

K&L GATES

July 25, 2023

Mr. Michael Hoffman
Trial Attorney, Commercial Litigation Branch
Department of Justice

Bobby Higdon
bobby.higdon@klgates.com

T +1 919 314 5610

Re: Civil Investigative Demand 21-337 to Sentara Healthcare

Mr. Hoffman:

We are in receipt of your letter dated July 20, 2023, regarding the above referenced Civil Investigative Demand (subject CID), in which you allege bad faith on behalf of and withholding of documents by Sentara Health Care and Optima Health Plans (collectively "Sentara" or "Company" herein) in their response to the subject CID (and other related CIDs which have been issued as part of this investigation). Sentara and its Counsel are in complete disagreement with your selective presentation of the facts and circumstances related to the Company's efforts to comply with the Department's numerous demands and will decline many of the additional demands made in that letter.

In sum, the Department of Justice and the United States Attorney's Office for the Western District of Virginia (collectively "Department" herein) have been engaged in a False Claims Act investigation of Optima Health Plans' participation in the 2018 and 2019 Affordable Care Act's Individual Insurance market for at least 26 months. Sentara first received the subject CID in July of 2021, which sought broad production of documents, materials and witness testimony. Shortly after the service of the subject CID, counsel for Sentara (K&L Gates, LLP) worked with the Department to refine the scope of the production based on the focus of the inquiry through Department-created search terms applied to specific custodians and time frames.

In an effort to comply with the Department's demands, Sentara immediately undertook to preserve, collect, review, and produce all the materials falling within the scope of the search to which the Department agreed. These efforts resulted in the review of more than 130,000 documents and the production of nearly 25,000 such documents.

Since that time, the Department has issued additional CIDs and made additional demands seeking a broad range of related information and witness testimony. In response to those specific questions and demands, Sentara and its counsel conducted additional searches (e.g., [REDACTED] and produced additional documents to respond to those specific questions. In addition to those productions, Sentara and its counsel produced additional materials not originally falling within the agreed upon bounds of production, in order to provide the Department with materials which may inform the Department's investigation.

Moreover, during the last nine months, numerous current and former Sentara employees, who played a role in the development of Optima's 2018 and 2019 Individual Product rates, have appeared for lengthy sworn statements at the United States Attorney's Office in Roanoke, Virginia. In each case, the Department subjected these individuals to extended periods of questioning, significantly exceeding the time periods allowed under the Federal Rules of Civil Procedure, which, as we have pointed out, are incorporated by reference into the rules governing the CID process.¹

The individuals from whom the Department has taken include two of Optima's [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] In total, witnesses from Sentara have testified for more than 60 hours under oath and responded to nearly every question asked, regardless of the question's relevancy or propriety.

In recent weeks, counsel for Sentara became aware that some relevant documents may not have been produced to the Department as part of the previous productions. In response to that discovery, Sentara has undertaken a review of the production process to determine why some documents were not produced and communicated how that review was being undertaken to the Department.

Ultimately, as also communicated to the Department, counsel for Sentara concluded that there may be several reasons for the failure. First, counsel for Sentara attributed the issue to human error (the failure of a member of the review team to properly determine a document may be responsive to the inquiry). In other instances, the document fell outside of the scope of the agreed upon production terms or, third, there was simply not enough information known at the time of the review, in order to determine the documents' responsiveness.

In response to these discoveries, counsel for Sentara are undertaking a review of the documents originally determined to be unresponsive. In some instances, this review includes re-reviewing every document associated with a custodian/witness [REDACTED]. In other instances, counsel is leveraging predictive analytics to identify documents and materials which are likely responsive but were not properly coded and produced. From those predictive codes, counsel will prioritize the re-review to determine whether the documents are responsive.

We have described this process, in whole or in part, to the Department in at least three separate conversations, including our most recent telephonic meeting on Monday, July 17, 2023. In each instance, the Department left us with the impression that everyone understood what we were doing, why we were doing it, and were comfortable with that process. As such, the letter received on July 20, 2023, is surprising and, we believe, represents an effort by the Department to pretextually reposition its investigation so that it can obtain a "do-over" for certain aspects of its investigation.

¹ See, 31 U.S.C. § 3733(j)(6).

There is simply no basis on which the Department can honestly assert any type of bad faith on the part of Sentara, its employees, its management or its counsel. Here, there are simply hundreds of thousands of unique documents relevant to Sentara's operations and the heavily regulated environment in which the Company operates. When large volumes of document evidence is involved, there is simply no other way to evaluate that evidence for responsiveness but to conduct some type of review, which is always subject to human error. As in many highly technical cases, documents may not appear to be relevant to the reviewer, depending upon the stage of the investigation or the briefing and training of that individual.

We understand and have repeatedly acknowledged Sentara's (and counsels') continuing obligation to search for responsive materials and produce them when such materials are found. These obligations are particularly important when, as Sentara and counsel understand and have communicated, the review is subject to human error and the development of new information throughout the CID investigative process. Thus, for the Department to suggest in the July 20th letter that Sentara and/or counsel have somehow fallen short of that obligation and now must acknowledge it in writing, is abusive and fails to reflect the nature and content of Sentara's interaction and cooperation with the Department over the past 26 months.

As you are no doubt aware, the CID process is not intended to circumvent the discovery process, but is instead designed to allow the Department of Justice the opportunity "to assess quickly, and at the least cost to the taxpayers or to the party from whom information is requested, whether grounds exist for initiating a false claims suit." *United States v. Markwood*, 48, F.3d 969, 979 (6th Cir. 1995); see also *In re Civil Investigation Demand 15-439*, 2016 WL 4275853 (W.D.Va, Aug.12, 2016). [REDACTED]

[REDACTED] the Department explained [REDACTED] unless Sentara settled the matter.

In response [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. We provided detailed information that factually demonstrated:

- Sentara and Optima were much smaller participants in the Affordable Care Act's individual market in Virginia prior to the 2018 rate setting process. While insuring no more than about 20,000 Virginians annually, Optima had already lost some \$30,000,000 between 2013 and 2016.
- With that backdrop, Sentara had to determine whether to remain in the individual market during a time of unprecedented uncertainty, as the result of efforts in Washington D.C. to repeal and/or replace the Affordable Care Act, or portions thereof, and the corresponding withdrawal of Virginia's biggest insurers.
- In response to the numerous requests from Virginia political leadership and regulators, fearing that tens of thousands of Virginians would have no insurance option, the Company

was known to you at the time you had the opportunity to question them. Moreover, we note that under 31 U.S.C. § 3773(a)(2)(G), the Attorney General of the United States “may not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.” Should the Department determine that it will issue additional demands for oral testimony, we will insist that you follow the requirements of this statute, and we insist on the right to be heard in that process by the Attorney General and further reserve our rights to take this matter to the Court for review.

Fourth, the Department asks that we expand the document search to include additional terms, including [REDACTED] and [REDACTED]. The issue of a [REDACTED] and any type of [REDACTED], are not new concepts in your inquiry. Indeed, the concept of a [REDACTED] has been discussed with every witness you have questioned and the effort to attach this new and potentially very broad review at this juncture is improper. Accordingly, we will decline to undertake an additional and very expensive review so that you can simply gather more evidence rather than serve your legitimate goal of [REDACTED].

Finally, you ask us to add former Sentara CEO Howard Kern as a “custodian for production purposes.” This, too, is not a new aspect of the investigation. You have known that Mr. Kern was the CEO of Sentara during the relevant time period since before you served the subject CID back in 2021. Indeed, [REDACTED]

[REDACTED] To now suggest that there is some new development which warrants additional extensive searches and reviews as the result of a small percentage of documents which may not have been provided to you as yet, is improper. Sentara will decline this portion of your demand as well, and we specifically retain and reference our rights to respond to any action you may take in U.S. District Court in the Western District of Virginia.

