

# Emails with the VA & new Whistleblower counter-claims

Emails obtained by Viceroy between MiMedx employees and a Department of Veterans Affairs hospital further evidence channel stuffing. New whistleblower counterclaim reveals *blatant, systematic fraud* across what appears to be the entirety of the MiMedx corporate structure.

Viceroy have obtained an email exchange between a number of MiMedx sales employees and a VA Medical Center, showing that **MiMedx employees attempt to circumvent hospital policy on consignment inventory to prevent tracking of MiMedx product usage.**

This inevitably results in the hospital noting that, due to the lack of documentation, **reimbursement is essentially impossible without forging statements.**

Viceroy does not believe that this is an isolated incident, and our numerous reports detailing MiMedx's systematic fraudulent schemes support this, including transcript.

The email exchange supports Viceroy's and other commentators' claims that MiMedx completely circumvented AvKare during throughout their relationship. AvKare had no role to play beyond providing MiMedx an FSS number. **At no point is an AvKare representative present in any sourced business discussion – even when discussing the transition of suppliers to MiMedx from AvKare for the VA facility.** MiMedx's push for a consignment agreement with the VA Medical Center only occurs after this transition. We to believe that a motivation for the revised arrangement is hide MiMedx product usage from hospital monitoring systems.

Additionally, Viceroy has obtained court filings between MiMedx and former employee Michael Fox that have been recently filed. The counterclaim alleges and provides evidence to support:

- MiMedx conducted channel stuffing at VA and commercial levels – supported by extensive transcripts of discussions between MiMedx management
- Fox filed evidence with the SEC under the Whistleblower program. **The SEC allegedly has commenced an investigation against the company in light of evidence provided by Fox.** MiMedx acknowledges they received this subpoena from the SEC and have since self-exonerated themselves with an internal, non-independent investigation. Management should reveal the contents of this investigation immediately.
- MiMedx threaten former employees and whistleblowers. Legal letters from MiMedx show lawyers coercing perjury from former employees, including making a statement that original complaints and allegations made to the SEC were "frivolous". **Given the SEC were investigating MiMedx at the time, this appears to show MiMedx was actively hindering an active investigation.**

Annexed to this article are the transcripts of recordings of phone calls between Jess Kruchoski, former MiMedx employee; Steve Blocker (Area VP) and Lou Roselli (Director of National Sales, aka "5 Levels Lower" Lou). **The three openly discuss end-of-quarter channel stuffing activity directed by Pete Petit and Chris Cashman.**

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## Emails between MiMedx and VA facilities

Viceroy has obtained emails between MiMedx and a VA Medical Facility. These email exchanges occurred between late-2016 and mid-2017. There are several concerning themes that run throughout the emails, most notably.

1. MiMedx sales employees insisting on a consignment agreement, and being told time and time again that this is against hospital policy
2. Details into MiMedx's relationship with AvKare and other distributors, notably using them as a "front" for drop-shipped products
3. Several cases wherein product was ordered or billed with no record of patients using the product
4. Fabrication or post-dated creation of 2237 and 1081 forms to justify the above.

**Glossary - GLAC** – Great Lakes Acquisition Center      **UAC** – Unauthorized Commitment

### Part 1: Setting up the consignment

|  |                 |
|--|-----------------|
| Hi,<br><br>Our company wants me to confirm that both vendor change ( AvKare switched to mimedx and vice versa ) and serial can be changed on our end as long as the agents are aware. The change to serial was noted but just making sure of vendor change.<br><br>Thank you ! | MiMedx employee |
| Not sure and now there is a question about your contract because it just says you are interested in a consignment agreement, not that you have one. I am checking and will get back to you.  | VA employee 1   |

Figure 1 Emails dated November 8, 2016

|   |                 |
|---|-----------------|
| I believe your BPA just went into effect and we got notice that it is MANDATORY. Is all of your products listed on that one? If so, you are good! | VA employee 1   |
| They are !! That's great , should we order a different way now? Through Kresiers ?  | MiMedx employee |
| No because we don't have Kresiers in our system. What is that anyway? No our orders have to have either AvKare or Mimedx on them. Thanks          | VA employee 1   |

