, Robert Jackson,
23 Cathy Yanni, all eminently qualified people in the field of
24 claims handling and resolution, right?

14:31 25 A. Yes.

14:31 1 Q. If myself, through John Cracken, reached out to each of
2 those people in order to assist us in working with you with
3 respect to how to put these claims through the GCCF, would you
4 have any criticism whatsoever with the pedigree of the liaisons
5 to Ken Feinberg that we chose to employ?

14:31 6 A. No.

14:31 7 Q. Has it been your experience that when people engage
8 experts of the quality of Francis McGovern, Eric Green, John
9 Coffee, Robert Jackson and Cathy Yanni, that that is not
10 exactly conduct consistent of someone trying to slip one by
11 you?

14:31 12 A. Yes.

14:31 13 Q. You recall talking to several of those folks about these
14 claims on our behalf, right?

14:32 15 A. No. I recall talking with John Cracken.

14:32 16 Q. Okay.

14:32 17 A. Of those names, that's the individual, and Francis
18 McGovern, who was working for Judge Barbier.

14:32 19 Q. Sure. With respect to the GCCF, I want to give a little
20 more context here. The oil spill happens in April. It hits
21 all the beaches. They don't need a history lesson with respect
22 to that. There was some time before August when this fund got
23 set up, correct?

14:32 24 A. Correct.

14:32 25 Q. And you recall that the chief executive officer of BP, who

1 was somewhat irritated that this was ruining his life, was
2 called to the White House and summoned by President Obama,
3 correct?

14:32 4 A. I don't recall BP -- I don't know the chief himself -- BP
5 was called to the White House by the President, yes.

14:32 6 Q. They were threatened with something called debarment if
7 they didn't take care of this, correct?

14:32 8 A. Correct.

14:32 9 Q. And debarment is all of those lights we see offshore,
10 offshore drilling rigs, those are all what used to be called
11 MMS lease lands, correct?

14:33 12 A. Correct.

14:33 13 Q. And companies like BP bid on those, paid hundreds of
14 millions of dollars sometime for the right to drill in U.S.
15 territorial waters in the Gulf of Mexico, right?

14:33 16 A. Correct.

14:33 17 Q. President Obama basically told BP, you broke it, you clean
18 it up or you are going to be out, right?

14:33 19 A. I don't know what President Obama told BP, but they agreed
20 to set up the Gulf Coast Claims Facility.

14:33 21 Q. Okay. And so they put up in a trust a penance of five
22 million dollars a year over a number of years, a total of 20
23 billion dollars in order to take care of the claims that would
24 be ensuing with respect to the BP oil spill. Fair?

14:33 25 A. Correct.

14:33 1 Q. You already mentioned there were 1.25 million claims in 16
2 months, correct?

14:33 3 A. Correct.

14:33 4 Q. Of anything you have ever done, that is the most claims
5 you have ever seen that fast, correct?

14:33 6 A. By far.

14:33 7 Q. To be fair to the claimants, it is because the BP Oil
8 Spill destroyed an entire ecosystem in the Gulf of Mexico and
9 basically shut down large parts of the economy?

14:34 10 A. So I read.

14:34 11 Q. And so you saw in the claims, correct?

14:34 12 A. Yes.

14:34 13 Q. Fair enough. Now, you mentioned that, obviously, before
14 you would pay a claim, you wanted to know it was a real person,
15 right?

14:34 16 A. Correct.

14:34 17 Q. You wanted to know that it was somebody that was really
18 damaged, right?

14:34 19 A. Correct.

14:34 20 Q. And you wanted to know that that somebody had proof of
21 their damage, correct?

14:34 22 A. Correct.

14:34 23 Q. As we are here, we are talking about my state of mind,
24 apparently, that's not new stuff in terms of all these other
25 claims that you've administered that I played a role in filing

1 claims with, right?

14:34 2 A. Correct.

14:34 3 Q. Can you think of a mass tort claims facility in the last
4 25 years that is passing out money like candy, based on a name
5 and a nine-digit number?

14:34 6 A. I don't understand the question.

14:35 7 Q. Hasn't it been the practice, your practice, other claims
8 administrators' practice with whom I've dealt with for 25
9 years, that you don't get paid unless you have a real person
10 with real proof?

14:35 11 A. Correct.

14:35 12 Q. So when you sent that letter to me saying, I want a real
13 person with real proof, there was nothing unusual about that;
14 can we agree?

14:35 15 A. Agreed.

14:35 16 Q. Fair enough. We had a video of one of your town halls
17 in -- I think it was in Louisiana, but we don't need to play it
18 right now because you've already said what I wanted you to say,
19 and that is this: You invited lawyers to submit the claims of
20 their clients to the GCCF, correct?

14:35 21 A. Correct.

14:35 22 Q. In addition to conducting the series of town hall meetings
23 throughout the Gulf Coast where you met directly with folks,
24 you also had a bunch of outreach meetings with lawyers around
25 the Gulf Coast states, correct?

14:35 1 A. Yes.

14:35 2 Q. Your thought was, I believe you were quoted in the Wall
3 Street Journal, that you have come to believe that lawyers can
4 be invaluable in terms of assisting you in putting together all
5 of these claims, correct?

14:36 6 A. Correct.

14:36 7 Q. When I called your firm, I called your partner, Michael
8 Rozen, in the summer, correct?

14:36 9 A. Correct.

14:36 10 Q. Mr. Rozen and I had worked together on the Celebrex Bextra
11 litigation, and we are actually friends, right?

14:36 12 A. Correct.

14:36 13 Q. Originally, I was writing him, but I got the impression he
14 was copying you on them; is that correct?

14:36 15 A. Yes.

14:36 16 Q. You knew in the summer of 2010, I was very forthrightly
17 telling Mike, hey, I've got a bunch of these clients, I've got
18 more of these clients, I've got more of these clients?

14:36 19 A. Correct.

14:36 20 Q. And in September, we began having discussions with respect
21 to how to put those clients into the Gulf Coast Claims
22 Facility's system, fair?

14:36 23 A. Correct.

14:36 24 Q. All right. And the challenge was, you had an electronic
25 filing system that is on servers, but those servers can be

1 overwhelmed and crash if not handled properly, right?

14:37 2 A. We had no trouble with the servers. I don't know about
3 any of them crashing, but you could file electronically, and if
4 you wanted to, you could file manually, either way.

14:37 5 Q. Sure. The reason I called your office was, I was telling
6 you I was planning on filing upwards of 25,000 claims, and as a
7 courtesy to your office and your servers, I wanted to let you
8 know they were coming, right?

14:37 9 A. You did notify us that you planned to file the initial
10 25,000 claims.

14:37 11 Q. And then you put me in touch with a woman name Camille
12 Biros?

14:37 13 A. Camille Biros. Yes.

14:37 14 Q. Biros. I apologize.

14:37 15 Q. And we worked out the logistics in terms of how those
16 claims were going to be put on your servers?

14:37 17 A. Yes, sir.

14:37 18 Q. Fair enough. Now, in the correspondence that I sent you,
19 I informed you that in addition to the names we had, we also
20 had client contracts available for your review, right?

14:38 21 A. I don't recall that, but it's possible.

14:38 22 Q. Let me just -- it's not a memory test. Whenever I don't
23 get a yes, I just pull out the document and we agree that it
24 was six years ago. Okay?

14:38 25 **MR. MIKAL WATTS:** May I approach, Your Honor?

14:38 1 **THE COURT:** You may.

14:38 2 **BY MR. MIKAL WATTS:**

14:38 3 Q. Let me hand you D1-000535 and ask you whether that is
4 communication from me to you and your office on September 7,
5 2010.

14:39 6 A. Thank you.

14:39 7 Q. And it is what I described, right?

14:39 8 A. Yes.

14:39 9 **MR. MIKAL WATTS:** Your Honor, we would offer Exhibit
10 D1000535.

14:39 11 **THE COURT:** Any objection?

14:39 12 **MR. RUSHING:** No objection, Your Honor.

14:39 13 **THE COURT:** Without objection, D1-000535, the
14 document will be marked and admitted into evidence.

14:39 15 **MR. MIKAL WATTS:** Thank you, Your Honor.

14:39 16 **THE COURT:** Without objection.

14:39 17 **(EXHIBIT D1-535 MARKED)**

14:39 18 **BY MR. MIKAL WATTS:**

14:40 19 Q. All right, Mr. Feinberg. As we look at this document, the
20 date of it is September 22, 2010, correct?

14:40 21 A. Correct.

14:40 22 Q. I have written it to yourself and your partner, Michael
23 Rozen?

14:40 24 A. Correct.

14:40 25 Q. With whom I had been communicating throughout the summer

1 because of our past friendship, right?

14:40 2 A. I don't know, but --

14:40 3 Q. ^ But you're now --

14:40 4 A. Yes.

14:40 5 Q. I said, As I mentioned today, we are planning to file with
6 the fund our 41,000 cases over the next week or two. Right?

14:40 7 A. Yes.

14:40 8 Q. And I said, "As you know, during the months of June
9 through August, we kept Mike informed of our case count status,
10 as it rose from 10,000 to 20,000, to 30,000 and eventually to
11 41,000 claimants. All of these claimants' cases were filed
12 under state maritime law in federal and state court. We did
13 not file under the OPA prior to the MDL hearing in Idaho in
14 late July. All presently are in the MDL before Judge Barbier."
15 Did I read that correctly?

14:41 16 A. Yes.

14:41 17 Q. I just want to set the stage for a second. Nothing about
18 your fund said that you wouldn't pay claims for people that
19 were already in litigation? They could come to you, take a
20 claim and write you a release, and that would be fine, right?

14:41 21 A. Fine.

14:41 22 Q. So lawyers like myself that have filed lawsuits that are
23 in the MDL also had a choice to come talk to you to see if we
24 could get redress for our clients through the GCCF, right?

14:41 25 A. Correct.

14:41 1 Q. Now, as we go to the next paragraph, "You had mentioned
2 that you preferred that we file individual applications for
3 each client as opposed to having aggregate discussions and
4 would like us to provide the fund with computer submission of
5 the claim forms in order for the fund to work with us on
6 interim payments for 41,000 clients." Did I read that
7 correctly?

14:42 8 A. Right.

14:42 9 Q. Let's talk about the concept of interim payments. Explain
10 for the jury real quick the sequencing of emergency payments,
11 interim and final payments?

14:42 12 A. We decided under this program and under federal law
13 governing oil spill compensation that we would provide any
14 claimant, eligible claimant, with a choice. They could receive
15 an emergency payment of, an individual, \$5,000.

14:42 16 Q. So they could get by?

14:42 17 A. Correct. An emergency financial payment. We also
18 provided under the law that we would allow interim payments,
19 that is, we would pay a fisherman or a shrimper who had
20 immediate damage, we would pay their documented damage, not
21 require any release or promises. We would just pay that claim.
22 And they could come back later on for more damage compensation,
23 or they could come in and request a final payment where we
24 would calculate their damage present and predicted future, cut
25 them a check, and they would then have to sign a document.

1 They would not sue BP or any other responsible party for that
2 oil spill.

14:43 3 Q. The reason they needed to release all of the responsible
4 parties, not just BP, is there was a lot of cross-litigation
5 between them, and if you didn't get a settlement for one, it
6 didn't do them any -- I mean, for all, it wouldn't do them any
7 good?

14:43 8 A. Exactly.

14:43 9 Q. So we described what interim payment. There was a certain
10 schedule or deadline for the end of the emergency/interim
11 payment period, right?

14:43 12 A. Correct.

14:43 13 Q. That was sometime in mid-November, as I recall?

14:43 14 A. I believe that is correct.

14:43 15 Q. Fair enough. Let's keep going. "Additionally, after I
16 sent a letter to Ken regarding the fund's payment around us of
17 some of our clients, Ken asked that we also provide social
18 security numbers. And then, finally, he put us in touch with
19 Camille Biros and Jackie, who mentioned that the fund would
20 appreciate it if we could provide our representation contracts
21 for each of our clients." Correct?

14:44 22 A. Correct.

14:44 23 Q. Now, it is correct that after that request from the fund
24 was made, my firm got with Camille Biros and Jackie, and we
25 engineered a way that instead of just giving you PDFs of client

1 contracts, we would superimpose onto the client contracts
2 things like name, social security number and claim number so
3 that you could match a particular document to a particular
4 claimant, right?

14:44 5 A. Correct.