In sum, Sentara and its counsel have fully cooperated with your investigation. Accordingly, we will produce the additional responsive documents identified during the re-review process, as we have already agreed to do. However, once that is done, it is time for the Department to [REDACTED] and not prolong this investigation any longer.

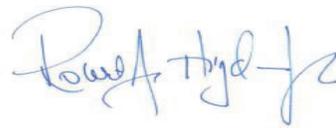
As we produce the responsive documents previously agreed to, we also have two requests for the Department [REDACTED]

[REDACTED] Given the Department’s consistent practice of providing all the exhibits and evidence produced to Sentara’s witnesses, we trust this request will not be problematic.

Additionally, [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED] Please let us know by August 1, 2023, whether the Department agrees [REDACTED]. Given that the Department has declined to tell us a specific deadline [REDACTED] (except for “in the fall”), we believe that it is essential for the ultimate decision-makers to hear directly from Sentara as soon as possible, and before [REDACTED] [REDACTED] (or the decision to seek court intervention on the CID issues) is made.

With kindest regards,

A handwritten signature in blue ink that reads "Robert J. Higdon, Jr." with a stylized flourish at the end.

Robert J. Higdon, Jr.

From: [Lugar, Justin \(USAVAW\)](#)
To: [Higdon Jr, Robert J.](#); [Hoffman, Michael A. \(CIV\)](#)
Cc: [Rottenborn, Laura \(USAVAW\)](#)
Subject: RE: Sentara CID Production 01
Date: Friday, November 5, 2021 6:08:01 PM
Attachments: [image002.png](#)
[image003.jpg](#)

External Sender:

Bobby,

Thank you for your email about a call next Friday. We have conferred and 9:30 works for us. I will send a calendar invite with dial in details imminently. In the interim, we wanted to give you our initial reactions/thoughts to your email.

First, for an initial production, we are willing to focus your data pull on the [REDACTED] custodians listed in your email ([REDACTED]) in addition to [REDACTED]. We expect production of the other custodians as well, but would like to prioritize those [REDACTED] first.

Second, the [REDACTED] search terms you chose to run on a sample set [REDACTED] and the other iterations listed in I.c.) do not adequately capture the records responsive to our inquiry. We agree that we can cut the terms [REDACTED] and [REDACTED] but using the terms in I.c. of your email as an initial search cull is not acceptable to the United States.

Third, and as we discussed previously, we propose rolling productions beginning with the 2017, 2018, and 2019 documents, which may help streamline the productions. We are also willing to discuss executing a clawback agreement with Sentara if that would help address any concerns your client has.

Best,

Justin



Justin M. Lugar
Assistant United States Attorney
Western District of Virginia
310 First Street, SW, Room 906 | Roanoke, VA 24011
Tel (540)278-1471 | Fax (540)857-2614

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error, please notify the sender immediately, and permanently delete the email, any attachments, and all copies from your computer.

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Friday, November 5, 2021 2:00 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Cc: Rottenborn, Laura (USAVAW) <LRottenborn@usa.doj.gov>
Subject: [EXTERNAL] RE: Sentara CID Production 01

Michael: Could you all do the call on Friday of next week? We can be available any time that day except between 11:30 and 2. Would sometime that day work?

Bobby



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Thursday, November 4, 2021 10:50 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>
Subject: RE: Sentara CID Production 01

Bobby:

Thank you for this email and update, which we have been reviewing. We have some concerns, including regarding the filter terms in I(c), and agree that a discussion makes sense. Could you propose a few times for a call next week, excluding Monday before 2pm ET and Thursday?

Regards,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Tuesday, November 02, 2021 3:46 AM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Cc: Rottenborn, Laura (USAVAW) <L.Rottenborn@usa.doj.gov>
Subject: [EXTERNAL] RE: Sentara CID Production 01

Michael and Justin:

By way of update on our email review efforts, thank you for your patience as we have overcome some unanticipated challenges in capturing and reviewing relevant materials in response to the CID.

Our team has successfully extracted [REDACTED] files from Sentara's internal email drives after troubleshooting a number of technical obstacles in conjunction with IT teams from both the company and our firm. Attached please find a hit by term report which breaks down the number of documents returned after application of your suggested terms. As outlined further below, we suggest a revision to your proposed terms, after observing that several are pulling in a large number of emails outside the scope of this matter. Once we have your guidance/agreement on the revisions, we will apply the final agreed upon terms to the data, with an anticipated first production in mid-November.

I. Overview of Data Extraction

- a. [REDACTED]
 - b. [REDACTED]
- This

[Redacted]

- i. [Redacted]
- ii. [Redacted]
- iii. [Redacted]

c. [Redacted]

- i. [Redacted]
- ii. [Redacted]
- iii. [Redacted]

d. [Redacted]

II. Current Set

- a. [Redacted]
- b. [Redacted]
- c. [Redacted]
 - i. [Redacted]
 - 1. [Redacted]
 - 2. [Redacted]
 - 3. [Redacted]

III. Proposed term revisions

- a. [Redacted]

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED] OR [REDACTED] OR [REDACTED] or [REDACTED] or [REDACTED]

b. [REDACTED]

- i. [REDACTED]:
 - 1. [REDACTED]
 - 2. [REDACTED]

Would it make sense for us to schedule a time at your convenience to discuss how we proceed from this point. We certainly want to ensure that the changes/narrowing we propose are acceptable. Moreover, if there is/are some more focused search(es) we can perform that will get to the heart of your concerns we would be very happy to conduct that/those searches. Otherwise, we'd like to discuss how we can more narrowly limit the search and review so that we can get relevant materials to you right away.

Bobby.



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Wednesday, October 20, 2021 11:46 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>
Subject: RE: Sentara CID Production 01

Bobby,

Thank you for this custodian list, which we have been reviewing. Could you provide us an update on the email review/production process and timetable?

Thanks,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Thursday, October 07, 2021 10:59 AM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Cc: Rottenborn, Laura (USAVAW) <LRottenborn@usa.doj.gov>
Subject: [EXTERNAL] RE: Sentara CID Production 01

Michael:

We have been working hard to develop our list of custodians and move the email document review along. Our list of custodians has expanded slightly since we last updated you. At the present time we believe the list should include the following [REDACTED] individuals:

- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Based on information about positions in the company we believe the list is likely to expand still slightly and I will get those names to you as soon as we determine whether those individuals have relevant documents/information. And, of course, if there are names you believe are missing from this list based upon your review of materials already produced by Sentara and/or others, please let me know and we will recheck our records.

Also, based on our previous discussions, this list does not include those individuals whose role was in sales or marketing and who were not otherwise involved in rate development. We have preserved those individuals' emails but not included them on the list above nor in our email review.

Please let me know if you have questions.

Bobby Higdon



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

-

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Thursday, September 23, 2021 2:17 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAFAW)

<Justin.Lugar@usdoj.gov>

Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>

Subject: RE: Sentara CID Production 01

Bobby:

Thank you for this update. Could you provide the names of the [REDACTED] custodians you have identified?

As to proposed search terms, we are providing the attached suggested terms to assist you, but expect that Sentara will supplement this list based on knowledge of its own documents, terminology, and practices. We can review a search terms hit report and/or discuss with you as appropriate as well.

-Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>

Sent: Monday, September 20, 2021 10:55 AM

To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>

Cc: Rottenborn, Laura (USAVAW) <LRottenborn@usa.doj.gov>

Subject: [EXTERNAL] RE: Sentara CID Production 01

Michael and Justin: By way of follow up to our exchange early last week regarding Sentara's ongoing efforts to identify and produce documents and materials relevant to its 2018 and 2019 Rate Filings to provide health insurance on the individual market in Virginia pursuant to the Affordable Care Act, let me offer a status update:

As you know from our disclosure on September 10, we have been working to provide the documents according to the priorities we discussed in our early calls about this issue. To that end, we have been retrieving and reviewing documents based on date ranges we believe to be associated with those requests and we have focused on the 2018 rate filing process first, to be followed by the 2019 process. To date we have been able to provide approximately [REDACTED] documents relative to the 2018 filing which were created in calendar year 2018. Shortly we will complete the 2018 disclosure by providing documents created in 2017 (and leading up to the 2018 filing) as well as those created in 2019 and which relate to the secondary review conducted by the Commonwealth of Virginia's Bureau of Insurance. Thereafter we will also be able to provide the documents relating to the 2019 rate process which did not include a secondary review.

We believe that we should be able to complete our review and disclose all of the above-referenced documents, as well as a small body of hard copy materials (which have been uploaded into our electronic data management system) to you by the end of this week or very early next week.

In your last message you also asked about our disclosure of emails relevant to the matters addressed

in the CID. Since our conversations with you in July of this year, we have been working to identify all relevant document custodians and have issued document retention directives to them and to Sentara's IT staff to ensure that Sentara maintains those documents for disclosure. To date, we have identified [REDACTED] potential custodians who are relevant to your inquiry. Those were identified initially based upon their role in Sentara and the list has been supplemented as we have conducted the ongoing document review. Document retention directives have been issued in an attempt to maintain the materials as new custodians have been identified.

When we first spoke about the CID and the disclosure process several weeks ago, we talked about ways in which the Department might help Sentara focus its review efforts in order to produce only those documents and materials relevant to your inquiry. To that end, are there search terms you would like applied to the body of email materials which would accomplish that goal? We are trying to develop search terms as we review the rate filing materials but, of course, we have little visibility into what would be useful and what would not. Any guidance you can provide would assist us greatly and would very likely speed the process. With that in mind we would hope to disclose the email materials in a relatively quick period of time following the completion of our rate filing disclosures.

We would appreciate your feedback and any effort you can make to more clearly focus our work.

Many thanks.

Bobby Higdon



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Tuesday, September 14, 2021 12:13 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW)

<Justin.Lugar@usdoj.gov>

Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>

Subject: RE: Sentara CID Production 01

That works. Safe travels & we'll look out for an email from you later this week.

Thanks,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>

Sent: Tuesday, September 14, 2021 11:48 AM

To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>

Cc: Rottenborn, Laura (USAVAW) <LRottenborn@usa.doj.gov>

Subject: RE: Sentara CID Production 01

Michael: Let me suggest that I give you an email update on or before Thursday about the categories of docs we're processing to include those mentioned in our letter and the emails and that we schedule a call immediately when I return from overseas (back in USA on Saturday, September 25). Would that be acceptable to you all?

Bobby.

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>

Sent: Tuesday, September 14, 2021 10:17 AM

To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>

Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>

Subject: RE: Sentara CID Production 01

Bobby – I appreciate you circling back and think I owed you a response already (and was waiting to get closer in terms of assessing call timing). I don't think we will have had much opportunity to review Sentara's latest production before Thursday, but we would like Sentara to be progressing with the email review in the meantime. Given that, it may make most sense to talk late next week, but if a call Thursday would be helpful to you in terms of progressing with the email review, I am happy to talk before 11am ET Thursday. Please let me know.

Thanks,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Monday, September 13, 2021 12:48 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Cc: Rottenborn, Laura (USAVAW) <LRottenborn@usa.doj.gov>
Subject: RE: Sentara CID Production 01

Michael: I think I may have failed to respond to this message. I forwarded to our team, but in reviewing my message, it looks like I didn't get back to you. If that's the case, my apologies.

Can you still do a call on the 16th? If so, would you be able to talk sometime that morning before 11? I have a matter that will take me out of the country that afternoon and I don't want to leave you hanging if a call would be productive.

Again, my apologies for failing to get back to you.

Bobby.



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Wednesday, September 1, 2021 11:24 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>
Subject: RE: Sentara CID Production 01

Bobby:

Thank you for this update. Your proposal to provide Sentara's production by September 10 is acceptable to us, and we can discuss rolling productions after that point. We agree it makes sense to push back our September 8th call as well. Do you have availability on September 16th or 17th?

Regards,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Wednesday, September 01, 2021 9:53 AM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAFAW) <JLugar@usa.doj.gov>
Cc: Rottenborn, Laura (USAFAW) <LRottenborn@usa.doj.gov>
Subject: RE: Sentara CID Production 01

Michael and Justin: I wanted to check in with you and provide an update regarding Sentara Health's efforts to comply with the CID.

As you know, when we last spoke as a group we were uploading the requested documents into our firm's document management system and then planned to begin the review and coding process so that we could comply with both the Department's request substantively and format it as necessary for your review. We have successfully uploaded those documents and they have been under review since that time.

Also, as we discussed, we have prioritized the request to deal first with the rate filings and the supporting documentation and analysis as defined in your request; and, we've prioritized the 2018 rate filing.

We anticipate that our next disclosure (dealing with the 2018 filing) will run in the neighborhood of [REDACTED] documents, plus or minus, and that a significant portion of those documents will be proprietary in nature.

You will recall that we discussed making this disclosure on or before this coming Friday. However, we believe that our document review and the steps necessary for preparation and actual transmission to the Department (as performed by our eData staff) will take a few more days beyond this Friday, but can be accomplished by the end of next week. So, I am writing seeking your agreement that we move that deadline out by one week so that we can complete the process properly.

Let me also note that we believe there will be additional documents relevant to the 2018 rate filing that will come in an additional disclosure since there was a more extensive interaction with the Bureau of Insurance relevant to that year involving what I might call a secondary review by the Bureau that continued into 2018 and 2019 examining the rate schedule for 2018. We will clearly point out those documents to you when that secondary disclosure is made.

So, would an extension of one week (to September 10) be acceptable to the Government?

Additionally, if you are amendable to that revised schedule, would it make sense to push our September 8 call to the following week to allow you time to at least preliminarily review our production so we can discuss it in the call? We'd be happy to adjust the call schedule to ensure the time is worthwhile when we talk.

Thanks for your consideration.

Bobby Higdon



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Friday, August 20, 2021 12:30 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>
Subject: RE: Sentara CID Production 01

Could we schedule a status call on September 8th at 10 or 11am?

Thanks,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Tuesday, August 17, 2021 3:46 AM

To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Cc: Rottenborn, Laura (USAVAW) <LRottenborn@usa.doj.gov>
Subject: RE: Sentara CID Production 01

Could we do Friday at 11:30 EDT? Bobby.

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Monday, August 16, 2021 1:38 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Cc: Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>
Subject: RE: Sentara CID Production 01

Bobby – I don't think that works for the 3 of us, unfortunately. How about Friday before 12pm ET?

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Monday, August 16, 2021 1:25 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Cc: Rottenborn, Laura (USAVAW) <LRottenborn@usa.doj.gov>
Subject: RE: Sentara CID Production 01

Michael: Of course, we'd be happy to talk further with you. Unfortunately I have matters already scheduled in the time windows you propose. Do you have any availability on Wednesday between 2 and 4 p.m. EST? Bobby.

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Monday, August 16, 2021 9:03 AM
To: Becerra, Nora E. <Nora.Becerra@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Cc: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Rottenborn, Laura (USAVAW) <Laura.Rottenborn@usdoj.gov>
Subject: RE: Sentara CID Production 01

Nora & Bobby,

Could we touch base regarding production status tomorrow before 1pm or Wednesday at 11am ET?