Figure 2 Emails dated November 15, 2016

Clearly MiMedx does not want to be on the order, instead preferring the order go through Kresiers, a wholesaler. To remedy this, a meeting with several other VA staff is set up to discuss the BPA including the chief of prosthetics. Former employees have highlighted Kreisers facilitated the purchase of a large amount of inventory previously.

|  |                 |
|--|-----------------|
| Good Afternoon,<br><br>I was wondering if we could set up a meeting to discuss the BPA further, I was informed today that it is now in effect. Would the week after Thanksgiving work? Possibly Friday the 2nd ?<br><br>Thanks and have a great weekend, | MiMedx employee |
| All,<br>That date works for me if we can do it about 10AM. Let me know and I will add to my calendar! Have a great weekend!  | VA employee 1   |

Figure 3 Emails dated November 18, 2016

The meeting is postponed due to scheduling conflicts to the 7<sup>th</sup> and then the 9<sup>th</sup> before which the following are sent.

|  |                 |
|--|-----------------|
| <p>Hi,<br/>Just checking in, spoke with one of the agents last Wed and she informed me our consignment agreement wasn't valid? Just checking to make sure, hope you are well!</p> <p>Thanks,</p>   | MiMedx employee |
| <p>That is what I was told. It was explained to me that we have no consignment contracts with any vendor. We have your BPA and your FSS but neither of these are a consignment agreement. The main reason we don't have one is that someone has to manage them and the medical center has no one to do this at the moment. There are no consignments for biologicals at JB. Sorry, just as I thought things would be easier, they are not.</p> | VA employee 1   |
| <p>Hi,<br/>Just following up, did they give you an answer if product is pre purchased is there still the need for multiple consults?</p> <p>Thank you !</p>  | MiMedx employee |
| <p>No answer yet. Had National call and the question was asked, so waiting.</p>  | VA employee 1   |

Figure 4 Emails dated December 14, 2016

Clearly the December meeting was a success because in early January the following exchange begins with the chief of prosthetics.

|  |                         |
|--|-------------------------|
|  | MiMedx employee         |
| <p>I was wondering about the possibility of having Mimedx products (Epicord, Amniofix, and Epifix ) pre-purchased. As you are aware we were just awarded a BPA, and currently the only biologic implant on this formulary. The product is stored at room temp and has a 5 year shelf life. has a history of usage with the products since 2013.</p> <p>We have other facilities nationally that have pre purchased product, and because they are inventory they have been told because it is VA owned inventory the prosthetic consults currently required are not needed. I was wondering if you would be able to verify this ?</p> <p>The ability to pre purchase product would allow the physicians and the prosthetic agents to have a lessened workload and allow the Vets to continue to receive the care they have earned. Thank you for checking into this and talk soon.</p> <p>Thank you,</p> <p>[Beginning of reply missing]</p> <p>those involved. Their having short staff should not stop the progress of the medical center. There has to be a compromise in the interim, until GLAC can hire enough staff to take on the Consignment agreements, it would be helpful to allow us to order from the newly awarded BPAs and get some hospital owned stock so that paperwork can be cut down for staff. At least we can then be credited with using the BPAs in this fiscal year, if nothing else. Thanks</p> |                         |
|  | VA Chief of Prosthetics |

Figure 5 Emails dated January 6, 2017

Eventually a workaround is found, as long as MiMedx gives their word to monitor the stock: of course they will, its integral to the whole scheme!

On Thu, Jan 12, 2017 at 4:09 PM -0600, "

So we can get Logistics to buy the first batch and we will replace as they are used and docs can use the Consignment consult because they will be owned by the hospital, but I need your word that you will be monitoring the stock.

VA Chief of Prosthetics

**Subject:** [EXTERNAL] Re: Mimedx Pre Purchase

Great !!!!You have my word !

Discuss tomorrow over lunch ?