14:44 6 Q. Did anybody else put 41,000 names, identifying
7 information, on client contracts when they came to the GCCF?

14:44 8 A. No.

14:44 9 Q. Okay. Is a lawyer putting 41,000 names, identifying
10 information and social security numbers on a client contract
11 consistent with somebody who is trying to hide something to
12 you?

14:45 13 A. No.

14:45 14 Q. And yet we did that?

14:45 15 A. You represented that you would do it. Now, whether you
16 did it, I don't know.

14:45 17 Q. Let's keep going through the letters and you will see --

14:45 18 **MR. RUSHING:** I object. He has a right to answer his
19 question first.

14:45 20 **MR. MIKAL WATTS:** That was my bad. I'm sorry.

14:45 21 **THE COURT:** Let's avoid making side comments. You
22 may proceed.

14:45 23 **MR. MIKAL WATTS:** I will, and I apologize to you,
24 sir.

14:45 25 **BY MR. MIKAL WATTS:**

14:45 1 Q. "This week we are scanning and databasing for each of our
2 clients the following: Number one, client contract; number
3 two, Form 4506T tax release form; and number three, income
4 information from the Bureau of Labor Statistics." Did I read
5 that correctly?

14:45 6 A. Yes.

14:45 7 Q. Now, just for context, we know what a client contract is.
8 That is a so-called representation agreement, right?

14:45 9 A. Right.

14:45 10 Q. That is the document to which we are putting the name and
11 social security on there so you could find it, correct?

14:45 12 A. Correct.

14:45 13 Q. The second document, Form 4506-T tax release form, you are
14 familiar with that form?

14:46 15 A. I am not.

14:46 16 Q. Okay. Are you familiar with releases that are often done
17 in claims administration so that the defendant can go get all
18 the records they want?

14:46 19 A. Yes.

14:46 20 Q. With respect to tax release forms, if somebody wants to
21 enable a third party to go get their tax returns, to get
22 documentation of damages, you can sign a tax release form,
23 right?

14:46 24 A. Correct.

14:46 25 Q. So your last answer, when you said you weren't familiar, I

1 think you weren't familiar with the number, but you are
2 familiar with what a tax release form is?

14:46 3 A. Correct.

14:46 4 Q. Next, income information from the Bureau of Labor
5 Statistics. Did the GCCF employ demographers?

14:46 6 A. No.

14:46 7 Q. Did the GCCF employ experts in labor statistics?

14:46 8 A. No.

14:46 9 Q. Okay. "We will begin with submitting these documents,
10 together with the 41,000 claims applications for interim
11 payments online." Now, I also mentioned down at the bottom
12 that we have 80 to a hundred people in the field working on
13 finalizing applications for final payment. And you and I had a
14 discussion about the idea that if we were going to come to the
15 fund and get interim payments, you would like us to at least
16 make available to our clients these final payments for which
17 you could get a release, right?

14:47 18 A. Correct.

14:47 19 Q. That seemed fair to you and it seemed fair to me, right?

14:47 20 A. It seemed fair to me.

14:47 21 Q. Well, we weren't bound to, but we would at least present
22 the idea as --

14:47 23 A. As an option. That is correct.

14:47 24 Q. Okay. But that is September 22. Let me hand you
25 D1-0001046. Is this an e-mail I wrote to you on October 4th?

14:48 1 A. Yes.

14:48 2 Q. Okay.

14:48 3 **MR. MIKAL WATTS:** Your Honor, we would offer into
4 evidence D1-0001046.

14:48 5 **THE COURT:** Any objection?

14:48 6 **MR. RUSHING:** May I see that one you have got there,
7 Mikal?

14:49 8 **MR. RUSHING:** No objection, Your Honor.

14:49 9 **THE COURT:** Without objection, D1-000-1046 will be
10 marked and admitted into evidence.

14:49 11 **(EXHIBIT D1-1046 MARKED)**

14:49 12 **MR. MIKAL WATTS:** Thank you, Your Honor.

14:49 13 **BY MR. MIKAL WATTS:**

14:49 14 Q. This is an e-mail about ten or 12 days later, written
15 October 4, 2010 from myself to you and Mr. Rozen, right?

14:49 16 A. Correct.

14:49 17 Q. I said, "I mentioned to Mike last week that we would begin
18 this week filing our claims with the fund online. We wrote a
19 script that the fund's web site appears to have accepted. Of
20 our 41,000 claims, you now have claims for interim payments of
21 about 26,200 claimants, and we have claim numbers from the fund
22 for approximately 25,499 claimants. We will continue to file
23 claims with the fund for the other 15,000 claimants we
24 represent." Did I read that correctly?

14:50 25 A. Yes.

14:50 1 Q. My first question is this: When somebody goes online with
2 the fund, they are issued a claim identification number once
3 the fund receives the claim, right?

14:50 4 A. Correct.

14:50 5 Q. And so I'm telling you that we have gone online, we have
6 received claim numbers from the GCCF for 25,499 claims. Do you
7 see that?

14:50 8 A. Yes.

14:50 9 Q. Now, I had previously mentioned the 41,000, and now we are
10 down to 26,000. Let's talk about the reason for that. It is a
11 fact that the GCCF computer system requires a nine-digit social
12 security number to be able to input the claim electronically,
13 right?

14:50 14 A. Correct.

14:50 15 Q. If a lawyer like me has social security numbers for 25,000
16 claimants and doesn't have them for the rest because he hasn't
17 gotten them yet or hasn't been given them yet, he can't file a
18 claim for those, correct?

14:51 19 A. Correct.

14:51 20 Q. Now, I'm then asking about the documentation that we had
21 discussed in the previous e-mail, and I said, "We are ready to
22 send those to you but my tech guys have advised against
23 attempting to upload that volume of documentation through your
24 site. We also have 41,000 tax release forms and other
25 documentation but need your thoughts about how to get it to you

1 in the most efficient way possible." Right?

14:51 2 A. Yes.

14:51 3 **MR. MIKAL WATTS:** Now, may I approach, Your Honor?

14:51 4 **THE COURT:** You may.

14:51 5 **BY MR. MIKAL WATTS:**

14:51 6 Q. You wrote me back the next day, D-005790. And is this the
7 response that you gave me to that e-mail?

14:52 8 A. Yes.

14:52 9 Q. Okay.

14:52 10 **MR. MIKAL WATTS:** Your Honor, we would offer
11 D1-0005790.

14:52 12 **MR. RUSHING:** No objection, Your Honor.

14:52 13 **THE COURT:** Without objection, that will be marked
14 and admitted into evidence.

14:52 15 **(EXHIBIT D1-5790 MARKED)**

14:52 16 **BY MR. MIKAL WATTS:**

14:52 17 Q. Now, at this time, you told me, look, even though you gave
18 me the contracts that I asked for, there are so many claims.
19 What I would really like is a letter from the claimant saying
20 that you represent them before the GCCF. Right?

14:52 21 A. I didn't receive retention contracts from you for those
22 41,000 people.

14:53 23 Q. Okay. Are you sure about that?

14:53 24 A. Yes. Are you saying that I received 41,000 individual
25 retainer agreements between you and 41,000 individual clients?

1 I don't recall that.

14:53 2 Q. Okay. Let's go look at it. What's the next exhibit you
3 have in front of you?

14:53 4 A. D1-009189.

14:53 5 Q. This is the response e-mail I gave you on October 5th,
6 right?

14:53 7 A. Yes.

14:53 8 **MR. MIKAL WATTS:** We offer D1-009189.

14:53 9 **THE COURT:** Any objection, Mr. Rushing?

14:53 10 **MR. RUSHING:** No objection, Your Honor.

14:53 11 **THE COURT:** Without objection, it will be marked and
12 admitted into evidence.

14:53 13 **(EXHIBIT D1-9189 MARKED)**

14:53 14 **BY MR. MIKAL WATTS:**

14:53 15 Q. As we look at this on the screen, I tell you, "Ken, I can
16 assure you I have the retention agreements with each of these
17 people. Would a hard drive of the 41,000 contracts be
18 sufficient, or do you want them printed out individually and
19 shipped to you in boxes? They have all been scanned and are
20 ready to be shipped via hard drive as we speak. Please advise,
21 Mikal." Did I read that correctly?

14:54 22 A. Yes.

14:54 23 Q. Now, to be fair, you are running around the coast, all
24 over the place. You kind of deputize someone else to take over
25 this at this time, right?

14:54 1 A. I have deputies.

14:54 2 Q. All right. If we could go to the next document,
3 D1-007169. Are you there?

14:54 4 A. Yes.

14:54 5 Q. This is an e-mail from myself to Camille Biros copying you
6 and Mike Rozen on October 5th, right?

14:54 7 A. Yes.

14:54 8 **MR. MIKAL WATTS:** We would offer D1-007169.

14:54 9 **MR. RUSHING:** No objection, Your Honor.

14:54 10 **THE COURT:** Without objection, it will be marked and
11 admitted.

14:55 12 **(EXHIBIT D1-7169 MARKED)**

14:55 13 **BY MR. MIKAL WATTS:**

14:55 14 Q. Now, Camille Biros has responded to me, and she says, "I
15 will get back to you regarding the way we will need you to
16 transmit these signed retention letters. Each one must include
17 the individual's SSN or TIN numbers, as well as any claimant ID
18 you have received." And I respond back to Camille, copying you
19 and Mr. Rozen, "Excellent. I look forward to hearing from you
20 regarding the format in which you want the client contracts
21 produced to you. Previously we were instructed to put a social
22 security number on each contract and wrote a script to
23 superimpose each respective social security number from our
24 database onto the applicable client contract that has been
25 scanned into our database. Let me get with my IT people

1 regarding how to do the same thing with the claim number the
2 fund recently provided to us." Did I read that correctly?

14:55 3 A. Yes.

14:56 4 Q. If you would go to the next document. This is D1-010445.
5 Is that right, Mr. Feinberg?

14:56 6 A. Yes.

14:56 7 Q. This is an e-mail from myself to Camille Biros copying
8 yourself on October 5 again?

14:56 9 A. Yes.

14:56 10 **MR. MIKAL WATTS:** We would offer D1,-010445?

14:56 11 **MR. RUSHING:** No objection, Your Honor.

14:56 12 **THE COURT:** Without objection, it will be marked and
13 admitted into evidence. That is D1-010445.

14:56 14 **MR. MIKAL WATTS:** Yes, sir.

14:56 15 **(EXHIBIT D1-10445 MARKED)**

14:56 16 **BY MR. MIKAL WATTS:**

14:56 17 Q. As we look at this document, Ms. Biros, in the middle of
18 the page, says, "If these are the signed retention agreements,
19 please do not scan them into the system. Please forward them
20 on CD's via Federal Express to our offices in Washington D.C."
21 Then I respond, "Great. I will do so. To what address, care
22 of who?" Correct?

14:57 23 A. Correct.

14:57 24 Q. The next document is D1-010400. It is dated the same day,
25 October 5th, again from myself to Camille Biros, copying

1 yourself and others, right?

14:57 2 A. Correct.

14:57 3 **MR. MIKAL WATTS:** We offer that document.

14:57 4 **MR. RUSHING:** No objection, Your Honor.

14:57 5 **THE COURT:** Without objection, the exhibit will be
6 marked and admitted into evidence.

14:58 7 **(EXHIBIT D1-10400 MARKED)**

14:58 8 **THE COURT:** Mr. Watts, at some time in the not too
9 distant future, we are going to have a discussion about your
10 enumeration system which may be a little difficult for the
11 clerk and the court reporter to handle.

14:58 12 **MR. MIKAL WATTS:** I have a way to solve it, but I
13 agree with you.

14:58 14 **THE COURT:** Thank you.

14:58 15 **BY MR. MIKAL WATTS:**

14:58 16 Q. With respect to this document, I write Camille. It says,
17 "You must have social security number and claim numbers on
18 each. I say, "Will do. We'll run the program and send it to
19 you. Should we file each file with the claim number-POA so you
20 can find them by claim number in the disk or hard drive instead
21 of opening each document? We are also scanning in tax forms
22 and will be sending in other documentation of damages. If we
23 name each document with the claim number first, doc type, will
24 that work? I'll get the script going tonight, and my IT guys
25 say it should take 48 hours or so. Then we can ship them all

1 to you at the end of the week. Please advise ^ re document
2 file name, preference." Correct?

14:59 3 A. Correct.

14:59 4 Q. Mr. Feinberg, do you still not recall seeing these 41,000
5 contracts?