Thanks,

Michael

From: Becerra, Nora E. <Nora.Becerra@klgates.com>

Sent: Friday, August 06, 2021 5:20 PM

To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>

Cc: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>

Subject: Sentara CID Production 01

Michael and Justin,

Attached please find correspondence from Bobby Higdon in the above-referenced matter. The below link contains production 1 which is bates-labeled Sentara CID_0000001-Sentara CID_0000008. I will circulate access credentials under separate cover. Please let me know if you have any questions.

<https://edat-ftp.klgates.com/>

Best,
Nora



Nora E. Becerra

K&L Gates LLP

70 W. Madison St., Suite 3100

Chicago, IL 60602

Phone: 312.807.4222

Fax: 312.345.1377

Nora.Becerra@klgates.com

www.klgates.com

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From: Taylor, Laura (USAVAW)
To: Higdon Jr, Robert J.
Cc: Hoffman, Michael A. (CIV); Lugar, Justin (USAVAW); O'Connor, John (CIV)
Subject: RE: CID No. 21-337 - Sentara Production 08
Date: Monday, May 16, 2022 3:09:28 PM
Attachments: ~WRD0003.jpg
image001.jpg
image002.png
image003.jpg

External Sender:

Bobby,

Thank you for this information. We appreciate the follow-up.

We have a few follow-up questions as well.

1. Per our phone call of April 26, would you please provide us a [REDACTED]
[REDACTED]
2. Will you please confirm whether [REDACTED]
[REDACTED]
[REDACTED]
3. In response to CID Request #2, [REDACTED]
[REDACTED]

Thank you,

Laura

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Wednesday, May 4, 2022 10:29 AM
To: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura:

We have been working very hard to try to track down information regarding the [REDACTED]
[REDACTED].

After further searches, conversations and the checking of records, here is what we have discovered:

[REDACTED]

[REDACTED]

[REDACTED]

Please let me know if you have questions or require any additional information.

Bobby Higdon



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Monday, May 2, 2022 8:17 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Bobby,

Thank you for this helpful rundown. It is much appreciated.

Laura

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Monday, May 2, 2022 8:15 AM
To: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura: Updating you on the issues we discussed last week.

[REDACTED]

[REDACTED];
-We are re-running/re-reviewing emails involving [REDACTED] in light of your questions related to volume and any communications between [REDACTED] which were not copied to anyone else to ensure we have not missed anything relevant to your inquiry;

-We are reviewing the privilege logs to correct any errors. Because some documents were corrupted from an electronic review perspective and because others had to be reviewed from hardcopy there are some glitches in the system in terms of accounting for them. We think that may be what has thrown it off. In any event, we'll get that all cleared up.

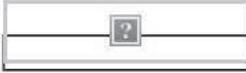
[REDACTED]

Now, as to the bigger question of [REDACTED], I am making unexpected progress. I have a little more work to do on the issue but I am hopeful that within a day or two I can report back to you with useful information. The issue of



Of course, if you have questions or concerns, please let me know.

Bobby.



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Friday, April 29, 2022 8:17 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Thank you. We'll check in with you at the end of the day.

Laura

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Friday, April 29, 2022 7:50 AM
To: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura: In followup to our call earlier this week, I did meet with Sentara's legal counsel late yesterday. Because of some turnover in that office, I have additional meetings with them today and can then give you all an update on the issues we discussed.

Bobby.

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Tuesday, April 26, 2022 3:32 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Bobby,

We look forward to speaking with you at 4:30 ET today. I have circulated a dial-in.

To advance our conversation, I am attaching the cover email to the PowerPoint presentation we previously sent you. We have some questions regarding that email specifically.

Thank you,

Laura

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Monday, April 25, 2022 4:38 PM
To: Taylor, Laura (USAVAW) <L.Taylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura: I would be happy to talk with you all. Tomorrow would be the best option for me. I am on the West Coast right now and, so, three hours behind you. Could you do between 4 and 5 p.m. EST?

And, as I indicated in my message this morning [REDACTED] beyond those that you have already been provided in our earlier productions.

Bobby.

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Monday, April 25, 2022 1:29 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Bobby,

Thank you for your email.

We would like to have a call to discuss. Please let us know your availability for this afternoon or tomorrow.

Also, in the meanwhile, will you please confirm it is your understanding that, in addition to there being no [REDACTED]

Thank you.

Laura

Laura Day (Rottenborn) Taylor
Assistant United States Attorney
Civil Chief/Appellate Chief
United States Attorney's Office
Western District of Virginia
Office: (540) 857-2976
Fax: (540) 857-2614

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From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>

Sent: Monday, April 25, 2022 8:48 AM

To: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>

Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura: I am circling back with you all on the question of whether [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

As I said, we'll get that redacted document to you right away. But, I wanted you to have the language from it that was relevant to your inquiry.

If you need additional information, have other questions, or believe our attempt to address the question about [REDACTED] falls short in some way, please let me know.

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Wednesday, April 20, 2022 3:59 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Thank you, Bobby. We look forward to hearing from you later this week.

Laura

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Wednesday, April 20, 2022 3:57 PM
To: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura: We are working very diligently on this issue. We have re-reviewed the email and related documents before, during and after the time period in question and we have made an additional search of company files ([REDACTED]). And, I would hope to report back to you in the next day or so as to the results of that effort. Right now I am just trying to close the loop on a couple of things. Rest assured we have been working hard on this since you raised the issue with us.

Bobby.

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Wednesday, April 20, 2022 3:52 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Hi Bobby,

Good afternoon. When you can, would you please update us on when we can expect a response on this issue? Thank you.

Laura

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Thursday, April 14, 2022 10:27 AM
To: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura: We will run this to ground immediately and be back in touch. Bobby.



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Thursday, April 14, 2022 10:06 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Bobby,

I am attaching materials reflecting a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



The attached emails refer to it as a [REDACTED]. One of the Sentara emails from [REDACTED] as having [REDACTED]

If you are impliedly claiming in your email below that the [REDACTED] was not a [REDACTED] but instead a [REDACTED] please confirm that in writing and we will respond.

In the meanwhile, please immediately send us whatever [REDACTED] [REDACTED]. If no [REDACTED], please provide that confirmation in writing. If materials previously existed but have been destroyed, please provide that confirmation in writing along

with the custodians of the material, the nature of the material, and the date of destruction.

Thank you.

Laura

Laura Day (Rottenborn) Taylor
Assistant United States Attorney
Civil Chief/Appellate Chief
United States Attorney's Office
Western District of Virginia
Office: (540) 857-2976
Fax: (540) 857-2614

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From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Thursday, April 14, 2022 5:10 AM
To: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Laura: To our knowledge neither Sentara nor any of its related divisions conducted [REDACTED]. The [REDACTED] and we have disclosed the materials related to that [REDACTED], in unredacted form, in a previous production.

If there is information you'd like us to review in order to resolve the issue of why the Government believes [REDACTED], we would be more than happy to do so in order to clear up any confusion.

Bobby Higdon



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Sent: Wednesday, April 13, 2022 4:25 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Bobby,

I am following up regarding the [REDACTED]. Please confirm whether you have located the [REDACTED] and any other materials related to [REDACTED].

Thank you.

Laura

Laura Day (Rottenborn) Taylor
Assistant United States Attorney
Civil Chief/Appellate Chief
United States Attorney's Office
Western District of Virginia
Office: (540) 857-2976
Fax: (540) 857-2614

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From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Monday, April 4, 2022 2:21 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Michael: We have completed the review of the emails/documents for the [REDACTED] additional custodians [REDACTED]) and we will produce those materials to you today. They are being prepared by our eDAT staff and we will provide those to you as soon as they are ready.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

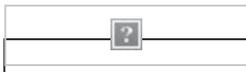
You have also asked that we disclose [REDACTED] for a [REDACTED] [REDACTED]. Those materials were not identified/located in our initial search but I have asked the company to review its records again to determine if we missed those. I will let you know as soon as I have an answer.