MiMedx employee

I don't know if today would be good to talk because a Senator is coming to the hospital to walk through my area and I'm not sure how long the visit will last. You can email me later, but probably you should talk with and let him know that we can order a bulk order using the new BPA and we can touch base next week. Thanks

P

VA Chief of Prosthetics

Figure 6 Emails dated January 12-13, 2017

**Clearly at this point MiMedx have successfully circumvented the VA Medical Center's internal policy on consignment inventory.** The next step is preventing detection from outside the center.

## Part 2: the GLAC and covering their tracks

Roughly a week after the previous events a MiMedx distributor, Kreisers, MMS and Seneca Medical sends an email regarding MiMedx's BPA which is quoted by MiMedx sent to the VA.

All:

I did some research and found some documentation that may be helpful. If you are ordering MiMedx products please be aware that they are on the SAC formulary and available through MSPV-NG. These products are dropped shipped.

Kreisers, MMS and Seneca Medical employee

Hope this helps.

Sincerely,

Good Morning

My understanding is that since we are on the SAC formulary logistics should be able to place the order through MSPV-NG and not have the items be sent the GLAC for approval ?

We are the only company that has this method available for purchase at this point.

MiMedx employee

Let me know if this helps at all.

Figure 7 Emails dated February 10, 2017

Viceroy question why MiMedx is so concerned about product that will already be on consignment at the VA facility going through the Great Lakes Acquisition Center. Time would not be a factor, neither would inventory as MiMedx has already agreed to monitor the stock. Viceroy believes MiMedx is anxious to shield its orders from prying eyes. Another meeting is set up to discuss the problem.

**Subject:** [EXTERNAL] Re: Update Mimedx MiMedx employee

Good Morning|

Do you have a couple minutes to discuss this week? **The product is the MSPV formulary, and should be available to order. The order goes to Kreisers and then is dropped shipped by Mimedx.** If you don't have time to meet could we set up a time to talk?

Thanks,

**Subject:** RE: Update Mimedx VA Chief of Prosthetics

I am available on Thursday from 9:30AM – 12:30PM so if people can let me know what time works, I will block it off in my calendar. Thanks

Figure 8 Emails dated February 21, 2017

With the GLAC problem avoided, the next issue is actually getting paid for a product whose transactions MiMedx has made every effort to hide.

Hi

Just following up to our discussion Friday (you said to remind you). **Regarding our pending order and the money that may have been freed up.**

Thanks ! MiMedx employee

I was just speaking to her and she is saying that **because they are considered implants we can't do it. We cannot manage implants in the PIP system.** I thought we would be able to because of the way \_\_\_\_\_ explained it, but \_\_\_\_\_ my supervisor] is saying no. They are confusing me. Maybe you can get someone to speak with \_\_\_\_\_ or speak with her yourself and she could send something out in regards to what we could purchase vs. not purchase. I am trying to go to bat for you! **Keep this between us because I don't want things getting back to her.** Thanks

VA employee 1

Thanks for the update , I will see what I can come up with, what does PIP refer to?

Thanks, MiMedx employee

**It is our tracking system and we cannot track implants.** The GIP for Logistics tracks all of their inventory but there are specific rules about implants.

VA employee 1

Figure 9 Emails dated March 21, 2017

This is finally followed up by the Chief of Prosthetics:

She is going back and forth and I don't know what's happening. **This afternoon she is asking for those orders I had sent to the GLAC and now I can't find yours.** Send it ASAP so I can try to get it to her, maybe she changed her mind again! Thanks

VA Chief of Prosthetics

Figure 10 Emails dated March 21, 2017

When a MiMedx employee follows up payment once more, he is met with what appears to be a VA employee annoyed at not receiving some hockey game tickets. We think this speaks for itself, and it would not surprise us at all if MiMedx were bribing the VA.

Hi

Just wondering if there was any news ??

Thanks !!

MiMedx employee

None that I have heard as of yet, but I know it got sent up to the GLAC maybe about month ago when we talked last or possibly before that but because we were told we could use some special funds that GLAC had to get the initial order in. My supervisor is here from Milwaukee today and I will find out if she has heard any news and let you know. Hey, you forgot about us and the hockey game for 4/15/17 and I were looking for you to say something and you didn't. You know I'm gonna beat you up now! LOL!