14:59 6 A. Retention agreements? No. I never saw 41,000 individual
7 retention agreements with the client -- with you representing
8 each client and that client so providing that information.

14:59 9 Q. Okay. Let's go to the next document. You can skip over
10 where I congratulate you on your 60 Minutes interview, and go
11 to the next one after that. D1-013299. Is this an e-mail that
12 I wrote to you on October 9th?

14:59 13 A. Yes.

14:59 14 **MR. MIKAL WATTS:** We offer that document.

14:59 15 **THE COURT:** Any objection?

14:59 16 **MR. RUSHING:** No objection, Your Honor.

14:59 17 **THE COURT:** Without objection, the exhibit will be
18 marked and admitted into evidence.

15:00 19 **(EXHIBIT D1-13299 MARKED)**

15:00 20 **MR. MIKAL WATTS:** Thank you, Your Honor.

15:00 21 **BY MR. MIKAL WATTS:**

15:00 22 Q. I say, "Camille, an update. We were able to put not
23 merely the social security number and the claim ID's number on
24 each contract, but we have succeeded also in meeting your
25 request of placing the addresses of each claimant on the front

1 of their attorney retention contract. We should have these
2 assembled on Monday, and David Watts will Fed Ex these to you
3 at the Washington address you provided. I will be in Houston
4 in trial." Correct?

15:00 5 A. Right.

15:00 6 Q. Now, if you would go to the next document, D1-015383. Is
7 this an e-mail from myself to you on the 15th of October in
8 2010?

15:01 9 A. Yes.

15:01 10 **MR. MIKAL WATTS:** We offer the exhibit.

15:01 11 **THE COURT:** Any objection, Mr. Rushing?

15:01 12 **MR. RUSHING:** No, Your Honor.

15:01 13 **THE COURT:** Without objection, it will be marked and
14 admitted.

15:01 15 **(EXHIBIT D1-15383 MARKED)**

15:01 16 **BY MR. MIKAL WATTS:**

15:01 17 Q. I say Ken, "I enjoyed our conversation today. Despite
18 having received our POAs" -- that is power of attorneys,
19 correct?

15:01 20 A. Correct.

15:01 21 Q. You mentioned that due to the numbers involved, before
22 processing these interim payments, you want a letter from my
23 clients stating that I represent them and that I'm authorized
24 to make their claim with the GCCF. I mentioned to you that I
25 had been writing status letters to my clients and that I

1 wouldn't mind having a specific written -- wouldn't mind having
2 specific written directions from my clients authorizing the
3 steps we have taken and plan to take. I also mentioned we have
4 100 people now ready to go into the field to collect damages
5 documentation for final applications but that I had been
6 waiting until the plaintiff's fact sheet form had been agreed
7 to by the PSC and BP. Do you see that, sir?

15:02 8 A. Yes.

15:02 9 Q. And then the accordingly phrase, "Accordingly, you will
10 hold payment for our clients until you receive a letter, then
11 will process the claim within 48 hours or so that you have
12 previously mentioned in your public statements. As we get
13 these letters signed, we will send them to you periodically,
14 and those claims for which letters are received will then be
15 processed. In other words, we will send you letters in
16 tranches, and you will process claims in tranches. As I
17 promised to send you a draft of the letter first, and here is
18 my first draft.

15:02 19 A. Yes.

15:02 20 Q. In fairness, it has been six years. Do you now recall you
21 had received all the powers of attorney but then decided you
22 wanted a letter as well?

15:02 23 A. Yeah. We were waiting for individual letters from 41,000
24 clients in which they say we are represented in this matter by
25 Mr. Watts' law firm.

15:03 1 Q. Sure. My only point, that is slightly different from what
2 you said a minute ago. Let me just clarify. You acknowledge
3 that I sent you 41,000 powers of attorney, attorney retention
4 agreements with name, address, social security number and claim
5 ID number in the upper right-hand corner, right?

15:03 6 A. I don't acknowledge that. You may be right, Mr. Watts.

15:03 7 Q. You don't remember?

15:03 8 A. I don't remember. My concern was that if there are 41,000
9 people that you purport to represent, and there are people
10 every day complaining about I'm not representing -- not just
11 about you but by lawyers as well.

15:03 12 Q. Everyone, sure.

15:03 13 A. They don't represent me, I don't know how they got my
14 name, I don't want you to send the money to them, it should be
15 sent to me only. We needed, in this situation, better proof
16 before we send out hundreds of millions of dollars that the
17 claimant is represented by the law firm.

15:04 18 Q. Okay. So I send you the contracts. Then we agree that we
19 need to have a letter because of these proof problems that you
20 are concerned with, and we are clearly there, right?

15:04 21 A. Right.

15:04 22 Q. During the week of the 15th to the 18th, we are sending
23 drafts back and forth as to what the letters should look like?

15:04 24 A. Correct.

15:04 25 Q. While I'm in trial in Houston, Texas?

15:04 1 A. Correct.

15:04 2 Q. D1-007910 is a letter from you to me or an e-mail from you
3 to me on October 18th, right?

15:04 4 A. Correct.

15:04 5 **MR. MIKAL WATTS:** We offer that exhibit.

15:04 6 **MR. RUSHING:** No objection, Your Honor.

15:05 7 **THE COURT:** I think my real time just crashed. Let
8 me reboot. Okay. Without objection, it will be marked and
9 admitted into evidence.

15:05 10 **(EXHIBIT D1-7910 MARKED)**

15:05 11 **BY MR. MIKAL WATTS:**

15:05 12 Q. Okay. Mr. Feinberg, at a certain point in time, we get
13 the letter agreed to, correct?

15:05 14 A. Correct.

15:05 15 Q. I'm going to skip over some of these documents. The
16 become and forth is not really important. We had another
17 problem. My trial in Houston finished, and then I had to go to
18 Minnesota and try another case, and I didn't have time to do
19 this, so you were dealing with Hilliard and Cracken at that
20 point?

15:05 21 A. I don't recall, but I'm not surprised.

15:05 22 Q. Let me show you a document I have marked previously.

15:05 23 **MR. MIKAL WATTS:** May I approach?

15:06 24 **THE COURT:** You may.

15:06 25 **BY MR. MIKAL WATTS:**

15:06 1 Q. It is entitled memorandum. This is a memorandum from
2 Michael Rozen from Charlie Silver and John Cracken
3 October 25th. Is that correct?

15:06 4 A. Correct.

15:06 5 Q. ^ From Charlie Silver and John Cracken to Michael Rozen,
6 dated October 25th. Here is my question. Down at the bottom,
7 it says it is confidential and intended for the exclusive use
8 of Ken Feinberg and Michael Rozen?

15:06 9 A. Correct.

15:06 10 Q. And Professor Silver and John Cracken are proposing a
11 streamlined protocol that would have a path A and a path B so
12 we could get these 41,000 claims through the GCCF system,
13 correct?

15:06 14 A. Correct.

15:06 15 Q. You received and considered this document, true?

15:06 16 A. True.

15:07 17 **MR. MIKAL WATTS:** We offer D1-071807.

15:07 18 **MR. RUSHING:** No objection, Your Honor.

15:07 19 **THE COURT:** Without objection, it will be marked and
20 admitted into evidence.

15:07 21 **(EXHIBIT D1L-71807 MARKED)**

15:07 22 **BY MR. MIKAL WATTS:**

15:07 23 Q. Now, if we look at this memorandum, Professor Silver and
24 Mr. Cracken are proposing to the GCCF a streamline claims
25 processing protocol to expedite final payments and

1 corresponding full and final releases from plus or minus 60,000
2 individual claimants, right?

15:07 3 A. Correct.

15:07 4 Q. It says, of those 60,000, that Watts Guerra Craft has been
5 engaged by more than 40,000 claimants, correct?

15:07 6 A. Correct.

15:07 7 Q. And then as we go to page two, the idea is to in
8 incentivize or to ^ (?) claimants and their counsel to present
9 their claims to the GCCF rather than litigate. Do you see
10 that?

15:08 11 A. Yes.

15:08 12 Q. And it draws on and leverages our experiences together in
13 Zyprexa, our experience in Vioxx and in other mass tort
14 settlements, right?

15:08 15 A. That is what it says.

15:08 16 Q. Now, in terms of path A, the idea is that initially, the
17 claimant would show up with a comprehensive affidavit that
18 provides all the facts required for the GCCF to make an
19 informed offer to the claimant, or in the alternative, the GCCF
20 may compel further diligence by counsel and the production of
21 further facts in support of a claimant's claim which facts
22 would be detailed in an amended affidavit. Do you see that?

15:08 23 A. Yes.

15:08 24 Q. In exchange for this process, counsel would agree to cut
25 their fee from what normally could be 40 percent down to 25

1 percent, do you see that? Or 25 to 30 percent in this
2 document.

15:08 3 A. Correct.

15:08 4 Q. And Path B would envision that once that comprehensive
5 affidavit has been accepted in Path A, they can come back, and
6 they can file additional evidence beyond the affidavit which
7 corroborates a claimant's verified applications, and once that
8 happens, they can get a path B payment, which is a final
9 payment, right?

15:09 10 A. Correct.

15:09 11 Q. I just want to look at some of the materials we are
12 offering here. Before we do, this would be a process -- if you
13 go to page seven. Paragraph E, Professor Silver and
14 Mr. Cracken on my behalf are offering to bring claimants to
15 you, and we would steer it full of a common benefit fund tax.
16 Do you see that?

15:10 17 A. Yes.

15:10 18 Q. Now, I think one of the issues in this case is, you know,
19 maybe I made up a bunch of claims to get on the Plaintiff's
20 Steering Committee or something. I don't know. Common benefit
21 fee, you know what that is?

15:10 22 A. Yes.

15:10 23 Q. This is offering to put 60,000 claims through you not
24 subject to a common benefit fee, right?

15:10 25 A. I don't know. Again, I'm just reviewing this document.

1 Which paragraph does it say that?

15:10 2 Q. Page seven, paragraph E.

15:10 3 A. E?

15:10 4 Q. Yes.

15:10 5 A. Yes.

15:10 6 Q. Now, we are now off to about late October, 2010. Before
7 the memo that you showed the jury dated -- by the way, what was
8 the date of that memo we just sent you. October 25?

15:11 9 A. October 25, 2010.

15:11 10 Q. Okay. Would it be fair for the jury to understand that by
11 or around that date, you and I or you and Mr. Cracken had
12 negotiated a process where we were going to go back out in the
13 field and get documentation that you had deemed acceptable for
14 a GCCF claim?

15:11 15 A. Yes, I think we had negotiated what we would need as proof
16 of the validity of a claim.

15:11 17 Q. And you understood that me going back out in the field
18 with hundreds of people to get 41,000 documents and signatures
19 and letters was a very expensive multi-million dollar
20 proposition for me, right?

15:12 21 A. Yes. Yes.

15:12 22 Q. So if somebody was to make a wire for \$500,000 to get that
23 started, that wouldn't surprise you in going back out in the
24 field to pay hundreds of people, right?

15:12 25 A. No.

15:12 1 Q. And in terms of context, my thinking of sending a wire in
2 early November for \$500 from Texas to Jackson, Mississippi miss
3 as outlined in count 18 --

15:12 4 **MR. RUSHING:** Objection, Your Honor.

15:12 5 **THE COURT:** What is the basis of your objection?

15:12 6 **MR. RUSHING:** He is going into something not before
7 the jury yet.

15:12 8 **MR. MIKAL WATTS:** I'm not going to use this document.

15:12 9 **THE COURT:** Wait just a minute, gentlemen. First of
10 all, I didn't understand your objection. And when you turn and
11 talk to him, I can't hear you. You need to address any
12 comments you have to the bench so I can make an informed
13 decision. What is your objection?

15:13 14 **MR. RUSHING:** That is not in evidence, what he is
15 discussing.

15:13 16 **MR. MIKAL WATTS:** I'm not going to use it and show it
17 to the jury. I'm referencing the count number.

15:13 18 **THE COURT:** Overruled. You may proceed.

15:13 19 **MR. MIKAL WATTS:** Thank you, sir.

15:13 20 **BY MR. MIKAL WATTS:**

15:13 21 Q. If I sent a wire from Texas to Jackson to pay all of these
22 people on November 9th of \$500,000, it is a fact that that is a
23 program that would have been the consequence of your
24 negotiations with me about my need to go back out and get a
25 signed letter, more documents, right?