As to past productions, you will recall that we had some technical issues where a relatively small number of documents were deemed corrupted and could not be read by our system and therefore could not be reviewed. Our eDAT staff has worked with the company's IT staff and we believe that nearly all of the issues have been resolved and it yielded a handful of relevant documents upon review. We'll get those prepared and disclose them to you, probably by Friday of this week.

You have also asked that we provide the privilege log in this matter. It is our intention to finalize that log and to provide it to you by the end of this week as well.

I think that covers the outstanding issues at this time. If, however, I have missed anything or you have questions or concerns, please let me know.

Bobby.



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400

Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Higdon Jr, Robert J.
Sent: Friday, March 25, 2022 11:06 AM
To: 'Hoffman, Michael A. (CIV)' <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Michael: We have been preparing a privilege log as we go and our plan is to provide that at the conclusion of the review or at some natural break point in the production if it will continue beyond the [REDACTED] custodians we're focused on right now. Please advise if you'd suggest some other process or timetable.

Thanks. Bobby.

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Wednesday, March 23, 2022 3:13 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Bobby:

Thank you for this update. We received your production last night and are loading it. What are your plans regarding a privilege log for redacted and any withheld documents to date?

-Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Monday, March 21, 2022 6:14 AM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>
Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Michael: After looking at possible alterations in the search terms, we don't see substantial reductions in

the volume of material to be reviewed even when applying new/different search terms or when combining the search terms we've been using. So, we will continue to proceed as agreed at the beginning of the process rather than recommending any change.

Later today it is our plan to disclose to you materials which required some type of redaction. Once you have those in hand, if you have any questions or concern we will be happy to discuss.

We have also continued to try to access about [REDACTED] or so documents which were unreviewable in our system. The review platform indicated they had been corrupted and we simply could not get into them. We have tried and failed at this point. We have gone back to the company to see if they can be accessed in some other way that would allow us to review and provide them to you as appropriate. We continue to work with the company on this issue and will keep you updated. But, as of yet we do not have access to these documents nor do we know their content.

[REDACTED]

Please let me know if you have questions or concerns.

Bobby Higdon

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Thursday, March 10, 2022 10:39 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Bobby: Thank you for this clarification. [REDACTED]

[REDACTED] Of course, we reserve the right to request production of those documents.

We look forward to receiving the April 4th production. If you would like to discuss search terms or other issues, just let us know.

Thanks,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Thursday, March 10, 2022 10:14 AM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>

Subject: [EXTERNAL] RE: CID No. 21-337 - Sentara Production 08

Michael:

[REDACTED]

As for our next production we will focus on the custodians and time frame you outline below. We are working to retrieve those materials and assess volume right now, but think we will be able to meet the April 4 deadline. In the meantime, we may want to come back for discussion about the scope of the search terms in light of experience gained (what produced relevant documents; what produced a high number of irrelevant documents). But, absent renewed discussions, once we have those materials in our system we will continue to use the terms as agreed with the Government in our early discussion.

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Monday, March 7, 2022 11:04 AM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Subject: RE: CID No. 21-337 - Sentara Production 08

Hi Bobby:

[REDACTED]

Second, we agree that Sentara/Optima does not need to produce documents from January 1, 2020 through date of service of the CID at this time. Instead, we request that Sentara/Optima produce responsive emails from custodians [REDACTED] for the time period January 1, 2017 through December 31, 2018. Please produce these documents no later than April 4th.

Thank you for the other updates regarding documents you will produce this week. Please let us know if you have questions about the responses above or would like to discuss.

Thanks,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Monday, March 07, 2022 9:04 AM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; O'Connor, John (CIV) <John.O'Connor2@usdoj.gov>
Cc: Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>
Subject: [EXTERNAL] FW: CID No. 21-337 - Sentara Production 08

All: As you know from Nora Becerra's communication on Friday, we made our eighth production which substantially met your deadline of March 4 for the materials through calendar year 2019.

Our production is not totally complete in several important ways. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] if, however, you feel that we should not have withheld those materials, please let me know so that we can address that with you.

Additionally, there are a group of documents that we believe are either privileged or partially privileged. We are completing that review and redaction process and will produce those materials as appropriate in the next few days.

Finally, there are a [REDACTED] documents for which there were technical issues that required they be rescanned, reloaded and then reviewed. There issues has nothing to do with the substance of the materials but the manner in which the computers accepted or didn't accept them. Again, we should have the results of the review of those documents to you within a few days.

By way of a question, I want to make sure that we interpret your communications accurately. When you asked that we comply with the March 4 deadline by completing the search of materials through calendar year 2019, does that indicate that you believe we are at a stopping point or are you anticipating that we would complete the search of materials related to the three custodians through the date of service of the subpoena (July, 2021)?

Thank you.

Bobby Higdon

From: Becerra, Nora E. <Nora.Becerra@klgates.com>
Sent: Friday, March 4, 2022 7:14 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Justin.Lugar@usdoj.gov;

john.o'connor2@usdoj.gov

Cc: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>

Subject: CID No. 21-337 - Sentara Production 08

Michael, Justin, and John:

Attached please find correspondence from Bobby Higdon in the above-referenced matter. The below FTP link contains production 08 which is bates-labeled Sentara CID_0091518-Sentara CID_0100011.

Please let me know if you have any questions.

<https://edat-ftp.klgates.com/>

Thank you,
Nora



Nora E. Becerra

K&L Gates LLP

70 W. Madison St., Suite 3100

Chicago, IL 60602

Phone: 312.807.4222

Fax: 312.345.1377

Nora.Becerra@klgates.com

www.klgates.com

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From: [Hoffman, Michael A. \(CIV\)](#)
To: [Higdon Jr, Robert J.](#)
Cc: [Koesters, J.D.](#); [Becerra, Nora E.](#); [Taylor, Laura \(USAVAW\)](#); [Lugar, Justin \(USAVAW\)](#); [Acker, G. Norman](#)
Subject: Optima follow-up
Date: Monday, December 12, 2022 2:08:51 PM
Attachments: [~WRD0001.jpg](#)
[image001.jpg](#)

External Sender:

Bobby & Team:

I'm writing to follow up on the [REDACTED] email review and other topics.

1. [REDACTED]

2. Please provide an ETA for the production of all variations of [REDACTED] and their attachments (per my 12/6 email to you).

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

Please let us know if you have questions or would like to discuss.

Thanks,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Wednesday, December 07, 2022 1:21 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Cc: Koesters, J.D. <J.D.Koesters@klgates.com>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; Acker, G. Norman <Norman.Acker@klgates.com>
Subject: [EXTERNAL] RE: Service of CID

Michael: Good to see you as well. And, I look forward to seeing you all tomorrow.

Let me respond in reverse order of issues. First, the [REDACTED] materials; for which he have a bit of a revised update following the update I gave to Laura as we were leaving on Monday:

We have obtained [REDACTED] emails from Sentara/Optima and following the same procedures as with the other custodians. We applied the search terms which were originally agreed upon, as well as "[REDACTED]" and "[REDACTED]." The full date range applied to the set was January 1, 2017 - December 31, 2020. These terms brought back approximately [REDACTED] documents ([REDACTED] GB), after de-duplication. Within the narrow time frames in which there is an escalated timeline for production, there are approximately [REDACTED] documents.

Below is a list of the most prolific search terms across the entire set of documents:

[REDACTED]	6923
[REDACTED]	1427
[REDACTED]	3335
[REDACTED]	10433
[REDACTED]	7709
[REDACTED]	11003

We will begin reviewing the approximately [REDACTED] documents in the narrow time frames immediately and produce those as quickly as possible. For the other remaining documents, we propose the following edits to these terms in order to narrow the field of potentially relevant data. We believe these terms align with the Government's interest in [REDACTED] documents given [REDACTED] position in Optima at the time.