VA employee 1

Figure 11 Emails dated May 4, 2017

### Part 3 Phantom patients

Ladies,

These are old Mimedx grafts that were used previously and not put into the system. [redacted] stopped by on Friday and I emailed [redacted] to ask if they put in the information if these would be considered UACs. [redacted] told me not if before November date, and if they were under \$3500 threshold. Please process these as soon as you can. Per [redacted] they have been entered in the system.

Thanks for your continued hard work!

VA employee 1

Hello [redacted] and

We cannot locate these items without patient information. Also, if I am correct when you say put in to the system; you are saying that patient consults have been submitted?

Can you call me directly at [redacted] and if you can supply me with the Patient info then I can look these items up.

Thanks

VA employee 2

Good morning, I did not include any of the patient information, they have been entered into the system as a consult. I can provide a list.

MiMedx employee

Figure 12 Emails dated May 22, 2017

I have researched everything and this is what I came up with below. For the most part it looks like the consults were not entered and there are no new consults entered for these people. Please check with the residents to make sure they put the right info. I put down the closest date of info and what was put on the consult to include the PO that was used for that purchase.

Hope this helps!

EH41-P1605695-005 2/6/17- BXXXX THE ONLY CONSULT SUBMITTED ON THIS DAY WAS FOR epixL 4x10 EH41-P1605705-022 ON PO Q75517

MI12-20150462-007 2/15/17-BXXXX THERE WAS NO CONSULT PUT IN AROUND THIS DATE FOR THIS PATIENT

LU35-P1611020-004 2/24/17- DXXXX NO PATIENT IN THE SYSTEM WITH THIS NAME

GS16-P1602400-011 2/27/17-RXXXX epifix 160 mg MI20-P1611873-007 2021/11/01/ PO Q76970 MIMEDX

AF025-P1613286-011 3/9/17-KXXXX only thing put in on 3/8/2017 amniofill 250mg AF025-P1612213-017/ PO Q76821

AF10-P1612273-006 3/24/17- MXXXX ONLY ORDER PUT IN ON THAT DAY WAS FOR Vendor: Mimedx amniofill 1000mg/ PO Q77893 Ref AF-1000 Ser AF10-P1612273-003

AF20-P1613092-008 3/27/17 RXXXX ONLY CONSULT PUT IN ON THIS DATE WAS FOR: Mimedix Amniofill 2000 AF-2000 AF20-P1610265-007/ PO Q7809

GS23-P1608757-004 3/31/17 MXXXX THERE WAS NO CONSULT PUT IN ON THAT DATE THE CLOSEST ENTRY WAS FOR 3/27/2017 Vendor: Mimedx amniofill 1000mg/ PO Q77893 Ref AF-1000

AF10-p1613167-008 4/5/17 PXXXX THERE WAS NO CONSULT SUBMITTED PAT 3/27/2017

MI05-P1612877-010 4/7/17 MXXXX / NO CONSULT ENTRY FOR THIS DATE HOWEVER, ON 4/12/2017 THERE WAS A CONSULT SUBMITTED FOR epifix 40 mg E1550 MIS-P1612877-010 (WHICH IS WHAT I THINK YOUR LOOKING FOR) IT WAS SUBMITTED ON PO Q78697

GS44-P1609524-007 4/10/17 FXXXX ON 4/10 THERE WAS A CONSULT SUBMITTED (BUT IT HAD INCOMPLETE INFO: epifix 4x gs 5440. THIS WAS ON PO Q78737

VA employee 2

Figure 13 Email dated May 23, 2017

For clarity, if there were no consults made on the day or consults were incomplete then information about the patients' condition or needs is not available for reimbursement. Note that on February 2, 2017 the hospital system had no patient of that name for a reimbursement claim. This practice must have been fairly widespread for the VA employee to claim:

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*“for the most part it looks like the consults were not entered and there are no new consults entered for those people”*

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Recall the above section wherein the MiMedx employee makes a point of asking if a new consult would be required if there was a consignment arrangement in place. Clearly if such an arrangement existed, the hospital system would have no way of actually monitoring MiMedx product usage.