15:13 1 A. I have no idea why, you know -- I don't know any of the
2 facts concerning that payment, but if you are paying people who
3 are going to go out and get documents so it will satisfy the
4 GCCF, I understand that.

15:13 5 Q. As a matter of sequencing, our negotiations about the
6 letter I needed, the documents I needed were just before the
7 wire I sent from Texas to Jackson on November 9th, right?

15:14 8 A. Yes.

15:14 9 Q. Thank you. Mr. Feinberg, if you could skip over a few and
10 go to November 15th. Those are in sequential order and I will
11 tell you the document in just a second. I'm trying to cut this
12 short.

15:14 13 A. November the 15th?

15:14 14 Q. Yes, sir.

15:14 15 A. I don't have that.

15:14 16 Q. Let's see if we can go to it this way. If you could go to
17 the document on the top that is dated December 10th. It is an
18 e-mail string. It is D1-006749.

15:15 19 A. I'm looking.

15:15 20 Q. Is this an e-mail string that follows an e-mail from John
21 Cracken to you on the second page, on December 10th?

15:15 22 A. Yes.

15:15 23 Q. And then if you go a few more pages to Bates page number
24 34989.

15:16 25 A. Yes.

15:16 1 Q. Is this an e-mail that John Cracken from my team sent to
2 Ken Feinberg and Camille Biros of the GCCF copying Michael
3 Rozen, Bob Hilliard and myself on November 15?

15:16 4 A. Yes.

15:16 5 **MR. MIKAL WATTS:** We would offer this document, Your
6 Honor.

15:16 7 **MR. RUSHING:** No objection, Your Honor.

15:16 8 **THE COURT:** Without objection, it will be marked and
9 admitted into evidence.

15:16 10 **(EXHIBIT D1-6749 MARKED)**

15:16 11 **BY MR. MIKAL WATTS:**

15:16 12 Q. Now, that e-mail, if I could show it, is written on
13 Monday, November 15th at 7:38 in the evening, correct?

15:16 14 A. Yes.

15:16 15 Q. It is referencing and thanking you for visiting with Bob
16 Hilliard and I this morning, right?

15:16 17 A. Yes.

15:16 18 Q. Now, as it happens, you scheduled a meeting with
19 Mr. Cracken and Mr. Hilliard on that day, right?

15:17 20 A. Correct.

15:17 21 Q. They traveled from Texas to Washington D.C. to visit with
22 you, correct?

15:17 23 A. Correct.

15:17 24 Q. You served them coffee, and you had a very nice meeting,
25 correct?

15:17 1 A. I don't remember.

15:17 2 Q. There's a photograph of the meeting, right?

15:17 3 A. Yes.

15:17 4 Q. Could you identify the photograph, the number on the
5 bottom of the photograph?

15:17 6 A. D1-014433.

15:17 7 **MR. MIKAL WATTS:** We offer that photograph, Your
8 Honor.

15:17 9 **MR. RUSHING:** No objection, Your Honor.

15:17 10 **THE COURT:** Without objection, it will be marked and
11 admitted into evidence.

15:17 12 **(EXHIBIT D1-14433 MARKED)**

15:17 13 **BY MR. MIKAL WATTS:**

15:17 14 Q. Now, the gentleman on the left side of the photograph is
15 Mr. Bob Hilliard. That is one of my partners in the BP
16 litigation, right?

15:17 17 A. Right.

15:17 18 Q. And on the right side, that is yourself, and that is taken
19 in your office, I presume?

15:17 20 A. Yes.

15:17 21 Q. Can I presume from this photograph that you had a very
22 amicable, productive meeting?

15:17 23 A. Yes.

15:18 24 Q. Now, after the meeting, Mr. Cracken writes you this memo.
25 It says, Thanks for visiting with Bob Hilliard and I this

1 morning.

15:18 2 **THE CLERK:** What's the exhibit number?

15:18 3 **MR. MIKAL WATTS:** We are back on -- you want the
4 photograph or the one -- D1-006749.

15:18 5 **THE COURT:** It's already been admitted, Vicki.

15:18 6 **BY MR. MIKAL WATTS:**

15:18 7 Q. Ken, it was great to catch up. To recap, number one,
8 Watts Guerra Craft LLP, WGC, heads into the field this week to
9 conduct their Phase II diligence to verify the limited data WGC
10 received from referring counsel and collect details in
11 connection with their approximate 41,000 clients' spill-related
12 losses. Did I read that correctly?

15:19 13 A. Yes.

15:19 14 Q. Did Mr. Cracken disclose to you on behalf of my law firm
15 that we expected material attrition just as you did?

15:19 16 A. Yes.

15:19 17 Q. Did we disclose to you that WGC will lose clients because
18 they, A, didn't suffer spill-related losses; B, can't prove
19 their losses; and/or C, determined not to work with WGC?

15:19 20 A. WGC being the firm, law firm. Yes.

15:19 21 Q. It is a fact that there were a lot of people out there
22 in -- there were a lot of people out there in 2010 that even if
23 they signed up with lawyers, they needed that check, and a lot
24 of lawyers like me said give it to them?

15:19 25 A. Yes.

15:19 1 Q. In fact, as you testify in front of this jury, every
2 single time the GCCF notified Watts Guerra Craft that it had a
3 claimant wanting to proceed before it without counsel, we
4 allowed them to do so, didn't we?

15:20 5 A. Yes.

15:20 6 Q. Number three, "In the interim, please place WGC's
7 approximate 25,000 claims for emergency payments on hold." You
8 were asked to do that by my team, right?

15:20 9 A. Yes. I don't know whether that was in response to my
10 request that we want retention agreements, but we agreed that
11 we would place them on hold.

15:20 12 Q. Okay. So the claims are placed on hold. We are in late
13 October, and you have met with Mr. Hilliard and Mr. Cracken.
14 Did I meet with them a second time in December?

15:20 15 A. I don't recall.

15:20 16 Q. Okay. Let me show you the next document, which is dated
17 December 10th on the top of the first page. It is D1-0006749?

15:21 18 A. Yes.

15:21 19 Q. If you would go to the third page. There is a December 3,
20 2010 e-mail from John Cracken of my team to Ken Feinberg at
21 5:40 p.m. with respect to a meeting that occurred on
22 December 2nd, right?

15:21 23 A. Yes.

15:21 24 Q. This e-mail is being written one day after your meeting,
25 right?

15:21 1 A. Yes.

15:21 2 **MR. MIKAL WATTS:** Have I offered this one yet? I
3 apologize.

15:21 4 **THE CLERK:** What is that number?

15:21 5 **MR. MIKAL WATTS:** D1-0006749.

15:21 6 **THE COURT:** That's been admitted.

15:21 7 **BY MR. MIKAL WATTS:**

15:21 8 Q. If I could put this page on the screen, this December 2nd
9 meeting. Do you recall meeting with Mr. Hilliard, Mr. Cracken
10 and Emily Jeffcott from my office, I think it was down in New
11 Orleans, if I recall?

15:22 12 A. Yes.

15:22 13 Q. "Very helpful. As you point out, our goal is to define
14 the minimum proof required to secure compensation for our
15 fishermen. Any campaign to collect proof when multiplied by
16 thousands of plaintiffs, much less 40,000, is daunting, as you
17 know."

15:22 18 Now, when we agreed to go out, once again, the word
19 daunting is financially daunting as well. You construe
20 daunting as going to be expensive?

15:22 21 A. Yes.

15:22 22 Q. On the same day, Mr. Cracken says it is going to be
23 expensive, my office wired \$250,000 from Texas to Jackson,
24 Mississippi. That would just happen to be on December 3rd, the
25 same day we are saying we are going to do this, right?

15:22 1 A. I don't know if you wired it.

15:23 2 Q. But if we did, it would be on December 3rd?

15:23 3 A. Yes.

15:23 4 Q. Did there come a time when Mr. Hilliard and you began to,
5 I don't want to say quarrel, but debate what should be required
6 with respect to proof?

15:23 7 A. I don't recall. We may have.

15:23 8 Q. Did he threaten to take all the cases and go to
9 litigation?

15:23 10 A. Well, he does that, yes. That is his mantra, so --

15:23 11 Q. He will love that that's in the record. Shortly after
12 that, in late December, on December 21st, did the PSC file a
13 motion to supervise ex parte communications between BP
14 defendants and putative class members?

15:24 15 A. Yes.

15:24 16 Q. Is that motion marked as D1-071810?

15:24 17 A. Yes.

15:24 18 Q. And is the motion, is that something that the GCCF
19 responded to?

15:24 20 A. I don't recall whether we responded. BP may have
21 responded. I don't recall whether we did.

15:24 22 Q. And after the briefing was done, the next document and the
23 last document, the judge issued an order on February 2 of 2011,
24 docket number 1098 in the BP MDL?

15:24 25 A. Correct.

15:24 1 Q. And the motion to supervise ex parte communications with
2 the putative class was granted in part and denied in part,
3 correct?

15:24 4 A. Correct.

15:24 5 Q. And as a result of that, the motion and then the order,
6 there were new procedures put in place with respect to your
7 ability to communicate with people represented by counsel?

15:25 8 A. That is correct.

15:25 9 Q. Now, by that point in time, would it be fair to say that
10 most of the Plaintiff's Steering Committee was in litigation
11 taking depositions, going the litigation track?

15:25 12 A. Yes.

15:25 13 Q. And you understood that at that time, I was a member of
14 the Plaintiff's Steering Committee taking depositions, pursuing
15 the litigation track?

15:25 16 A. Yes.

15:25 17 Q. Did there come a point in time, however, in April where
18 your office sent me 35 checks totaling 475,000 for some of my
19 claimants?

15:25 20 A. Yes.

15:25 21 Q. Do you recall that I sent those checks back to you?

15:25 22 A. Yes.

15:25 23 Q. All of them?

15:25 24 A. Yes.

15:25 25 Q. Every dollar of them?

15:25 1 A. Yes.

15:25 2 **MR. MIKAL WATTS:** Those are all my questions, sir.

15:25 3 **THE COURT:** Thank you, Mr. Watts. Mr. McCrum, do you
4 have any cross-examination questions for this witness, sir.

15:26 5 **MR. MCCRUM:** Yes, sir, I do.

15:26 6 **THE COURT:** You may proceed.

15:26 7 **CROSS-EXAMINATION**

15:26 8 **BY MR. MCCRUM:**

15:26 9 Q. Good afternoon, Mr. Feinberg. My name is Michael McCrum.
10 We have never had the pleasure, sir.

15:26 11 A. Good afternoon.

15:26 12 Q. Good afternoon. I wanted to follow up on a couple of
13 things to make sure I understand correctly. I understand from
14 Mr. Rushing's questions and your answers, sir, that you were
15 hired or appointed, I'm not sure which, maybe both, to be the
16 administrator of GCCF in August of 2010; is that right?

15:27 17 A. Correct.

15:27 18 Q. And the entity that hired you was actually BP; is that
19 right?

15:27 20 A. Yes, with the consent and approval of the Obama
21 administration.

15:27 22 Q. The White House?

15:27 23 A. And the Department of Justice.

15:27 24 Q. As well as the Department of Justice. Now, was it also in
25 August of 2010 that this multi-district litigation or MDL was

1 created?

15:27 2 A. I don't know. Around that time, yes.

15:27 3 Q. Was the GCCF operating independently of that MDL that had
4 been initiated?

15:27 5 A. It was operating independently, but under the Oil
6 Pollution Control Act, you had to present a claim to us before
7 you could go to the MDL, but yes, we were on a parallel track
8 to the MDL, yes.

15:27 9 Q. As I understand, sir, the mission of the GCCF was to see
10 if you could settle claims instead of there being litigation.
11 Is that right, is that fair to say?

15:28 12 A. Well, that was mission. The other mission was to try and
13 compensate victims of the spill quicker and more certainly than
14 through protracted litigation. It was a win/win for BP and the
15 claimants.

15:28 16 Q. So if it came to be that people couldn't get satisfaction
17 through working with the GCCF, then they could choose, assuming
18 they had filed the appropriate documents, to proceed to the
19 litigation route?

15:28 20 A. Absolutely, yes.

15:28 21 Q. When you came into your position in August of 2010, sir,
22 there had already been lawsuits in place; is that right?

15:28 23 A. Correct.

15:28 24 Q. People had filed lawsuits all over the country; is that
25 right?

15:28 1 A. Correct.