- "[REDACTED]"
 - [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Please let us know if you agree to these edits. If so, we will re-run the searches and provide the

updated hit count. Laura and I very briefly discussed that the Government may not need or want the much larger volume of documents so, if there is some other way to reduce the volume that needs to be reviewed and provided, we would welcome that discussion.

As to document [REDACTED] we are pulling all iterations of that again and attempting to locate each version as you asked. We can report back on that in the next day or so as well.

Very Respectfully,

Bobby



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Tuesday, December 6, 2022 3:17 PM
To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Cc: Koesters, J.D. <J.D.Koesters@klgates.com>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Subject: RE: Service of CID

Bobby: Nice to see you all yesterday (virtually, in my case). We wanted to follow up on one document [REDACTED] – see attached. We appear to be missing the earlier emails in this chain and their attachments. Could you please produce those two earlier emails in the chain with their attachments and/or identify the Bates numbers if we have somehow overlooked them in the production? Please produce any other variants of this email chain as well (e.g., any continuation of this email chain).

Please keep us posted on [REDACTED] documents as well.

Thank you,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Wednesday, November 30, 2022 1:00 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Beatley-Patterson, Jaina N. (CIV) <Jaina.N.Beatley-Patterson@usdoj.gov>
Cc: Koesters, J.D. <J.D.Koesters@klgates.com>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Subject: [EXTERNAL] RE: Service of CID

Michael: I am sorry for the delay. I was traveling yesterday. Yes, we can confirm receipt of the CID for [REDACTED]

We have been working with the company to obtain [REDACTED] emails and documents and should have volume totals in the next day or so. (The effort was slowed a bit with key people on vacation in the days running up to Thanksgiving.) At that point we can work with you to determine scope of review and should be able to complete that review pretty quickly. And, of course, we appreciate your willingness to work with us on the timing of the testimony.

Bobby.



Robert J. Higdon, Jr.
Partner
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, North Carolina 27560
Phone: 919-314-5610
Fax: 919-831-7040
Bobby.Higdon@klgates.com
www.klgates.com

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Wednesday, November 30, 2022 12:08 PM
To: Beatley-Patterson, Jaina N. (CIV) <Jaina.N.Beatley-Patterson@usdoj.gov>; Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>

Cc: Koesters, J.D. <J.D.Koesters@klgates.com>; Becerra, Nora E. <Nora.Becerra@klgates.com>; Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>
Subject: RE: Service of CID

Bobby:

Could you confirm receipt of this CID? Also, could you provide an update on producing [REDACTED] emails so we can discuss setting a date for [REDACTED] testimony other than the default date specified in the CID?

Thanks,
Michael

From: Beatley-Patterson, Jaina N. (CIV) <Jaina.N.Beatley-Patterson@usdoj.gov>
Sent: Tuesday, November 29, 2022 9:40 AM
To: Bobby.Higdon@klgates.com
Cc: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; J.D.Koesters@klgates.com; Nora.Becerra@klgates.com; Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>
Subject: Service of CID

Good day Mr. Higdon,

Could you please confirm that you are authorized and willing to accept service of this CID?

Respectfully,

Jaina Beatley-Patterson

Legal Assistant (Leidos)
DOJ Contractor, Civil Division
Commercial Litigation Branch, Fraud Section
Tel: 443-977-9157
Email: Jaina.N.Beatley-Patterson@usdoj.gov

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CIVIL INVESTIGATIVE DEMAND

United States Department of Justice

Washington, D.C. 20530

TO: Sentara Healthcare
6015 Poplar Hall Dr., Ste. 308
Norfolk, VA, 23502-3819

Civil Investigative
Demand No. 23-1222

This Civil Investigative Demand is issued pursuant to the False Claims Act, 31 U.S.C. §§ 3729-3733, in the course of a False Claims Act investigation to determine whether there is or has been a violation of 31 U.S.C. § 3729. The False Claims Act investigation concerns allegations that Sentara Healthcare and/or its subsidiaries knowingly filed false health insurance rate filings in 2018 and 2019 for the Affordable Care Act individual health insurance marketplace in Virginia, thereby causing the submission of false claims for premium tax credits to the United States, in violation of the False Claims Act.

This Demand requires you to provide documents and answers to the attached written interrogatories to the Federal Government. This is the original of the Demand; no copies have been served on other parties. The information and documents provided in response to this Demand may be shared, used, and disclosed as provided by 31 U.S.C. § 3733.

Document Requests:

You are required by this Demand to produce any and all documents in your possession, custody, or control responsive to the document requests set forth in the attachment to this Demand.

You must make this material available to Department of Justice attorneys Michael Hoffman and Justin Lugar, who have been designated as False Claims Act custodians in this case. They may be contacted at michael.a.hoffman@usdoj.gov and justin.lugar@usa.doj.gov, if you have any questions. These documents shall be produced no later than thirty (30) days from the receipt of this Demand to the attention of Mr. Hoffman, at U.S. Department of Justice, Civil Division, 175 N Street NE, Room 10.105, Washington, D.C. 20002, or at another time or location to be mutually agreed upon by you and the False Claims Act custodians. The production of documentary material in response to this Demand must be made under a sworn certificate in the form printed in this Demand.

Written Interrogatories:

You are required by this Demand to answer the attached interrogatories. The answers to interrogatories shall be submitted to Mr. Hoffman no later than twenty (20) days from the receipt of this Demand, at U.S. Department of Justice, Civil Division, 175 N Street NE, Room 10.105

-2-

Washington, D.C. 20002, or at another time or location to be mutually agreed upon by you and the False Claims Act custodians. The interrogatories shall be answered separately and fully in writing under oath and also shall be submitted under a sworn certificate in the form printed in this Demand. If you object to any interrogatory, the reasons for the objection shall be stated with specificity.

Issued at Washington, DC, this 25th day of September, 2023.

JAMIE ANN
YAVELBERG

 Digitally signed by JAMIE ANN
YAVELBERG
Date: 2023.09.25 16:02:15 -04'00'

Jamie Ann Yavelberg
Director
Commercial Litigation Branch

FORM OF CERTIFICATE OF COMPLIANCE¹

I have responsibility for producing the documents requested in Civil Investigative Demand No. 23-1222. I hereby certify that all the materials required by that Civil Investigative Demand which are in the possession, custody or control of the person to whom the Demand is directed have been submitted to a custodian named therein.

If any such material has not been produced because of a lawful objection, the objection to the document request and the reasons for the objection have been stated.

Signature _____

Title _____

SWORN TO before me this _____ day of _____, 2023

NOTARY PUBLIC

¹ In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

FORM OF CERTIFICATE OF COMPLIANCE¹

I have responsibility for answering interrogatory numbers _____ in Civil Investigative Demand No. 23-1222. I hereby certify that all the information required by the Civil Investigative Demand and in the possession, custody, control, or knowledge of the person to whom the Civil Investigative Demand is directed has been submitted. To the extent information has not been furnished, the information is identified and the reasons why the information was not furnished are set forth with particularity. Additionally, if any such information has not been produced because of a lawful objection, the objection to the interrogatory and the reasons for the objection have been stated. I certify under penalty of perjury that the foregoing interrogatory responses are true and correct.

Signature _____

Title _____

SWORN TO before me this _____ day of _____, 2023

NOTARY PUBLIC

¹ In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

VERIFIED RETURN OF SERVICE

I, _____, an employee of the United States working under the direction and supervision of attorney Justin Lugar in connection with a false claims law investigation, hereby certify that at the time of _____, on the _____ day of _____, 2023, I personally served Civil Investigative Demand No. 23-1222 on Sentara Healthcare, by delivering an executed copy of such Demand at:

I declare under penalty of perjury that the foregoing is true and correct. Executed on this _____ day of _____, 2023.

