Preliminary Expert Report
Dr. James T. McClave
July 14, 2004

In Re: U.S.A. *ex. rel.* Karyn D. Walker, Plaintiff, vs.
R. & S. Properties of Lake County, Inc., Defendant.

U.S. District Court for the Middle District of Florida
In the Ocala Division

Case No: 5:02-CV-131-Oc-10GRJ

1.0 Introduction

This report presents my preliminary opinions relating to the process of estimating economic damages for the above-styled case. In this report I make a preliminary estimate of the number of improperly submitted Medicare billings by the defendant in the July 1, 1994 to October 31, 2003 time period. I intend to revise and supplement this report as additional relevant information becomes available to me through the discovery process.

My educational background includes a bachelors degree in physics and a Ph.D. in statistics. After earning my Ph.D. in 1971, I taught at the university level for 20 years, in both departments of statistics and business schools. The primary focus of my teaching and research during this period was in the area of econometrics, which is the application of statistical and mathematical methods to economic issues. I taught a wide range of courses to tens of thousands of students at both the undergraduate and graduate levels, and for the last ten years of my academic career, I supervised and taught the statistics and econometrics courses offered by the University of Florida's College of Business in the undergraduate and MBA programs. I have published a number of articles containing original research in the areas of statistics and econometrics in peer-reviewed journals. I also published six textbooks, including *Statistics for Business and Economics*, now in its ninth edition.

In 1976 I founded Info Tech, Inc., initially a statistical and econometric consulting firm. During the 1980's Info Tech developed software to enhance business productivity in the transportation industry, and our software is currently installed in the Departments of Transportation in 38 states. Today Info Tech has approximately 200 employees, and is organized around two divisions: the Consulting Division, which performs statistical and econometric consulting; and the Systems Division, which develops, enhances, and maintains software for the transportation industry. I resigned my full-time faculty position in 1990 to devote full-time to Info Tech as its president and CEO. I remain an Adjunct Professor at the University of Florida.
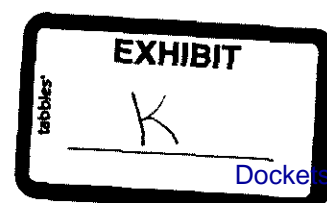
Since its inception, Info Tech has provided extensive consulting in litigation matters. In particular, I have analyzed economic data in the context of more than one hundred matters during the past twenty-five years. During that time I have performed econometric analyses on a wide range of products and services, both in order to form opinions about liability issues and to measure the amount of economic damages, if any. In the course of my career, I have been retained by private plaintiffs and defendants, and by governmental entities, such as the attorneys general of a number of states, to investigate and report on such issues. I have been retained by plaintiffs and defendants with approximately equal frequency.

I have testified in federal and state courts in a number of different jurisdictions. I have been court-qualified as an expert in statistics and econometrics in both federal and state courts. I have testified on statistical and econometric issues in antitrust, breach of contract, business interference, employment discrimination, patent and trademark infringement, business valuation, and various other types of cases.

My complete CV is provided in Appendix A to this report. The CV indicates all of my publications and lists all cases during the past five years in which I have testified as an expert at trial or by deposition. I have also included in this appendix the Info Tech rate sheet, which provides the hourly rates being charged for all work on this case performed by me and by other professionals under my supervision.

2.0 Assignment

To date, I have been asked to estimate the number of improper Medicare claims submitted by the defendant in the time period from July 1, 1994 through October 31, 2003. Specifically, to estimate the number of claims that were submitted improperly for one or more of the following three reasons:

1. No physician was on site when the related treatment was performed by a Physician's Assistant or Nurse Practitioner,

2. A Physician's Assistant or Nurse Practitioner performed the related treatment on a new patient, or

3. A Physician's Assistant or Nurse Practitioner performed the related treatment on a previously treated patient, but it was for a new condition.

3.0 Documents Reviewed

I have not reviewed any documents to date. All data relied upon for my opinions in this report were obtained from conversations with plaintiff's counsel.

4.0 Assumptions Upon Which the Analysis is Based

In order to generate a proper Medicare claim, when a Physician's Assistant or Nurse Practitioner treats a patient, the following three conditions must be met:

1. A Physician must be on site,

2. The patient must be a returning patient (they cannot be a new patient), and

3. The patient must be being seen for a previously treated condition (as opposed to a new condition).

If any of these conditions are not met, then it is improper to file a Medicare claim for the visit.

The defendant medical practice has had two Physician's Assistants or Nurse Practitioners on staff from January 1996. Pior to that time, the practice only had one.

The defendant medical practice was open from 9-5 Monday through Friday for Normal Operating Hours and from 6-10 weekday evenings and 9-3 on Saturdays for Evening/Weekend Hours.