15:28 2 Q. Because the oil spill was in April of 2010, so by August,
3 could you even estimate how many lawsuits had been filed by
4 that time?

15:29 5 A. No.

15:29 6 Q. A bunch?

15:29 7 A. Yes.

15:29 8 Q. How much did BP pay out in the end for settling, both
9 through settlements through GCCF as well as through settlements
10 in the litigation. Do you know?

15:29 11 A. No, billions of dollars, but I don't have a number.

15:29 12 Q. How much was settled by the GCCF, sir, under your watch?

15:29 13 A. In 16 months, we honored 550,000 claims and paid six and a
14 half billion dollars out the door to eligible victims of the
15 spill.

15:29 16 Q. These eligible victims would include not only fishermen
17 and deckhands and people involved in the fishing industry but
18 also businesses that operated up and down the Gulf Coast and
19 some other people impacted by that people?

15:29 20 A. Yes.

15:29 21 Q. You said earlier you had 4,000 under your watch under
22 GCCF, but I didn't hear whether or not they were employees or
23 independent contractors.

15:30 24 A. The overwhelming number independent contractors, claims
25 appraisers, accountants, individual -- mostly claims appraisers

1 and claims valuator, accountants and others calculating
2 damages in individual cases.

15:30 3 Q. When you hired independent contractors to perform these
4 different functions, Mr. Feinberg, would you deal with the
5 heads of those independent contractors?

15:30 6 A. In hiring, yes. Then after that, they would have their
7 own employees.

15:30 8 Q. All right, sir. So after that, after the independent
9 contractor is hired to do a particular function, whatever they
10 are, accounting or the other things that you mentioned, what
11 kind of relationship, business relationship existed after that
12 point from your little shop -- and I say little shop because
13 your law firm is relatively small, isn't it?

15:31 14 A. Very.

15:31 15 Q. It is you and Mr. Rozen and a handful of lawyers or just
16 you two?

15:31 17 A. Me and Mr. Rozen.

15:31 18 Q. That's it. And then you have some staff members, right?

15:31 19 A. Right.

15:31 20 Q. And then you contract out under your authority with
21 independent contractors?

15:31 22 A. That is correct. We were a hub. All of those contractors
23 work in a centralized protocol with standard rules, terms and
24 conditions that we set up, and all of those contractors were
25 expected to follow that standardized manual that laid out the

1 rules.

15:31 2 Q. Did you get into the weeds as far as supervising the
3 employees of those independent contractors? Did you do that,
4 sir?

15:31 5 A. I didn't do that, but I would say we got into the weeds
6 pretty closely to make sure in those 35 claims offices
7 throughout the Gulf, everybody working in those offices was
8 applying the same standardized terms and conditions of
9 compensation.

15:32 10 Q. They would have to report in to you, correct?

15:32 11 A. Correct.

15:32 12 Q. They would have to send you e-mails and memos about what
13 they were doing?

15:32 14 A. That is correct.

15:32 15 Q. You would read the memos and read the letters and say,
16 okay, they are complying with the standards I expect, right?

15:32 17 A. That is correct.

15:32 18 Q. Did you give them training as to what you expected of them
19 before they started?

15:32 20 A. We did.

15:32 21 Q. And you trusted the people in charge of those different
22 accounting firms to make sure they are doing their jobs and the
23 standards are being carried out?

15:32 24 A. We had to trust them because there were so many claims and
25 so many people demanding compensation, yes.

15:32 1 Q. We have introduced very quickly in this trial the names of
2 John Cracken and Bob Hilliard. You understood them to be
3 partners with Mr. Watts?

15:32 4 A. I don't know if they were partners. They were involved in
5 the venture with Mr. Watts, yes.

15:33 6 Q. Do you know the level of investment that they made, if at
7 all?

15:33 8 A. No, I don't.

15:33 9 Q. You indicated earlier that you know and have heard of
10 Mr. Watts and his reputation in all of these other cases, sir.
11 How familiar are you with their internal operation of that law
12 firm?

15:33 13 A. Not at all.

15:33 14 Q. Do you know how many employees they have?

15:33 15 A. I do not.

15:33 16 Q. With respect to these 25,000 at first and then later
17 41,000 claimants that Watts Guerra Craft submitted, sir, did
18 you do any analysis, or people working at your direction, to
19 see what kind of due diligence was conducted by people like
20 David Watts or Wynter Lee or other people working there?

15:33 21 A. No.

15:33 22 Q. So in terms of how they got the information, from who and
23 how it was received, you don't have any knowledge about that?

15:33 24 A. None.

15:34 25 **MR. MCCRUM:** Could I see Government Exhibit 119? May

1 I approach, Judge?

15:34 2 **THE COURT:** You may.

15:34 3 **BY MR. MCCRUM:**

15:34 4 Q. Where would the contracts -- I thought I might mention in
5 that exhibit, Mr. Feinberg, but maybe you can just help me.
6 When contracts are sent in, signed contracts from the clients,
7 and we saw a bunch of e-mails about it being sent in, what
8 office would that have been handled through, your particular
9 law office?

15:35 10 A. You mean contracts between subcontractors, vendors helping
11 me and the Gulf Coast Claims Facility?

15:35 12 Q. Good point. No, sir, that's a good question. I meant the
13 client contracts. For example, when WGC said they had 41,000
14 clients and there was some discussion of sending disks with all
15 the claims -- the contracts -

15:35 16 A. When we eventually got those contracts electronically, I
17 think it went through our claims handlers in Ohio, I think it
18 was, but ultimately we kept track of that

15:35 19 Q. When they arrived in Ohio or wherever they did, sir, did
20 you go to review all of the individual contracts?

15:35 21 A. No. We didn't have to review many of them because --
22 because we were skeptical that these 41,000 people had agreed
23 to be represented by the firm.

15:35 24 Q. And that was part of the reason for negotiating and
25 meeting with Mr. Cracken and Mr. Hilliard and how --

15:35 1 A. Exactly. Exactly. How can 41,000 people be represented
2 by one firm? We want to see, before we calculate damages and
3 pay the money, we want to see that in fact those people,
4 fishermen or whatever, are in fact represented by the Watts
5 firm.

15:36 6 Q. And that was your job to do that, right, Mr. Feinberg?

15:36 7 A. I think it was my fiduciary responsibility in distributing
8 this type of money.

15:36 9 Q. In terms of what you said, we wanted to see how was it
10 that they represented 41,000, I think you just mentioned. Let
11 me ask you this. You said you had worked with Mr. Watts or at
12 least heard of him working on other cases. Did you work with
13 him on the Trans Union mass injury case where he represented
14 80,000 people?

15:36 15 A. No. I don't recall. I don't think I did. He will know,
16 but I don't think I did.

15:36 17 Q. Do you know how that worked out as far as whether or not
18 that was successful for Mr. Watts?

15:36 19 A. I have no idea.

15:36 20 Q. How about a Syngenta case where they are representing
21 47,000 claimants?

15:37 22 A. I wasn't involved. Were those class actions?

15:37 23 Q. Sir, if you don't know, I can't tell you.

15:37 24 A. If they are class actions, of course, that is altogether
25 different.

15:37 1 Q. I can tell you they are not class actions.

15:37 2 A. AGain, I'm not acquainted with those cases.

15:37 3 Q. How about a case that is referred to as RUK where his firm
4 represented 25,000 people?

15:37 5 A. No recollection. I don't believe I had anything to do
6 with that case.

15:37 7 Q. Did you work on the FEMA case where his firm represented
8 31,000 people?

15:37 9 A. No.

15:37 10 Q. In your experience -- you said you heard a lot about him
11 and his experience. Did you hear the rate of success they had
12 on that 31,000 case in FEMA?

15:37 13 A. Not in that particular case. I know of the rate of
14 success of Mr. Watts, but I don't know about that case.

15:37 15 Q. The rate of success is very high?

15:37 16 A. Very high.

15:37 17 Q. So when he says he represents 80,000, 47,000 or 31,000 in
18 a case, at least historically, he has been right?

15:38 19 A. He was successful. I have no idea on those cases. I
20 can't comment on those cases.

15:38 21 Q. Let me ask you -- I want to refer to D1 exhibit 6749. It
22 is that e-mail that y'all talked about a little bit.

15:38 23 **THE COURT:** It has been admitted.

15:38 24 **BY MR. MCCRUM:**

15:38 25 Q. I know y'all talked about this, but I want to see what

1 your understanding of this clause is. WGC, to bring this up to
2 date, I don't know if you have that in front of you, sir.

15:38 3 A. I have it right here.

15:38 4 Q. What is the date of that particular writing?

15:38 5 A. I haven't got that. I have page two of up.

15:39 6 Q. November 15th of 2010. Does that sound about right?

15:39 7 A. Yes.

15:39 8 Q. When it says here, and this is to bring everybody's
9 recollection of that, this is an e-mail from John Cracken to
10 you and others. Your partner, Mike Rozen and others.

15:39 11 A. Correct.

15:39 12 Q. When it says Mr. Cracken is telling you WGC -- you
13 understand that's Watts Guerra Craft?

15:39 14 A. Right.

15:39 15 Q. -- expects material attrition, for the members of us here
16 in the courtroom that may not fully grasp that in the context
17 of your work, sir, what do you take that to mean when you
18 receive that?

15:39 19 A. C, right below it. They have determined not to work with
20 WGC; that is, that there will be clients who when they are
21 asked to submit a formal retention agreement will decide that
22 they don't want to be represented by that law firm.

15:39 23 Q. Okay. So it's not as many as you thought you had,
24 basically, in common parlance?

15:40 25 A. I don't know how many -- what would be material attrition,

1 but I understood there would be, based on this memo, there will
2 be a drop-off on the number of represented clients.

15:40 3 Q. You would agree that attrition is basically a drop-off?

15:40 4 A. Right.

15:40 5 Q. And material, in the context of your business, would
6 mean --

15:40 7 A. Substantial.

15:40 8 Q. Substantial. All right. You also mentioned earlier there
9 were some town halls, but since we are so early in the case, we
10 have all seen town halls in presidential elections when he has
11 got about 30 people in front of him and answering questions.
12 Is that the same kind of thing we are talking about when you
13 said you attended town halls?

15:40 14 A. The volume of people attending was much greater but the
15 basic same format. Public debate, public discussion over the
16 program and how my protocol and the compensation program would
17 work.

15:41 18 Q. So is that common in these mass injury cases, mass tort
19 cases, where lawyers will come and conduct town halls or
20 lawyers' representatives will?

15:41 21 A. No.

15:41 22 Q. It's not common?

15:41 23 A. No.

15:41 24 Q. Is this BP the only time you have ever seen it?

15:41 25 A. No, I have done it in all the cases I've been involved in,

1 but I don't think it is common, where the claims administrator
2 goes to a public meeting and invites any critics or anybody
3 who's upset or feels the program is unfair, invites them to
4 come in and complain or state their views.

15:41 5 Q. Have you seen them in the context of these mass tort cases
6 where lawyers who are going to represent clients or potential
7 clients will conduct town halls to see if those people are
8 interesting in hiring that lawyer?

15:42 9 A. No.

15:42 10 Q. You've never heard of that?

15:42 11 A. No.

15:42 12 Q. Okay. Have you ever represented thousands of people, Mr.
13 Feinberg, in a mass injuries case?

15:42 14 A. No.

15:42 15 Q. Now, let me ask you about, as far as your negotiations
16 with Mr. Hilliard and Mr. Cracken, was there a man that began
17 to meet with them that was associated with you in a certain way
18 named David Pitofsky?

15:42 19 A. Yes.

15:42 20 Q. Who is he?

15:42 21 A. A lawyer at the Goodwin Proctor law firm in New York who
22 was counsel to the Gulf Coast Claims Facility.

15:42 23 Q. Basically, in your capacity as administrator, your lawyer?

15:42 24 A. That's correct.

15:42 25 Q. And Mr. Pitofsky, it is your understanding, would meet

1 with Mr. Cracken in 2010 or 2011 to continue this discussion of
2 what kind of proof is going to be necessary to prove up these
3 claims?

15:42 4 A. I have no recollection of such meetings, but if it is
5 recorded, then they occurred. I don't recall Pitofsky meeting
6 with those individuals.

15:43 7 Q. Did you ever talk with him about the fact that meetings
8 even occurred?

15:43 9 A. I don't recall having discussions about that, no.