## Mike Fox counterclaim filings: former MiMedx employees spoke to the SEC

Viceroy has obtained newly-filed legal documents from MiMedx's legal action against former employee Michael "Mike" Fox.

To recap

In addition to the now-familiar accusations of defrauding the VA system and outright aggressive litigation against employees who speak up the filing shows that **former MiMedx employees have given evidence to the SEC.**

114. On December 15, 2016, Messrs. Kruchoski and Tornquist filed a whistleblower complaint with the SEC concerning MiMedx's channel-stuffing scheme.

115. On January 17, 2017, Fox gave a voluntary interview with the SEC to assist with an investigation into MiMedx's violations of securities laws. In that interview, Fox provided information regarding MiMedx's channel-stuffing scheme in both the government and private sales channels.

Figure 14 Extract from Fox vs MiMedx Case: 1:16-cv-11715

Further, an SEC subpoena was issued (which we also know) in conjunction with Fox's testimony, MiMedx then took legal action:

First Set of Requests for Production to Michael Fox (Mar. 30, 2017). MiMedx hence knew or suspected that Fox had provided information to the SEC regarding a violation of securities laws.

118. On April 3, 2017, MiMedx's counsel, Joseph D. Wargo of Wargo French LLP sent Messrs. Kruchoski and Tornquist's counsel an e-mail regarding the potential settlement of the parties' civil litigation. Mr. Wargo stated that "we continue to be hampered by . . . you reaching out to government authorities concerning your clients' claims which we consider to be frivolous." (Exhibit 15). Mr. Wargo, apparently acting on behalf of MiMedx, conditioned settling the civil litigation, including its claims against Messrs. Kruchoski and Tornquist, on their counsel "contact[ing] any and all governmental authorities to whom you have previously reached out to and (a) withdraw[ing] previously-made complaints made and (2) provid[ing] a statement that that your clients' initial complaint was frivolous based on facts of which you are currently aware." (Id.).

Figure 15 Extract from Fox vs MiMedx Case: 1:16-cv-11715

Viceroy considers this further proof that MiMedx's aggressive legal practices against former employees is to shut them up.

Fox, along with his former subordinates Jess Kruchoski and Luke Tornquist, spoke up against the blatant VA fraud occurring at MiMedx, especially the end-of-quarter channel stuffing activities. In response, MiMedx terminated Fox and his team. When Fox obtained another job at CPN Biosciences LLC, MiMedx made it a point to create so much legal trouble as to have him dismissed. Fox and his team also had their severances withheld.

96. Kuntz informed Fox during this call that the Company was terminating his employment for cause. He further informed Fox that MiMedx was unilaterally and retroactively reducing Fox's rate of pay for the last nine days of his employment to the Illinois minimum wage of \$8.25 per hour.

97. Kuntz also told Fox during this call that Fox would only have until the end of the day to exercise those vested options he had been awarded pursuant to the Plan. When Fox pointed out that it was past 6:00 p.m. on the East Coast and the stock market was closed, Kuntz replied: "Exactly."

Figure 16 Extract from Fox vs MiMedx Case: 1:16-cv-11715

Even more damningly MiMedx made a point of taking adverse action against Fox's protected actions including reporting to the SEC and other regulatory authorities.

106. On December 29, 2016, MiMedx also terminated Veronica Loch, one of the sales representatives Fox managed for MiMedx. In an apparent attempt to prevent Loch from assisting law enforcement, including the SEC, as well as whistleblowers in bringing claims against the Company, MiMedx offered her a severance package that conditioned the receipt of severance pay and benefits on Loch waiving her right to "voluntarily assist other individuals or entities in bringing claims against [MiMedx]." (Exhibit 12.) By accepting the severance package, she would agree not to "provide any such assistance other than assistance in an investigation or proceeding conducted by the United States Equal Employment Opportunity Commission" except pursuant to a valid subpoena. (Id.) MiMedx further stated in an accompanying letter that the receipt of severance pay and benefits was conditioned on Loch not taking any action that would be adverse to the Company's interests, including disclosing to any person sensitive or secret information acquired in connection with her employment. (Id.) MiMedx made no exception for communicating civil or criminal violations to law enforcement agencies, including the SEC. (Id.)

