

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 30 October 2015**

Case No.: 2010-SOX-00038

In the Matter of:

ANITA JOHNSON, *pro se*,

Complainant,

v.

THE WELLPOINT COMPANIES, INC.,

Respondent.

APPEARANCES: Anita R. Johnson  
*pro se* Complainant

Erin McPhail Wetty  
Christopher F. Robertson  
Attorneys for Respondent

BEFORE: ALAN L. BERGSTROM  
Administrative Law Judge

**DECISION AND ORDER ON REMAND -- DENYING COMPLAINT**

This case arises under Section 806 (the employee protection provision) of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (“SOX”), 18 U.S.C. § 1514A,<sup>1</sup> and its implementing regulations found at 29 C.F.R. Part 1980. Section 806 provides “whistleblower” protection to individual employees of publicly traded companies against discrimination by employers in the terms and conditions of employment because of certain “protected activity” by the employee. Pursuant to 29 C.F.R. §1980.107

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<sup>1</sup> Title VIII of SOX is designated the Corporate and Criminal Fraud Accountability Act of 2002. Section 806, the employee protection provision, protects employees who provide information to a covered employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire, radio, and television fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission, or any provision of federal law relating to fraud against shareholders.

proceedings in this matter are subject to the rules of practice and procedure codified in 29 C.F.R. Part 18, Subpart A.

The Complainant filed this current complaint on January 20, 2009. The complaint was denied by the Regional Administrator, Occupational Safety and Health Administration, Atlanta, Georgia, on May 19, 2010. On June 23, 2010, Complainant filed a request for hearing before an Administrative Law Judge. Respondent filed a Motion to Dismiss Complaint on November 24, 2010 and a Motion for Summary Decision on January 31, 2011. On February 25, 2011, after Complainant had responded to both motions and filed a correction of deficiencies in her pleadings, the Administrative Law Judge issued an Order granting both motions and dismissing the complaint. The Complainant subsequently appealed the Administrative Law Judge's dismissal to the Administrative Review Board (ARB). On February 25, 2013, the ARB issued a Decision and Order vacating the dismissal and remanding the claim to the Administrative Law Judge for formal hearing. The case file was received in this office on March 4, 2013. By Order of July 3, 2013 Respondent's renewed Motion for Summary Decision was denied.

Following a period of contentious discovery, a formal hearing was held on April 28 and 29, 2014, in Savannah, Georgia, with all Parties present and represented by counsel. At the formal hearing, Administrative Law Judge exhibits (ALJX) 1 through 12, Joint Stipulations of Fact (JX 1), eleven oral stipulations, Complainant's exhibits (CX) 1 through 4 and 6 through 34 and Respondent's exhibits (RX) 2 through 69 and 71 through 75 were admitted without objection (TR 6-9, 13, 24-31, 313, 643- 644). Respondent's objection to CX on relevance was sustained (TR 25-27). The Complainant's objections to RX 1 and 5 on relevance were overruled and the exhibits were admitted (TR 29-30). Post-hearing briefs were submitted by the Parties and were considered during deliberations.

### **STATUTORY AND REGULATORY FRAMEWORK**

The evidence of record establishes that the above captioned matter arose from the Parties' actions in Savannah, Georgia, which is within the jurisdictional area of the U.S. Court of Appeals for the Eleventh Circuit. Accordingly, the judicial precedents of the U.S. Court of Appeals for the Eleventh Circuit apply.

SOX, at 18 USC §1514A, provides in pertinent part:

- “(a) .... No company with a class of securities registered under section 12 of the Security Exchange Act of 1934 ... or that is required to file reports under section 15(d) of the Security Exchange Act of 1934 ... or any officer, employee, contractor, subcontractor, or agent of such company may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee –
  - (1) To provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct the employee reasonably believes constitutes a violation of section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by –

- (A) a Federal regulatory or law enforcement agency;
  - (B) any member of Congress or any committee of Congress; or,
  - (C) person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
- (2) To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission or any provision of Federal law relating to fraud against shareholders.”

Implementing federal regulations applicable to the SOX at 29 CFR Part 1980 were revised effective November 3, 2011.<sup>2</sup> These regulations provide, in pertinent part:

§1980.102 Obligations and prohibited acts.

- (a) No covered person may discharge, demote, suspend, threaten, harass or in any other manner retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, any employee with respect to the employee’s compensation, terms, conditions, or privileges of employment because the employee ... has engaged in any of the activities specified in ... this section.
- (b) An employee is protected against retaliation ... by a covered person for any lawful act done by the employee:
  - (1) To provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct the employee reasonably believes constitutes a violation of section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by –
    - (i) a Federal regulatory or law enforcement agency;
    - (ii) any member of Congress or any committee of Congress; or,
    - (iii) person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
  - (2) To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344 or 1348, any rule or regulation of the Securities and Exchange Commission or any provision of Federal law relating to fraud against shareholders.”