15:43 10 Q. Do you recall that during this time period in 2011, that
11 issues started coming up with respect to the Vietnamese
12 claimants that were involved in this BP situation?

15:43 13 A. Problem with Vietnamese claimants came from day one right
14 through until the end of the program.

15:43 15 Q. What kind of problems?

15:43 16 A. Cultural, translation, inability to get information,
17 failure to understand the program. We translated the forms and
18 the rules into Vietnamese. We held meetings with the
19 Vietnamese with translators. We did everything we could, I
20 think, to encourage the Vietnamese to better understand the
21 program.

15:44 22 Q. When you mentioned that there were cultural issues that
23 posed some challenges to you, sir, what are you referring to?

15:44 24 A. Does the wife file instead of the husband. Is it the
25 childrens' obligation under Vietnamese heritage, whatever. It

1 was difficult at times to make sure that we were getting
2 through to the Vietnamese fishermen, primarily, so that they
3 understood the program.

15:44 4 Q. Did you or people working with you experience the fact
5 that there they were transient in nature, as far as their
6 residency?

15:44 7 A. Yes.

15:44 8 Q. In other words, you found they would move often, or at
9 least after this spill they had to move somewhere because they
10 couldn't fish any more in the Gulf?

15:44 11 A. I don't know about transient in connection with this case,
12 but there was difficulty in finding some of these individuals
13 and locating them at various places in the Gulf.

15:45 14 Q. Now, at a certain time, they shut down the GCCF; isn't
15 that right?

15:45 16 A. Correct. Well, they. Judge Barbier did.

15:45 17 Q. And Mr. Watts asked you about a motion that had been filed
18 to supervise ex parte communication and an order that was
19 entered in February; is that right?

15:45 20 A. Correct, of 2011.

15:45 21 Q. Of 2011, yes, sir. And isn't it true that the order --
22 and you received a copy of it, right?

15:45 23 A. Yes.

15:45 24 Q. Because it was directed to you on what to do and what not
25 to do, right?

15:45 1 A. Yes.

15:45 2 Q. Judge Barbier gave you a laundry list of things you
3 shouldn't do anymore or should do. Is that right?

15:46 4 A. Yes.

15:46 5 Q. And the result of that is that the judge found that you
6 and GCCF were not completely neutral or independent from BP; is
7 that right?

15:46 8 **THE COURT:** Let's hold that thought for just a
9 minute, Mr. Feinberg. I want to give the jury a break. They
10 have been here for a while and so have you. Ladies and
11 gentlemen, you may go back to the jury room to refresh
12 yourselves.

15:46 13 **(JURY OUT AT)**

15:46 14 **THE COURT:** Mr. Feinberg, you may also step down,
15 sir, and take a break. We will be in recess for about ten
16 minutes.

15:47 17 **(RECESS TAKEN AT UNTIL)**.

16:07 18 **THE COURT:** Ready to proceed, Mr. McCrum?

16:07 19 **MR. MCCRUM:** Yes, I am.

16:07 20 **THE COURT:** Is the government ready to proceed?

16:08 21 **MR. RUSHING:** Yes, Your Honor.

16:08 22 **THE COURT:** Please bring in the jury.

16:08 23 Mr. Watts, I understand you are in discussions with the
24 clerk to come up with a more practical enumeration system.

16:08 25 **MR. MIKAL WATTS:** I think I understand what she needs

1 and we are good to go.

16:08 2 **THE COURT:** Thank you, sir.

16:09 3 **(JURY IN AT)**

16:10 4 **THE COURT:** Be seated, please. You may proceed,
5 Mr. McCrum.

16:10 6 **MR. MCCRUM:** Thank you, Your Honor.

16:10 7 **BY MR. MCCRUM:**

16:10 8 Q. Mr. Feinberg, I want to ask you some questions about some
9 of the challenges you faced in the work you have described so
10 far this afternoon. And specifically, I want to refer to there
11 was an evaluation of the GCCF conducted by an agency at the
12 request of the Department of Justice; isn't that right?

16:10 13 A. That is right. The audit at the end of the 16-month
14 program.

16:11 15 Q. Is that the audit prepared by BDO Consulting, a division
16 of BDO U.S.A. LLP?

16:11 17 A. Yes.

16:11 18 Q. That came out in the middle of 2012, correct?

16:11 19 A. Correct.

16:11 20 Q. And the Department of Justice requested that independent
21 evaluation to focus on just different things and how the whole
22 process worked; is that right?

16:11 23 A. Correct.

16:11 24 Q. Isn't it true, Mr. Feinberg, that because of the
25 complexity of this particular situation, this BP case, would

1 you agree it was unprecedented in many respects?

16:11 2 A. The volume of claims. I've never seen anything like the
3 volume. 1,200,000 claims, that, to me was unprecedented.

16:11 4 Q. And in terms of the evaluation, that was agreed upon, that
5 it was unprecedented and unique by many. Would you agree?

16:11 6 A. Yes.

16:11 7 Q. And through that evaluation, isn't it true that the
8 finding was that the GCCF had to constantly make adjustments
9 and improvements in its process in order to grab hold of -- I
10 say grab hold -- I can read the sentence -- but the myriad of
11 challenges you faced in your work. Is that right?

16:12 12 A. That is correct, and giving us a very, very high grade, as
13 you know, at the end of that audit.

16:12 14 Q. Yes, sir.

16:12 15 A. A plus. They acknowledged that we had to make changes
16 throughout the program in an effort to deal with the volume of
17 claims.

16:12 18 Q. Isn't it true, sir, that you even are quoted as saying
19 that you didn't expect some of the challenges that you were
20 going to face in this particular situation?

16:12 21 A. I think that is absolutely true.

16:12 22 Q. But those things happen. The complexity is more than you
23 anticipated. Isn't that right, Mr. Feinberg?

16:12 24 A. The volume was more than I anticipated, not the
25 complexity.

16:13 1 Q. Now, as a result of that, isn't it true that GCCF had to
2 make 20 different enhancements or changes to its review
3 platform in order to address new situations that were coming
4 up?

16:13 5 A. I think that's right, yes.

16:13 6 Q. And it was recognized that the potential for human error,
7 given the volume you are talking about, was significant?

16:13 8 A. The potential? Yes.

16:13 9 Q. Sure.

16:13 10 A. The potential, yes.

16:13 11 Q. Now, when you secured the services of different
12 independent contractors, and I will refer to two of them, GCG
13 and Brown Greer, to play a significant role in your process,
14 part of your decision was made based on your prior experience
15 with these companies; isn't that right?

16:13 16 A. Correct.

16:13 17 Q. And it was found that because you had worked with these
18 particular independent contractors before, and it had turned
19 out well, that you believed that each would bring that unique
20 and necessary strength to the GCCF and this project?

16:14 21 A. Correct.

16:14 22 Q. Do you recall saying that it not only was more complex and
23 voluminous than originally contemplated, but it was more
24 time-consuming than originally contemplated?

16:14 25 A. Yes.

16:14 1 Q. As part of the procedures that were initiated by the GCCF
2 in order to try to settle claims, there was a quick payout
3 system initiated. Isn't that right?

16:14 4 A. That is correct.

16:14 5 Q. So for example, if any deckhand or fisherman came to the
6 GCCF and said, I've been damaged, and I will sign a release,
7 I'm not going to sue you, I'm not represented by any lawyer,
8 you would enter an agreement with them to pay them some money;
9 is that right?

16:15 10 A. That's correct.

16:15 11 Q. And what was that quick payment amount?

16:15 12 A. 5,000 --

16:15 13 Q. I'm so sorry, sir?

16:15 14 A. \$5,000 for an individual. \$25,000 for a business.

16:15 15 Q. And the way that worked, again, would she just show up to
16 GCCF or would you set up a store front for people to just show
17 up, or how did it work?

16:15 18 A. The same way as everybody else. We had 35 claims offices
19 throughout the Gulf region, and you could file by going into an
20 office. You could file online for the quick payment. You
21 could send in an application, any way you wanted to do it.

16:15 22 Q. As long as you signed that release, that I'm not
23 represented by a lawyer and I'm not going to sue BP, then we
24 have a deal, and they get their 5,000-dollar check?

16:16 25 A. No, they had to demonstrate -- they had to have some proof

1 that they were damaged.

16:16 2 Q. That they were actual fisherman?

16:16 3 A. Correct. But the proof we required was very minimal, and
4 it was very important, we felt, to get money out the door
5 particularly to people who didn't file tax return, didn't have
6 much in the way of proof and yet were suffering. We wanted to
7 get them money as quickly as we could.

16:16 8 Q. Did you find that to be the case with the Vietnamese
9 fishermen, insofar as not having tax returns and difficulty in
10 giving you proof?

16:16 11 A. We found that with many, many claimants. I wouldn't
12 single out the Vietnamese fishermen. I would say generally,
13 there were many thousands of claimants that simply didn't have
14 any real documentation to show how damaged they were
15 financially by the spill.

16:16 16 Q. And so when you lowered the level of proof, you went to a
17 more minimal level of proof that was necessary in order to get
18 this \$5,000, what was that level of proof for a fisherman?

16:17 19 A. Show us that you've got a fisherman's license.

16:17 20 Q. Okay.

16:17 21 A. Shows us that you are a commercial fisherman. Just show
22 us that in the last month or two before the spill, you had
23 commercial permission from the Louisiana or the Mississippi
24 authorities to fish commercially. Just give us something, and
25 we will give you the quick payment.

16:17 1 Q. And how about the deckhands who are not required to have a
2 fishing license in order to conduct their business? What level
3 of proof? Do you recall what you required of them?

16:17 4 A. I don't recall, but it might have been evidence that they
5 were gainfully employed on a particular boat.

16:17 6 Q. Okay.

16:17 7 A. So that we could assume some damage.

16:17 8 Q. Now, the GCCF also issued deficiency letters to claimants
9 who failed to provide sufficient documentation. Isn't that
10 right?

16:18 11 A. Correct.

16:18 12 Q. That means that whatever you submitted to us, the claim,
13 it is deficient in some way, so you need to present us with
14 more proof or more information?

16:18 15 A. That is right. You haven't given us enough. We don't
16 want to find you ineligible, but you have to come up with
17 something better than what you have given us so far.

16:18 18 Q. When you didn't have that information and you reviewed
19 your database and said, oh, this is deficient, you wouldn't
20 just dismiss that claim, would you, Mr. Feinberg?

16:18 21 A. No, never. We always went back to the claimant and asked
22 the claimant, please, do you have additional information you
23 can provide us so we can determine your eligibility and so we
24 can calculate what the damage is to we can pay you.

16:18 25 Q. Yes, sir, but if they filed their claim before the

1 deadline and it was deficient, weren't you authorized to just
2 dismiss it or would that be --

16:18 3 A. We could, but we wanted to give the claimant every
4 opportunity to supplement the claim so we could find them
5 eligible and pay them the claim.

16:19 6 Q. So you felt it was prudent and a good thing to say, I'm
7 going to send a deficiency letter and say I'm not going to drop
8 you yet if you give me some more proof?

16:19 9 A. That's right. We received thousands and thousands of
10 claims from individuals and businesses.

16:19 11 Q. Yes, sir.

16:19 12 A. With no proof, zero, no proof whatsoever attached --

16:19 13 Q. And businesses?

16:19 14 A. Businesses. We had to go back to businesses and mainly
15 individuals, but some businesses, and ask them, please, we are
16 ready to pay a claim, but we need something to justify payment.
17 And that's why we tried to send deficiency letters, hoping they
18 could supplement their claim.

16:20 19 **MR. MCCRUM:** All right, sir. Let me just check here.
20 If I may have just a moment, Your Honor. I believe that is all
21 I have for now, Judge. I pass the witness.

16:20 22 **THE COURT:** Thank you, Mr. McCrum. Mr. Hightower, do
23 you have any questions you wish to ask this witness.

16:20 24 **MR. HIGHTOWER:** I have no questions.

16:20 25 **THE COURT:** Mr. Lewis, do you have any

1 cross-examination questions?

16:20 2 **MR. LEWIS:** That will be Ms. O'Neill.

16:20 3 **CROSS-EXAMINATION**

16:20 4 **BY MS. O'NEILL:**

16:20 5 Q. Good afternoon, Mr. Feinberg. My name is Alicia O'Neill,
6 and I represent Eloy Guerra. You have never met Mr. Guerra,
7 have you?

16:20 8 A. No.