During the period February 1, 1997 through May 20, 1999, on 251 separate dates the Evening/Weekend Hours were staffed by a Physician's Assistant or Nurse Practitioner without a Physician on site. On these 251 dates, Karyn Walker was the Nurse Practitioner on duty for 128 of them. On these 128 dates immediately above, 284 Medicare claims were filed.

When working during Normal Operating Hours, Karyn Walker's experience was:

1. She saw between 20-24 patients per day,

2. Approximately 70% of the patients were Medicare patients, and

3. Approximately 50% of the time she saw a patient, they were either a new patient or there for a new problem.

Karyn Walker worked during Normal Operating Hours on approximately 496.5 days in the February 1, 1997 to May 20, 1999 period.

5.0 Estimation of the Number of Improper Medicare Billings

5.1: Definition of Time Periods

This analysis will use three different time periods, designated A, B, and C, where:

February 1, 1997 to May 20, 1999 is time period A (27.67 months long),

July 1, 1994 to December 31, 1995 is time period B (19 months long), and

January 1, 1996 to October 31, 2003 is time period C (94 months long).

5.2: Improper Medicare Billings During Evening/Weekend Hours

The 128 days Karyn Walker worked Evening/Weekend Hours during time period A generated 284 improper claims. I assumed this rate would apply to all of the 251 total Evening/Weekend Hour days worked by a Physician's Assistant or Nurse Practitioner during the time period. This resulted in an estimate in period A of 556.9 improper claims.[1]

With only one-half the number of Physician's Assistant or Nurse Practitioner level employees available for working in the B period (as opposed to the A period), I assumed the improper claims in the B period to be generated at only one-half the rate of the A period. Therefore, the estimated number of improper claims for B is 191.2.[2]

I further assumed improper claims for the C period to be generated at approximately the same rate as in the A period. Therefore the estimated number of improper claims for C is 1,892.1.[3]

Therefore the Total Evening/Weekend Hours Improper Medicare Billings is the total of these, or 2,083.3.[4]

5.3: Improper Medicare Billings During Normal Operating Hours

I assumed Karyn Walker's experience with the number and make-up of patients was typical of all Physician's Assistant and Nurse Practitioners during the entire period. Her experience indicated a generation of approximately 7.7 improper Medicare billings per day[5]

Karyn Walker worked 496.5 days in the A period and generated approximately 7.7 improper claims per day, so a total of approximately 3,823.1.[6] improper billings were generated by one Physician's Assistant or Nurse Practitioner in the A period. Because the Defendant practice employed one Physician's Assistant during this time period in addition to Karyn Walker, a total number of approximately 7,646.2 improper billings were generated those providers in the A time period.

I assumed Karyn Walker's number of working days (as opposed to days when the defendant practice was closed or she was on vacation or away from work) during time

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[1] $D = 251 \times (284 / 128) = 556.9$

[2] $E = B \times ((D / 2) / A) = 191.2$

[3] $F = C \times (D / A) = 1,892.1$

[4] $G = E + F = 2,083.3$

[5] $H = (20 + 24) / 2 \times .70 \times .50 = 7.7$

[6] $I = 496.5 \times H = 3,823.1$

period *A* was typical of all Physician's Assistant and Nurse Practitioners during the entire period. Therefore the best estimate of the number of improper billings for the *B* period is 2,625.4.[7]

Using this same logic, the best estimate of the number of improper billings for period *C* is 25,978.0.[8]

Totaling across the two periods, the estimate of the Total Normal Operating Hours Improper Billings is 28,603.4.[9]
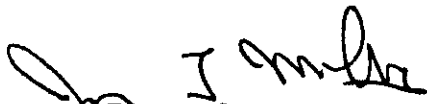
5.4: Total Improper Medicare Billings

Totaling the two categories of improper Medicare billings, I conclude that the approximate number of Improper Medicare Claims filed by the defendant in the July 1, 1994 to October 31, 2003 period is 30,686 claims.[10]

6.0 Conclusion

Based on the assumptions provided to me, the above calculations represent a reliable estimate of the number of improper Medicare claims filed by the defendant

It is my understanding that discovery is still ongoing in this matter. I may, with the Court's permission, update these calculations if and when new, relevant information, becomes available. I will also calculate the actual damages suffered by the government by the payment of these improper claims when data becomes available that will make that calculation possible.

James T. McClave, Ph.D.

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[7] $J = I \times (B / A)= 2{,}625.4$
[8] $K = I \times 2 \times (C / A)= 25{,}978.0$
[9] $L = J + K = 28{,}603.4$
[10] $30{,}686 = integer(G + L)$