§1980.109 Decision and orders of the administrative law judge.

- (a) ... A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

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<sup>2</sup> Fed. Reg., Vol 76, No. 213, 68084-68097 (Nov. 2, 2011)

- (b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

To establish a prima facie case of unlawful retaliation under SOX at the adjudication level, the Complainant must prove by a preponderance of the evidence (1) that she engaged in protected activity, (2) that the employer had knowledge of the protected activity, (3) that she was subjected to an adverse employment action with respect to her compensation, terms, conditions, or privileges of employment, and (4) that the protected activity was a contributing factor in the adverse employment action. *Fordham v. Fannie Mae*, No. 12-061, 2014 WL 5511070 (ARB Oct. 9, 2014) citing *Bechtel v. Administrative Review Board, U.S. Dept. of Labor*, 710 F.3d 443 (2<sup>nd</sup> Cir.2013); *Gale v. U.S. Dept of Labor*, 384 Fed. Appx. 926 (11<sup>th</sup> Cir. 2010) *unpub*; *Stone v. Webster Engineering Corp. v. Herman*, 115 F.3d 1568 (11<sup>th</sup> Cir. 1997) Protected activity is a contributing factor if “the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer’s decision.” 76 FR 68087 (Nov. 3, 2011)<sup>3</sup> “If the employee does not prove one of these elements, the entire complaint fails.” *Coryell v. Arkansas Energy Services, LLC.*, No. 12-033, 2013 WL 1934004, \*3 (ARB Apr. 25, 2013)

If the Complainant proves a prima facie case under SOX when before the Administrative Law Judge, the Respondent will not be held to have violated SOX if it establishes by clear and convincing evidence that the adverse employment action was the result of events and/or decisions independent of the protected activity. “Clear and convincing evidence is ‘evidence indicating that the thing to be proved is highly probable or reasonably certain.’” *Coryell v. Arkansas Energy Services, LLC.*, No. 12-033, 2013 WL 1934004, \*3 (ARB Apr. 25, 2013) quoting *Warren v. Custom Organics*, No. 10-092, 2012 WL 759335, \*5 (ARB Feb. 29, 2012); *Klosterman v. E.J. Davies, Inc.*, No. 12-035, 2013 WL 143761 (ARB Jan. 9, 2013)

### STIPULATIONS OF FACT

The parties have stipulated to, and this Administrative Law Judge finds, the following as fact (JX 1; TR 13-14, 16-24):

1. During employment termination meetings, Respondent gives departing employees a form asking them to report any ethics-related concerns.
2. In May 2007, Complainant received a promotion to Director of Customer Care, reporting to Vice President of Consumer Operations, Jenifer Wade, within WellPoint’s State Sponsored Business (“SSB”) unit. Wade made the decision to promote Complainant to that Director-level position.
3. Complainant was responsible for overseeing facilities in Camarillo, California and Savannah, Georgia and she worked out of the Savannah facility.
4. WellPoint encourages managers to have one-on-one meetings with their associates as part of the manager-associate relationship building process.

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<sup>3</sup> In *Fordham* the majority held that the ALJ erred in considering evidence the Respondent had introduced in support of its contention of legitimate, non-retaliatory reasons for taking the adverse personnel action during the decisional process on whether the complainant had met her burden under SOX of proving ‘contributing factor’ causation. The ARB has elected to readdress this rationale *en banc* in the case of *Powers v. Union Pacific Railroad Co.*, No. 13-034, 2014 WL 5511088 (ARM Oct. 17, 2014)