16:20 9 Q. I didn't think so. He was a liaison to the lawyers in
10 this case. You did have a lot of discussions with the lawyers
11 in this case, though, didn't you? You talked to Mikal Watts a
12 lot and to John Cracken about these claims?

16:21 13 A. Yes.

16:21 14 Q. I'm going to be very, very brief, and not like lawyer
15 brief, truly brief. I'm just going to ask you about one
16 e-mail. You guys have talked a lot about D1-6749. It's in
17 evidence. You already read it many, many times. I'm going to
18 talk to you about paragraph five, which you didn't talk about
19 that much earlier. This is Mr. Cracken sending an e-mail
20 saying that Camille, meaning Ms. Biros, proposed that the WGC
21 will take a sample of the ten claims and supplement those first
22 so they can work through those claims with y'all in the course
23 of dealing in connection with this --

16:23 24 (OFF-RECORD.)

16:24 25 **THE COURT:** You may proceed.

16:24 1 **BY MS. O'NEILL:**

16:24 2 Q. Mr. Feinberg, just to bring you back to what we were
3 talking about, Camille Biro's proposes that WGC, through
4 Cracken, will bring you ten claims so that you could look
5 through them to figure out how to best proceed from there.
6 Were you aware that in order to do that, Mr. Cracken simply
7 went directly to the head of his field team, Kristy Le, and
8 asked her to provide him with ten sample claims?

16:24 9 A. No.

16:24 10 Q. Were you aware that when either yourself or Ms. Biro's
11 would e-mail back and suggest that more documents be gathered,
12 additional information be obtained, that Mr. Cracken would
13 simply go directly to the head of his field team, Kristy Le,
14 and ask her to get that information for him?

16:24 15 A. No.

16:24 16 **MS. O'NEILL:** That's all I have for this witness.

16:24 17 **THE COURT:** Thank you, Ms. O'Neill. Any questions on
18 behalf of your client, Mr. Wilson?

16:25 19 **MR. WILSON:** Briefly, Your Honor.

16:25 20 **CROSS-EXAMINATION**

16:25 21 **BY MR. WILSON:**

16:25 22 Q. Good afternoon, Mr. Feinberg. I want to circle back to a
23 question you were asked earlier. My recollection on
24 cross-examination was that you said you had a number of issues
25 or the GCCF had a number of issues with claimants coming in

1 without their documentation?

16:25 2 A. Correct.

16:25 3 Q. And one of the actual subgroups that was talked about on
4 cross-examination was the Vietnamese community. Do you recall
5 that?

16:25 6 A. Correct.

16:25 7 Q. And you said that there were kind of particular hurdles
8 with the Vietnamese community, correct?

16:25 9 A. I don't know if there was particular hurdles. Language
10 problems. That was a hurdle.

16:25 11 Q. You mentioned language. You mean --

16:25 12 A. And culture.

16:25 13 Q. Culture?

16:25 14 A. Some of the views they have, yes.

16:25 15 Q. So language and culture?

16:25 16 A. I would say yes.

16:25 17 Q. Are you an expert in the Vietnamese language?

16:26 18 A. I certainly am not.

16:26 19 Q. What about their culture?

16:26 20 A. I certainly am not.

16:26 21 Q. I imagine that you, as head of the GCCF, you had people
22 below you that might have been more of an expert in the
23 language or the culture?

16:26 24 A. That is correct. We retained the services of the
25 Mississippi Justice Center, a nonprofit legal aid society, to

1 represent not only Vietnamese fishermen but any claimant who
2 couldn't afford an attorney or wanted help, and the Mississippi
3 Justice Center constantly was engaged in the dialogue with us
4 as to some of these problems I've referenced earlier.

16:26 5 Q. And as far as kind of the experts that you hired to help
6 you out with the Vietnamese language or cultural issues, you
7 relied on those people, right?

16:26 8 A. Yes.

16:26 9 Q. Because you had to rely on them?

16:26 10 A. Yes.

16:26 11 **MR. WILSON:** No further questions, Your Honor.

16:26 12 **THE COURT:** Mr. Weber, do you have any questions for
13 this witness, sir?

16:26 14 **MR. WEBER:** Yes, sir, Your Honor.

16:26 15 **CROSS-EXAMINATION**

16:27 16 **BY MR. WEBER:**

16:27 17 Q. Good afternoon, Mr. Feinberg.

16:27 18 A. Good afternoon.

16:27 19 Q. Real quick, I might have missed it. When was the GCCF set
20 up here?

16:27 21 A. August of 2010, about a few months after the oil rig
22 exploded in the Gulf.

16:27 23 Q. Right. And so are you saying in August of 2010, your
24 facility, the 35 offices across the coast, plus the ability to
25 submit claims online, you were accepting claims and then

1 reviewing those claims for payment?

16:27 2 A. Yes.

16:27 3 Q. And those payments included these emergency payments?

16:27 4 A. Yes.

16:27 5 Q. And if somebody had an emergency, they could go to the
6 claims office, one of the 35, and actually on that day get a
7 check, if you're an individual, for \$5,000, right?

16:27 8 A. That was the quick pay. You could go on that day to a
9 claims office and get paid compensation in an amount to be
10 determined for an emergency payment.

16:27 11 Q. All right. And so you testified that claimants' choice,
12 if there was an emergency payment, someone came to your claims
13 facility and said, I have no income, please help, and on that
14 particular day, they could go and see one of your
15 representatives, and if they had the proper documentation, they
16 could get the assistance they needed?

16:28 17 A. That is correct, and they would not have to sign any
18 release of any type. For an emergency payment, we paid out I
19 think it was about \$180 million in 90 days to get people
20 emergency payments as soon as possible.

16:28 21 Q. And then these folks -- \$180 million in emergency
22 payments?

16:28 23 A. Yes.

16:28 24 Q. And would your office, through the GCCF, continue to
25 correspond with those individuals that received this emergency

1 payment?

16:28 2 A. No.

16:28 3 Q. Would you send them documentation or letters asking them
4 to come in to look at our interim payment or final payment
5 process?

16:28 6 A. I don't think so. I think when they took the emergency
7 payment or any payment, they were given a copy of the protocol
8 or told what the rules were. I don't think we had any ongoing
9 correspondence with any claimant trying to get them to file a
10 claim. Once they filed, we kept in touch with them, of course.

16:29 11 Q. All right. And you indicated -- please tell us, was there
12 an effort from the GCCF to spread the word within the
13 communities that you were here to help and to provide
14 assistance?

16:29 15 A. A major effort, a major effort in that regard.

16:29 16 Q. And you communicated your existence and your help
17 available through television, news media?

16:29 18 A. Live town hall meetings in Biloxi and throughout the Gulf
19 area, all sorts of ways to try and promote the program.

16:29 20 Q. All right. And when did Judge Barbier shut down, if you
21 will, shut down the GCCF?

16:29 22 A. In February of 2012, upon the resolution of a class action
23 settlement in the multi-district litigation before Judge
24 Barbier. When that settlement was entered into, that
25 settlement provided a transition to a new facility, not the

1 Gulf Coast Claims Facility, not Ken Feinberg, and that new
2 facility then took over after February of 2012.

16:30 3 Q. All right. So since from August of 2010 to February of
4 2012, the Gulf Coast Claims Facility was open and ready for
5 business?

16:30 6 A. Correct.

16:30 7 **MR. WEBER:** No further questions.

16:30 8 **THE COURT:** Thank you, Mr. Weber. Mr. Orozco, do you
9 have any additional cross-examination questions for this
10 witness? I'll take that as a yes.

16:30 11 **MR. OROZCO:** Yes, Your Honor. I'm sorry.

16:30 12 **CROSS-EXAMINATION**

16:30 13 **BY MR. OROZCO:**

16:30 14 Q. Good afternoon, Mr. Feinberg.

16:30 15 A. Good afternoon.

16:30 16 Q. My name is Ramiro Orozco, and I represent Ms. Abbie
17 Nguyen. Sir, the GCCF is not a government agency, correct?

16:31 18 A. That is correct.

16:31 19 Q. Doesn't work for FEMA?

16:31 20 A. Not at all.

16:31 21 Q. Does not work for the Department of Justice, correct?

16:31 22 A. No, sir.

16:31 23 Q. And you were in charge -- yes, you were in charge of this
24 organization, which was a private organization, correct?

16:31 25 A. Correct.

16:31 1 Q. And they issued checks, correct?

16:31 2 A. Correct.

16:31 3 Q. And as director, you were aware that there was many fraud
4 indictments, correct, based on claims through the GCCF?

16:31 5 A. That is an interesting question. There were fraud
6 indictments. Many? I don't think there were many. There were
7 some.

16:31 8 Q. There were some, correct?

16:31 9 A. But when you receive \$1,250,000 claims, you are going to
10 get some fraud indictments. It is inevitable.

16:31 11 Q. They were based on checks that the GCCF gave to
12 individuals, correct?

16:31 13 A. That was one element of fraud. Fraudulent filings,
14 fraudulent tax returns. There were various methods used to try
15 and defraud the GCCF. I wouldn't say it was just checks that
16 were cut.

16:32 17 Q. Okay. But the Secret Service never came and investigated
18 you, did they, as the director of the GCCF?

16:32 19 A. No.

16:32 20 Q. They never indicted you, did they?

16:32 21 A. No.

16:32 22 Q. Okay. Now, these checks that were issued, or the claims
23 they were made, they weren't just for fishermen, correct?

16:32 24 A. Correct.

16:32 25 Q. There were waiters?

16:32 1 A. Yes.

16:32 2 Q. Store owners?

16:32 3 A. Yes.

16:32 4 Q. Lawyers?

16:32 5 A. Hotels, lawyers.

16:32 6 Q. Restaurants?

16:32 7 A. Yes.

16:32 8 Q. So it wasn't limited to just fishermen?

16:32 9 A. Not at all.

16:32 10 Q. And earlier you said that you contracted with the
11 Mississippi Center for Justice. That's the correct name,
12 correct? Mississippi Center for Justice in Jackson?

16:32 13 A. I stand corrected. I called it the Mississippi Justice
14 Center, but I defer to you on that.

16:32 15 Q. Yes, sir. That's all I have, sir.

16:32 16 **THE COURT:** Thank you, Mr. Orozco. Any redirect
17 examination?

16:33 18 **MR. RUSHING:** Yes, sir, Your Honor.

16:33 19 **REDIRECT EXAMINATION**

16:33 20 **BY MR. RUSHING:**

16:33 21 Q. Mr. Feinberg, you were asked on cross-examination about
22 you were kind of the head of the GCCF; is that correct?

16:33 23 A. I'm sorry?

16:33 24 Q. On cross-examination, you were asked that you were the
25 director of the GCCF; is that right?

16:33 1 A. Right.

16:33 2 Q. And that you had many employees down below you?

16:33 3 A. Correct.

16:33 4 Q. And you had to trust those employees?

16:33 5 A. Of course.

16:33 6 Q. If you heard something the employees weren't doing right,
7 would you investigate that?

16:33 8 A. Yes.

16:33 9 Q. Would you check into it and find out what was wrong?

16:33 10 A. Yes.

16:33 11 Q. And would you correct it?

16:33 12 A. Yes.

16:33 13 Q. Mr. Watts told you also -- I believe the conversation was
14 that he returned some final payment forms to you, correct?

16:33 15 A. Correct.

16:33 16 Q. Do you know how many it was he returned to you?

16:33 17 A. I don't recall how many, but he did return some checks.

16:33 18 Q. What is a final payment? What does that mean?

16:33 19 A. A final payment was a payment that the GCCF made for past,
20 present and future damage where in return for this payment, an
21 estimate of what the damage might be going forward, before you
22 could fish again or open your hotel or whatever, the claimant
23 will take that money and once and for all sign a release, I
24 will not return to the GCCF, I will not file a lawsuit, this is
25 it, final and once and for all.

16:34 1 Q. If they returned that final payment, were they allowed to
2 proceed to with the MDL or not?

16:34 3 A. They were not.

16:34 4 Q. You were also asked, I believe, about -- judge, I need to
5 have the Elmo on, please. This is D1-009189. I believe you
6 were -- can you see it on the screen? Do you recall looking at
7 that document earlier today with Mr. Watts?

16:34 8 A. Yes.

16:35 9 Q. And if you would, I believe the actual e-mail talks about,
10 directed to you, I can assure you I have retention agreements
11 with each of these people. Is that correct?

16:35 12 A. Correct.