Figure 17 Extract from Fox vs MiMedx Case: 1:16-cv-11715

Viceroy would like readers to note that this is a criminal activity. A copy of this legal letter is Annexed below.

Mike Fox's complaint as well as the email exchange with the VA Medical Center only adds to the (at this point literal) mountain of evidence against MiMedx. We believe that Fox's testimony to the SEC is part of a mounting case against MiMedx and that action against the company by the VA and the SEC is not far away.

## Summary

The email exchanges above show that MiMedx employees tried to circumvent the controls of a VA Medical Center with the help or assistance of facility employees. Viceroy believes a large part of MiMedx's revenue is illegitimate and stems from arrangements such as those detailed in this report.

The full email exchange and our interpretation of the information has been forwarded to the relevant authorities who we expect will take swift action against those involved.

Viceroy will continue to publish on MiMedx's illegal practices including breaches of the False Claims Act.

## Annexure 1

The following are call transcripts from the Fox vs MiMedx complaint. They record calls made between now-former MiMedx employees and MiMedx management in which they discuss end-of quarter channel stuffing schemes.

### Call transcripts

#### Kruchoski-Roselli phone call

|            |   |
|------------|---|
| Roselli:   | Well, I think – I don't know if Matt Bloemer . . . reached out to you for federal revenue. We need – we're pushing –  |
| Kruchoski: | So Matt –   |
| Roselli:   | – on that as far as we can. Huh?  |
| Kruchoski: | So Matt – Matt sent a message asking what we were gonna be putting on shelves this week if that's what you mean.  |
| Roselli:   | Yeah. <i>But I need to know not what you're putting on for yourself but what additional could you put on to help us hit the number for the quarter because we're short overall. And so do you have any additional space</i> (emphasis added) –  |
| Kruchoski: | [Unintelligible.]   |
| Roselli:   | – to do more if you had to? And how much –  |
| Kruchoski: | Probably – I probably.  |
| Roselli:   | – is that? Huh?   |
| Kruchoski: | I probably don't. And – I mean, the other part of this [unintelligible] always – every month this happens – or every quarter I just get – like the hives on the back of my neck go up. Because it feels like –  |
| Roselli:   | [Unintelligible.]   |
| Kruchoski: | It's like – basically what – correct me if I'm wrong, but we're trying to hit a number with unimplanted grafts, you know. It's basically the 08, the Osiris what they got, you know, taken to task for. I mean we're gonna be able to [unintelligible] out of a hundred thousand this month or in the last week here and Mike Wilson just put in a big order yesterday. But that – that's even a stretch. And what happens is every time we do this, we put ourselves in jeopardy with the account, especially right now as cases are being tracked like crazy. |

Roselli: No, I – look, I get it. I – I’ve sat on the other side and I’ve been asked to do it, you know. And then I’m on the other side asking everybody to do it, too, you know. What I’ll tell you is that – I mean, if you can do it, you know, and just don’t want to do it, and orders come through – this is – this is right out of [Pete Petit’s] mouth. So this is the – Pete says – I [unintelligible] – I fully understand the risk that we are taking. We share that same risk with him. And he said: But this is a company directive. So if they can help they need to help. And if they don’t and orders come through between now and [team meeting at the end of January] – this is the only time I’ve heard him cuss. He said: Their ass is grass. So I’m just – I’m just putting it out there. I don’t want to see anybody in trouble because an order came in in January that he didn’t want to come in, you know.

Kruchoski-Blocker phone call

Blocker: Let’s try to get through this number this time around. Do the best we can. And you guys have my commitment that – that I will start barking up a tree in April that we have to find a new channel to do this and that we’ve exhausted this. . . .