Signature _____

Title _____

ATTACHMENT TO CIVIL INVESTIGATIVE DEMAND NO. 23-1222

A. DEFINITIONS

1. Unless specified otherwise, the terms “Sentara,” “Optima,” “You,” or “Your” mean Sentara Healthcare, with a principal place of business in Norfolk, Virginia, Optima Health, Optima Health Plan, Optima Health Insurance Company, Optima Health Group, Inc., Sentara Health Plans, Inc., any and all predecessors, successors, affiliates, subsidiaries, parent companies, branches, divisions, offices, units, officers, directors, employees, agents, and assigns.

2. Unless otherwise specified, the terms [REDACTED] any and all predecessors, successors, affiliates, subsidiaries, parent companies, branches, divisions, offices, units, officers, directors, employees, agents, and assigns.

3. “2018 Rate Filing” means Optima’s filings to provide health insurance on the individual market in Virginia pursuant to the Affordable Care Act for plan year 2018, including filings with the Virginia Bureau of Insurance.

4. “2019 Rate Filing” means Optima’s filings to provide health insurance on the individual market in Virginia pursuant to the Affordable Care Act for plan year 2019, including filings with the Virginia Bureau of Insurance.

5. “Communication” is used in the broadest sense permitted by Federal Rule of Civil Procedure 26(b), 34(a) and 45(a) and means any transmission or exchange of information orally or in writing.

6. “Document” and “Documents” are used in the broadest sense permitted by Federal Rule of Civil Procedure 26(b), 34(a) and 45(a) and include, but are not limited to, any hard copy or electronically stored information and emails.

7. “Employee” shall mean any person including, but not limited to, an employee, volunteer, independent contractor or agent, all past and present directors, officers, agents, representatives, accountants, advisors, and consultants who acted or purported to act on Your behalf or who performed any service for You under Your name, whether on a full-time, part-time, piece-work, commission or other basis and whether paid or unpaid.

8. “Relating to” and “related to” mean consisting of, concerning, referring to, reflecting, supporting, evidencing, prepared in connection with, used in preparation for, or being in any way legally, logically, or factually connected to the matter discussed.

9. The terms “and” and “or” shall be construed conjunctively or disjunctively so as to make each particular request inclusive rather than exclusive.

10. The terms “any” and “all” shall be construed conjunctively or disjunctively so as to make each particular request inclusive rather than exclusive.

11. The singular and plural forms of any word shall be construed interchangeably so as to bring within the scope of this Demand any document which might otherwise be construed as outside its scope.

B. INSTRUCTIONS

1. *Relevant Time Period:* Unless otherwise stated in any specific request below, the relevant time period for each request is from January 1, 2017 through the date of service of this Civil Investigative Demand.

2. This Demand is continuing in nature. If you become aware of or acquire possession, custody, or control of additional documents that are responsive to this Demand, you shall promptly produce such additional documents.

3. This Demand applies to all documents and information in your possession, custody, or control regardless of their location and regardless of whether such documents or information are held by your current or former employees, including, but not limited to, in-house IT specialists and technicians, IT specialists and technicians to whom digital services have been out-sourced.

4. All documents produced pursuant to this Demand are to be organized in such a manner that all documents relating to a particular request are grouped together and identified as being responsive to that request.

5. If any document which is otherwise responsive to this Demand is not disclosed because of a claim of privilege or other objection, you shall identify such documents on a Privilege Log. The Privilege Log shall be produced in Excel or Word format and include the following information:

- (a) the basis for the assertion of the privilege or objection;
- (b) the type of document (e.g., letter, memorandum, email, etc.)
- (c) the name and title of the author (and if different, the preparer and signatory);
- (d) the name(s) and title(s) of the individual(s) to whom the document was addressed;
- (e) the name(s) and title(s) of the individuals to whom the document or a copy of the document was sent or to whom the document or a copy, or any part thereof, was shown;
- (f) the date of the document;
- (g) number of pages;

- (h) a general description of the subject matter; and
- (i) the Request(s) to which the document is responsive.

6. When a requested document contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible. If a privilege is asserted with regard to a part of the material contained in a document, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a document is redacted or altered in any fashion, identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted document.

7. If any document otherwise responsive to this Demand is not produced because it was lost, destroyed, or discarded:

- (a) identify the document by type, date, and title;
- (b) identify the person who last had custody or control over the document;
- (c) state the date on which the document was destroyed or was discovered to have been lost;
- (d) if the document was destroyed, state why it was destroyed and identify the person(s) who destroyed it;
- (e) if the document was lost, describe the circumstances in which its loss was discovered, state the date that it was last seen or otherwise accounted for, and identify the person(s) who discovered its loss and who last saw or otherwise accounted for it;
- (f) identify all persons who have knowledge pertaining to the destruction or loss of the document, giving a concise but complete statement of the knowledge you claim each such person has;
- (g) identify all persons who have knowledge of the contents of each lost or destroyed document, giving a concise but complete statement of the knowledge you claim each such person has; and
- (h) produce all existing indices, lists, or other documents in your possession, custody, or control that reflect the existence of such lost or destroyed documents, and/or their transfer or destruction.

8. If no documents exist that are responsive to a specific document request, a written statement to that effect shall be provided at the time of production.

9. To the extent that documents responsive to this Demand are in the possession, custody, or control of third parties, this Demand requires a statement to that effect at the time of production, specifically providing the name, address, telephone number and principal contact of the third party, and shall further identify those documents in said third party's possession.

10. Please produce imaged hard copy and electronic documents according to the attached **Specifications for Production of Electronically Stored Information and Digitized Images**.

C. INTERROGATORIES

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

8.

[REDACTED]

9.

[REDACTED]

10.

[REDACTED]

a)

[REDACTED]

b)

[REDACTED]

c)

[REDACTED]

11.

[REDACTED]

12.

[REDACTED]

13.

[REDACTED]

14.

[REDACTED]

a)

[REDACTED]

b)

[REDACTED]

15. [REDACTED]

a) [REDACTED]

b) [REDACTED]

c) [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

D. DOCUMENT REQUESTS

1. All documents identified or relied upon in response to the Interrogatories above, to the extent not already produced.

From: [Pugh, Preston](#)
To: [Hoffman, Michael A. \(CIV\)](#); [Taylor, Laura \(USAVAW\)](#); [Lugar, Justin \(USAVAW\)](#); [Hammer, Caroline \(CIV\)](#)
Cc: [Higdon Jr, Robert J.](#); [Barsky, Troy](#); [Acker, G. Norman](#)
Subject: RE: Sentara & Howard Kern CIDs
Date: Thursday, October 26, 2023 6:49:08 PM

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Michael,

Your statement that Sentara has refused to comply with the Department's fact-finding requests is incorrect. To date, Sentara has been fully cooperative. As noted in our October 13, 2023 letter, Sentara has produced more than 25,000 documents to the Department and made several Sentara employees available for over 40 hours of sworn testimony. As we have discussed, your current requests are duplicative of requests and documents the Department has already requested and received.

Although we hoped you would respond to our concern about the ACA Exchange and the responsibilities assigned to the Virginia Bureau of Insurance as an Effective Rate Review Program, which we are confident will save both Sentara and the Department time and resources, we are nonetheless working to respond to CID 23-1222. We intend to provide answers to the interrogatories and produce responsive documents no later than close of business tomorrow. If that is a problem, please let us know.