16:35 13 Q. When you were asking for retention agreements, what were
14 you wanting?

16:35 15 A. I wanted a document between the lawyer and the client
16 saying the client is represented by this lawyer, this lawyer
17 has a fee of X percent contingency, and I hereby authorize my
18 lawyer to represent me in this matter.

16:35 19 Q. Did you get those from Mr. Watts?

16:35 20 A. I did not.

16:35 21 Q. What did you get from Mr. Watts, if you recall, if
22 anything?

16:35 23 A. I got from Mr. Watts a spreadsheet, we represent 25,000 or
24 40,000 individuals, here are their names, here are their
25 occupations, here are their damages. And I explained to

1 Mr. Watts or his employees, that's not enough. It doesn't make
2 sense. I need more evidence of a formal relationship because
3 there are some fishermen or clients of yours, purportedly of
4 yours, complaining that you don't represent them, that they
5 never signed an agreement. And that was a problem.

16:36 6 Q. Now, when Mr. Watts sent you this e-mail, he was
7 responding to an e-mail you sent him; is that correct?

16:36 8 A. Correct.

16:36 9 Q. I don't think you got a chance to see that, let me see if
10 I can slap that in there. I may have to zoom out a little bit.
11 Can you see it?

16:36 12 A. Yes.

16:36 13 Q. If you would, can you read that for us, please, what your
14 letter to him was concerning. Would you read the letter, as
15 far as showing your concern to Mr. Watts about why you needed
16 those retention agreements?

16:36 17 A. "I thank you for your e-mail. Mikal, I thank you for your
18 e-mail, but you are jumping the gun just a bit. Your attempt
19 at filing these claims was unsuccessful, and I cannot accept
20 the filing of your claims until I know that you do in fact
21 represent these thousands of claimants referenced in your
22 e-mail. I am dubious. First, you cannot possibly have
23 consulted with each claimant and secured a knowledgeable
24 retention agreement. Second, I believe it likely that many of
25 your 'clients' are already represented in the fund with another

1 competing lawyer. Finally, I find it hard to believe that
2 there are even 41,000 fishermen in the entire gulf who would be
3 make evening a claim against the fund."

16:37 4 Q. Can you continue, sir?

16:37 5 A. "Accordingly, before we begin the task of reviewing your
6 individual claims, I need documentary proof that the claimant
7 has knowingly and willingly chose you as his/her attorney for
8 purposes of filing with the fund; and second, that such a
9 retainer agreement in documentary form (hard copy) be submitted
10 to the fund so that we can verify your agreement."

16:38 11 Q. Continue, sir.

16:38 12 A. "I hope you understand that I am perfectly willing to work
13 with you in processing each and every one of your claims, but I
14 am concerned about your representation of so many thousands of
15 claimants and need more proof that the various individual
16 representations are what you purport them to be."

16:38 17 Q. Would you read the next paragraph, please, sir?

16:38 18 A. "I note that we have to date paid 50,000 claimants the sum
19 of \$1 billion. Thus, my scepticism that you alone will almost
20 double the total number of eligible claimants entering the
21 fund. Perhaps we can discuss this by telephone later today. I
22 am also available in Washington next week if you would like to
23 visit our office to discuss this matter face to face. Thanks,
24 Ken."

16:39 25 **MR. RUSHING:** That's all I have, Mr. Feinberg. Thank

1 you, sir.

16:39 2 **THE COURT:** Thank you, Mr. Rushing. May this witness
3 be finally excused, Mr. Rushing.

16:39 4 **MR. RUSHING:** Yes, Your Honor.

16:39 5 **THE COURT:** Thank you, Mr. Feinberg. You may be
6 finally excused.

16:39 7 **MR. RUSHING:** I have one more witness. She is
8 scheduled to have a doctor's appointment tomorrow. I don't
9 know whether we are get her on today.

16:39 10 **THE COURT:** It depends on how long she will take.

16:39 11 **MR. RUSHING:** I don't expect my side to last very
12 long. I don't know whether the defense is going to question
13 her long or not.

16:39 14 **THE COURT:** Who is this witness?

16:39 15 **MR. RUSHING:** Christina Brieshaker.

16:40 16 **THE COURT:** Rather than forcing the jury to venture
17 out in inclement weather, we can proceed. I understand Judge
18 Ozerden was able to convince the GSA to leave the air
19 conditioner on a little longer today.

16:40 20 **MR. RUSHING:** We are offering G14 in for her, G120,
21 G121, 122, 123, 124 and 125 into evidence.

16:40 22 **MR. MIKAL WATTS:** We stipulate to the admissibility
23 of those documents, Your Honor.

16:40 24 **THE COURT:** Any objection?

16:40 25 **MR. MCCRUM:** No, sir.

16:40 1 **MR. WEBER:** What are the exhibits?

16:40 2 **THE COURT:** The exhibits --

16:40 3 **MR. RUSHING:** G14 is a hard drive of the information
4 that Mr. Watts sent to K & E, Cook and Ellis law firm
5 concerning his clients. Exhibit 120 is a letter dated
6 November 18, 2010 from Wynter Lee to K & E about some DVDs
7 containing plaintiff's fact sheets. G121 is an e-mail dated
8 December 13, 2010 about those same plaintiff fact sheets. G122
9 is a ship letter -- a letter of a shipment by Ms. Wynter Lee of
10 two DVDs containing 17,469 plaintiff fact sheets. G123 is an
11 e-mail from Ms. Wynter to K & E concerning these same fact
12 sheets. G124 is a July 14, 2011. Where Ms. Wynter Lee sent by
13 U.P.S. a DVD containing 2,596 plaintiff fact sheets. G125 is
14 an e-mail dated July 14, 2011 concerning those same fact
15 sheets. That would be the documents, Your Honor.

16:42 16 **MR. MIKAL WATTS:** Judge, we stipulate to the
17 admissibility of those documents.

16:42 18 **THE COURT:** Is that the only purpose of calling
19 Ms. Burke.

16:42 20 **MR. RUSHING:** Yes, Your Honor.

16:42 21 **THE COURT:** Without objection, G121, 122, 123, 124
22 and 125 will be marked and admitted into evidence.

16:42 23 **(EXHIBIT MARKED)**

16:42 24 **MR. RUSHING:** Thank you, Your Honor.

16:42 25 **THE COURT:** Mr. Rushing, do you happen to have

1 another really short witness that might be available this
2 afternoon.

16:42 3 **MR. RUSHING:** I do not, Your Honor. I'm sorry.

16:42 4 **THE COURT:** Then ladies and gentlemen of the jury, it
5 seems prudent in spite of the weather, that we go ahead and get
6 out of here. I'm going to ask you to remember the Court's
7 instructions regarding your conduct outside of the courtroom.
8 Please do not talk with anyone about the case or permit anyone
9 to talk with you about it. Make no independent investigations
10 of your own or any independent reserve. If it happens to be
11 mentioned in the media, I ask that you please not read about
12 this case in the newspaper. Remember as I told you from the
13 beginning, you are to be guided solely by the evidence you hear
14 in this courtroom and the instructions on the law as the Court
15 gives them to you. Please be very safe. The weather is
16 terrible out there and we will see you tomorrow morning at
17 9:00.

16:44 18 **(JURY OUT AT)**

16:44 19 **THE COURT:** Thank you. Be seated for just a few
20 minutes, please. Gentlemen, I had told you earlier that I
21 think we had gone over the proposition that since this trial
22 will take quite a long time, and we all anticipate that the
23 swir will be asked to listen to a lot of witnesses and take in
24 a lot of evidence, that it would be prudent to give them, from
25 time to time, I'll call it a day off. After all, they have

1 personal matters that I am sure they would have to take care
2 of. I have looked at the calendar, and we picked a couple of
3 days in the month of August, a couple of Fridays in the month
4 of August in which I intend to not convene this trial during
5 those days. Jennifer, I forgot the days.

16:45 6 **THE COURT:** It's August the fifth and August 19th.
7 That's every other Friday in August. I intend to let the jury
8 know that so they can make appropriate plans and so that you
9 can make appropriate plans as well. That should at least take
10 care of the month of August. That is the fifth and the 19th.
11 I don't usually do that. It is not unprecedented but unusual.
12 Does the government have any objection to the Court not
13 convening on those two particular days.

16:46 14 **MR. RUSHING:** No, Your Honor.

16:46 15 **THE COURT:** Does any defense counsel have any
16 objection?

16:46 17 **MR. MIKAL WATTS:** No.

16:46 18 **MR. HIGHTOWER:** No, Your Honor.

16:46 19 **THE COURT:** You you don't really have an objection,
20 do you Mr. Orozco?

16:46 21 **MR. OROZCO:** No, Your Honor. I just wanted to remind
22 the Court that yesterday I gave notice that my client is having
23 the doctor's appointment on the eighth, and if the Court would
24 consider the eighth.

16:46 25 **THE COURT:** If I remember, that was a Monday.

16:46 1 **MR. OROZCO:** Yes, sir oo.

16:46 2 **THE COURT:** And you said it was in the morning.

16:46 3 **MR. OROZCO:** Yes, sir.

16:46 4 **THE COURT:** That is a little ways off yet. Let's
5 think about that. I also have some issues in the month of
6 September that we are going to need to talk about. That's a
7 month away, and I don't like to make plans too far in the
8 future, but I recall that, and I will try to accommodate her.
9 All right, Mr. Watts, I very much ai appreciate your
10 willingness to work with the clerk of the court with a system
11 of numbering that might make her job a little easier, and make
12 the court reporter's job a little easier, but more importantly,
13 it will be difficult for the jury to follow along with these
14 documents, and let's not forget, everything I do is subject to
15 review. We want to make it as easy as possible for a reviewing
16 Court if that becomes necessary.

16:47 17 **MR. MIKAL WATTS:** For the benefit of the other
18 lawyers, when we call out the D1, we are not going to say the
19 00 before the number. Second thing, I've got a list of all of
20 those documents that I am following across and I will provide
21 that to you as well. A cheat sheet.

16:47 22 **THE COURT:** That will be helpful as well. Anything
23 else that we need to take up, Jennifer or Vicki that you can
24 think of? I am very much -- I have already seen your exhibit
25 list. I could barely lift it. I would like for you to

1 reconsider that, those exhibits through the prism, if you will,
2 of rule 403 and perhaps even considering there are other tools
3 within the rules of evidence that may be helpful in presenting
4 evidence without the necessity of 70,000 plus documents, which
5 I see no way a jury could possibly digest them.

16:48 6 **MR. MIKAL WATTS:** I want to be clear, I'm not intend
7 evening to go anywhere close to that. I was just so concerned
8 not knowing who the witnesses were that we wouldn't have the
9 appropriate documentation, but I think if we end up admitting
10 500 to a thousand documents, I would be shocked.

16:48 11 **THE COURT:** It's just that when you saw just your
12 exhibit list, it frightened me.

16:49 13 **MR. MIKAL WATTS:** Imagine how frightening it was for
14 me to copy it five times for you.

16:49 15 **THE COURT:** Anything else, Mr. Rushing we need to
16 take up before we recess for the evening.

16:49 17 **MR. RUSHING:** No, Your Honor.

16:49 18 **THE COURT:** Have you provided the defense counsel
19 with the names of those witnesses who will be testifying
20 tomorrow that you anticipate.

16:49 21 **MR. RUSHING:** Yes, we have.

16:49 22 **THE COURT:** Very good.

16:49 23 **MR. MIKAL WATTS:** I have one issue that kind of
24 popped up at the end of Mr. Feinberg. When the government got
25 back up on redirect and asked about a document, if they

1 introduce a new document on redirect, am I allowed to come back
2 on Recross and --

16:49 3 **THE COURT:** Had an objection had been made on
4 something that was not brought out on cross-examination, the
5 objection would be sustained.

16:49 6 **MR. MIKAL WATTS:** I thought it was a fair redirect.
7 It was a different part of a document than I used, but it made
8 me ask the question.

16:50 9 **THE COURT:** As a practical matter, the handling of
10 witnesses or the questioning of witnesses is limited to direct,
11 cross-examination and redirect, very, very, very rare would
12 there be a Recross.

16:50 13 **MR. MIKAL WATTS:** I understand. Thank you.

16:50 14 **THE COURT:** Anything else on behalf of any of the
15 defense counsel before we recess for the evening? Gentlemen,
16 ladies? If there is nothing else then, we will be in recess
17 until tomorrow morning at 9:00 .

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