Kruchoski: Who’s pushing this? Is it Lou [Roselli]? I mean, I don’t – where is this coming from? Like – because I always feel like –

Blocker: I had a number that we submitted to them that was like [\$3.1 million], which I thought was a pretty generous number. I think we’ll hit that – or I submitted a [\$3.1 million] on the high end, [\$2.7 million] on the low end. And then I said, you know: Based on what you guys are telling me, I could hit the low on it, you know. And Lou [Roselli] comes at me with some number like, you know, based on what you guys have done in the past and some phony number, you know, he’s like: You guys, you know, should be able to hit [\$3.7 million]. I said: Lou, I don’t know where you’re getting that number. I said: I don’t know, you know, maybe before, you know, you could’ve pulled the wool over people’s eyes. I’m like: But I know what I’m capable of doing. I know what I’ve done in the past, you know. . . . *And you guys want me to do ten percent growth on top of – you want me to provide real growth on a false number and I can’t – I can’t do that.* (emphasis added).



|            |   |
|------------|---|
| Blocker:   | But I told Chris Cashman what's going to prevent me from doing [\$3.7 million], you know – we were on a call. And <i>I said what's gonna prevent me is par levels at certain hospitals, you know, warnings that come down by saying: Don't send this again, don't send this much again. People that don't have carte blanche at their facilities are starting to get, you know, questions.</i> (emphasis added).  |
| Kruchoski: | Right.  |
| Blocker:   | And I don't want to do anything to jeopardize that. I said: <i>There's still – still some instances where I'm free to do whatever I want. And I go: And certainly we'll look at those avenues moving forward, I says, but I don't have those same luxuries anymore.</i> And [Chris Cashman's] response was: Well, do they have healing reviews down at those accounts? (emphasis added).  |
| Kruchoski: | Come on.  |
| Blocker:   | And I said I – and I said: Chris [Cashman] – I said: In all fairness – I said, you know: A healing review has no bearing on providing any extra shelf space or <i>alleviating the concerns of some, you know, floor manager or department manager who's looking at how many grafts are spilling out of every cabinet available to us.</i> I said: And what it helps with is when chief of surgery or chief of staff comes down and questions the amount of product that's being used, I go: <i>That doesn't help us in any capacity for what's being, you know, stuffed in our VAs.</i> So that – (emphasis added). |
| Kruchoski: | [Unintelligible.]   |
| Blocker:   | – to me shows that they don't understand. So it's [Chris] Cashman and [Michael] Carlton. And, you know, to a certain degree, you know, Bill [Taylor] has removed himself from it. So has Pete [Petit]. So it's pretty much direction from Cashman and Carlton given to Lou Roselli. And then we get on a call, [Mark] Diaz talks to us about our commercial number. Lou talks to us about our federal number.   |

## Annexure 2

The following is an extract from Fox vs MiMedx Case: 1:16-cv-11715

-----Original Message-----

From: Wargo, Joseph D. [<mailto:jwargo@wargofrench.com>]

Sent: Monday, April 03, 2017 2:52 PM

To: Clayton Halunen

Subject: Settlement response

Clayton,

Thank you for your thoughts regarding settlement. My client would like to resolve the disputes between our clients. However, we continue to be hampered by public comments you, personally, have made in the press as well as you reaching out to governmental authorities concerning your clients' claims which we consider to be frivolous.

Because of the above, we have fashioned a press release that addresses the forgoing issues. Our proposed press release is set forth, below.

In addition to agreeing to the press release, your clients would have to pay restitution for the damages associated with their conduct as well as disgorgement. The amount paid must include (a) monies received from other entities from the sale of other product; (b) a portion of the compensation paid by my client to your clients. Relative to (b), for Jess that amount would be 25% of his compensation from the date of formation of his LLC; for Luke, 15% of his compensation from the time he received any money from any other entities as described above. Lastly, each would be responsible for some portion of the legal fees incurred by my client from these proceedings. We would discuss that amount in furtherance of our settlement discussions.

Additionally, your clients would have to cooperate with us by providing all documentation we seek as well as sworn, oral testimony. We would need this evidence to pursue the other litigations of which you are aware.

Lastly, we would need you to contact any and all governmental authorities you previously have reached out to and (a) withdraw previously-made complaints and (b) provide a statement that your clients' initial complaint was frivolous based on facts of which you are currently aware.