Regards,

Preston Pugh

Preston L. Pugh

Pronouns: he/him/his
Crowell & Moring LLP
ppugh@crowell.com
+1.202.624.2669 direct | +1.312.405.4216 mobile

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Sent: Thursday, October 26, 2023 1:24 PM
To: Pugh, Preston <PPugh@crowell.com>; Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; Hammer, Caroline (CIV) <Caroline.Hammer@usdoj.gov>
Cc: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Barsky, Troy <TBarsky@crowell.com>; Acker, G. Norman <Norman.Acker@klgates.com>
Subject: RE: Sentara & Howard Kern CIDs

External Email

Preston:

We received your October 13th letter and look forward to receiving Sentara's answers to the interrogatories and associated responsive documents per CID 23-1222 today. We remain disappointed that Sentara has not agreed to the reasonable requests we made during our October 2nd meet and confer and are considering how best to proceed in light of the lack of agreement on those issues.

[REDACTED]. As you know, however, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. As we explained in our August 1st letter, we intend to complete our ongoing factual investigation and [REDACTED] so that we may make [REDACTED] decision as to Sentara and other defendants, as required by law. Unfortunately, Sentara's refusal to comply with our fact-finding requests will likely delay the completion of our investigation, which we have been working hard to complete expeditiously.

Regards,
Michael

From: Pugh, Preston <PPugh@crowell.com>
Sent: Tuesday, October 24, 2023 5:36 PM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>; Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>
Cc: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Barsky, Troy <TBarsky@crowell.com>; Acker, G. Norman <Norman.Acker@klgates.com>
Subject: [EXTERNAL] RE: Sentara & Howard Kern CIDs
Importance: High

Michael and Laura—

We trust you have had time to review our October 13th letter and to consider Sentara's position. Among the points we made, we requested your response to Sentara's argument regarding the ACA Exchange and the responsibilities assigned to the Virginia Bureau of Insurance as an Effective Rate Review Program. See 10/13/23 Letter, p. 2, attached hereto. As stated in our letter and our June 30th white paper, if the Department believes the rates Sentara proposed were unreasonable, the error lies with the State's review and certification process, not with Optima's actuarial justifications. The ACA accounts for the possibility of material rating misestimates by providing for the payment of rebates; and Optima - like so many other insurers - has paid those rebates pursuant to the terms of the ACA. We believe that fact is a fatal flaw in the Department's case.

Please let us know if you intend to respond to that argument before Sentara spends additional resources. We would like to speak with you by phone this week about obtaining such a response, or meeting with you and your colleagues at CMS. We can be available tomorrow or Thursday.

Thank you.

Preston Pugh

Preston L. Pugh

Pronouns: he/him/his

Crowell & Moring LLP

ppugh@crowell.com

+1.202.624.2669 direct | +1.312.405.4216 mobile

From: Pugh, Preston

Sent: Friday, October 13, 2023 5:26 PM

To: 'Hoffman, Michael A. (CIV)' <Michael.A.Hoffman@usdoj.gov>; Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; Hammer, Caroline (CIV) <Caroline.Hammer@usdoj.gov>

Cc: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>; Barsky, Troy <TBarsky@crowell.com>; Koesters, J.D. <J.D.Koesters@klgates.com>; Acker, G. Norman <Norman.Acker@klgates.com>; Ryland, Barbara <BRyland@crowell.com>; Reuter, Donna <DReuter@crowell.com>

Subject: RE: Sentara & Howard Kern CIDs

Michael, Laura, Justin and Caroline:

Enclosed, please find Sentara's response to your October 2, 2023 email and our call on the same day. We are available next week if you would like to discuss this further.

Thank you.

Preston Pugh

Preston L. Pugh

Pronouns: he/him/his

Crowell & Moring LLP

ppugh@crowell.com

+1.202.624.2669 direct | +1.312.405.4216 mobile

From: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>

Sent: Friday, October 13, 2023 8:22 AM

To: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>

Cc: Koesters, J.D. <J.D.Koesters@klgates.com>; Hammer, Caroline (CIV) <Caroline.Hammer@usdoj.gov>; Lugar, Justin (USAVAW) <Justin.Lugar@usdoj.gov>; Acker, G. Norman <Norman.Acker@klgates.com>; Pugh, Preston <PPugh@crowell.com>; Barsky, Troy <TBarsky@crowell.com>; Ryland, Barbara <BRyland@crowell.com>; Reuter, Donna <DReuter@crowell.com>; Taylor, Laura (USAVAW) <Laura.Taylor@usdoj.gov>
Subject: RE: Sentara & Howard Kern CIDs

External Email

Bobby: We need to bring the issues in my October 2nd email to resolution and think Sentara has had ample time to consider. Please let us know Sentara's position today.

Thank you,
Michael

From: Higdon Jr, Robert J. <Bobby.Higdon@klgates.com>
Sent: Friday, October 06, 2023 10:13 AM
To: Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov>
Cc: Koesters, J.D. <J.D.Koesters@klgates.com>; Hammer, Caroline (CIV) <Caroline.Hammer@usdoj.gov>; Lugar, Justin (USAVAW) <JLugar@usa.doj.gov>; Acker, G. Norman <Norman.Acker@klgates.com>; Pugh, Preston <PPugh@crowell.com>; Barsky, Troy <TBarsky@crowell.com>; Ryland, Barbara <BRyland@crowell.com>; Reuter, Donna <DReuter@crowell.com>; Taylor, Laura (USAVAW) <LTaylor@usa.doj.gov>
Subject: [EXTERNAL] Re: Sentara & Howard Kern CIDs

Michael: Thank you for this summary of our discussion. Since our call on Monday we have continued to review these matters and we have, of course, been in consultation with our client. That review and those consultations are not yet completed. We will need a few more days before we can provide you with an appropriate response.

Bobby Higdon

Sent from my iPhone

On Oct 2, 2023, at 3:56 PM, Hoffman, Michael A. (CIV) <Michael.A.Hoffman@usdoj.gov> wrote:

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Bobby & Team:

Thank you for meeting and conferring with us by phone today. We wanted to follow up regarding certain items we discussed:

1. We look forward to receiving Sentara's responses to the Interrogatories and associated documents for CID 23-1222 –those are due on Oct. 16 (interrogatory responses) and Oct. 26 (documents), though we expect the interrogatory responses to identify the Bates numbers of newly-produced documents, as relevant.
2. We renew our request for Sentara to produce Howard Kern's non-duplicative, responsive custodial documents pursuant to CID 21-337. We would schedule Mr. Kern's testimony in Roanoke to occur within a reasonable time following the completion of Sentara's production of his responsive documents.
 1. We did not discuss specific timing on our call, but propose that Sentara produce Mr. Kern's documents by October 27th and that we schedule Mr. Kern's testimony for the week of December 4th.
3. As referenced in prior correspondence, In light of documents that Sentara has produced since the testimony of Messrs. Michael Dudley and James Juillerat, we propose 1) conducting two hours of on the record CID testimony of Mr. Dudley, which could be by videoconference, provided he is willing to appear voluntarily; and 2) conducting four hours of on the record CID testimony of Mr. Juillerat, which we would be willing to conduct at the USAO's offices in either Charlottesville or Roanoke, VA. We propose November 1, 2, 3, 13, 14, 16, 17, 20, and 21 as potential dates for these witnesses.
 1. The focus of their testimony would be issues raised by the documents produced since May (including documents that either reference Dudley/Juillerat by name or for which they are a custodian), and their implication in light of previously produced documents and testimony. [REDACTED]
[REDACTED]
[REDACTED] but Sentara, of course, may review those document productions to fully understand the issues that are implicated.
4. We hope to avoid the need to take additional testimony of other prior CID witnesses, and have no current plans to do take additional CID testimony of other prior Sentara witnesses, but reserve our rights and understand those witnesses would reserve their rights to object should we seek additional testimony from them.

As discussed, please let us know your clients' position on the issues above by Friday.

Thank you,
Michael

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