5. During 2007 and 2008, WellPoint had contracts with California, Colorado, Connecticut, Indiana, Kansas, Massachusetts, Nevada, New Hampshire, New York, Ohio, Texas, Virginia, West Virginia, and Wisconsin (the "State Contracts").
6. Respondent also obtained a contract with South Carolina in 2008.
7. "Performance guarantees" are provisions within a State Contract that establish certain metrics that Respondent must meet and, if Respondent falls below a critical threshold level of those metrics, then it may have to pay performance penalties.
8. Among other things, the State Contracts required Respondent to process in-bound telephone calls, claims (including adjustments), and claims correspondence from Medicaid members and providers.
9. Complainant advised Wade that Cindy Quintana in Camarillo had discovered approximately 8,000+ pieces of correspondence in a file cabinet that had not been logged into the D950 system, counted, nor processed.
10. Complainant admits that none of the 8,000+ pieces of correspondence could have related to the South Carolina contract because Respondent did not assume responsibilities under this contract until the following year.
11. A correspondence action plan was developed to resolve the approximately 8,000+ pieces of correspondence in Camarillo. The correspondence action plan included a communications strategy for key stakeholders.
12. Wade did not conduct any portion of the investigation. Rather Hunt and Human Resources Manager, Marria McGee, conducted the investigation(s) and discussed their findings with Wade after they completed their investigation.
13. Wade communicated her decision to terminate Complainant's employment to Complainant on October 21, 2008.
14. David Mosher and Minga Williams are current employees of Respondent.
15. As of the time of her termination, Complainant's annual salary was \$102,386.47.
16. Complainant filed this SOX complaint on January 20, 2009.
17. Respondent is a publicly traded company that administers health benefit plans and maintains contracts with several states to administer their respective state-sponsored health insurance programs.
18. Section 806, the employee protection provision of the Corporate and Criminal Fraud Accountability Act of 2002, the Sarbanes-Oxley Act of 2002, known as SOX, at 18 U.U. Code, section 1514(a) applies to all times relevant to this complaint.
19. The SOX complaint was denied by the Regional Administrator, Occupational Safety and Health Administration, Atlanta, Georgia, on May 19, 2010.
20. On June 23, 2010, Complainant filed a request for hearing before an Administrative Law Judge.
21. Respondent's specialized state-sponsored SSB unit, business unit, administers plans for members with Medicaid.
22. The D950 system involved use of a computerized program to record and track the processing of individual correspondence in the Respondent's call center from receipt to closed status disposition.
23. The Complainant met by telephone monthly with Jennifer Wade from May 2007 through September 2008 to discuss matters related to Complainant's position as the Director of Customer Care.

24. In June 2008, Respondent's ethics and compliance department received a verbal complaint from J. Hennessey alleging that workers at the Savannah call center had been instructed to prematurely close contact logs before working the underlying correspondence, and a written complaint making similar allegations was received in July 2008.
25. An ethics and compliance investigation of J. Hennessey's complaint was undertaken by Nathan Hunt in August 2008.
26. Both Nathan Hunt and Maria McGee met with Complainant as part of their respective investigations.

## ISSUES

The issues remaining to be resolved are (TR 32-33; ALJ 6):

1. During the monthly telephonic meetings from May 2007 to September 2008, did the Complainant engage in protected activity under SOX by stating to J. Wade –
  - a. During the August/September 2007 telephonic meeting:
    - (i) Over 8,000 pieces of discovered claim correspondence has not been logged into the D950 system;
    - (ii) The D950 system was inadequate to support the required claim correspondence processing needs and required system workarounds and manual intervention which were very time consuming;
    - (iii) The D950 system lacked the ability to generate inventory management reporting that would allow in-house quality assessments
    - (iv) Weekly reporting process was very manual with actual pieces of correspondence being counted;
    - (v) There was no internal quality assessment performed by the Quality team on closed correspondence;
    - (vi) There was no claim correspondence manual, training manual of desk procedure to instruct associates on how to process claim correspondence, training was by word of mouth;
    - (vii) The known limitations of the D950 system did not adequately provide a mechanism for reporting aged claim correspondence inventory thereby misrepresenting the true age of the inventory and the inventory levels for claim correspondence and impedes the timeliness productivity standards that are required per contracts with the States.
  - b. During the October/November 2007 telephonic meeting:
    - (i) It appears that missing feeds for open claims correspondence, reconciliation and resolution requests related to lost medical records and aged suspended claims (black holes) exist due to EDI and/or Source Corp feeds exist and have been known for a while;

- (ii) The lack of internal control / system mechanism that alerts the IT community when incoming feeds fail should be a major concern; and,
    - (iii) “I am wondering about the accuracy of our reporting of claims and claims correspondence (Financial) given the number of transactions that fall into the ‘black holes’ and the timeframe it takes us to find out about these feeds.”
  - c. During the March/April 2008 telephonic conference meeting:
    - (i) We are having a hard time getting with Benefit Administration to update the CPT (medical) codes on the pricing tables in the D950 system;
    - (ii) A lot of the aged correspondence is due to CPT tables not being loaded or loaded incorrectly; and,
    - (iii) These issues are impacting the associates’ productivity timeliness thus impacting the associates’ ability to properly service the providers.
  - d. During the June 2008 telephonic meeting:
    - (i) There are some major feed issues between Source Corp and the D950 system related to the front-end processing of correspondence and sending the file via electronic mail; and,
    - (ii) The limitations of the D950 system in terms of internal controls and reporting really impact our ability to implement more cost savings initiatives.
  - e. During the August 29, 2008 telephonic meeting:
    - (i) Reporting that open/pending correspondence was not being counted in our weekly inventory for internal or external reports and that there was no motive to instruct employees to prematurely close them out.
  - f. During the September 26, 2008 telephonic meeting:
    - (i) The correspondence inventory did not include any open work-in-progress inquires;
    - (ii) The open correspondence in the D950 system was not being counted as part of the weekly inventory;
    - (iii) We only counted the pieces of correspondence that were on the associates’ desk and items that had been logged into the system but not assigned to an agent;
    - (iv) WellPoint was not counting work-in-process correspondence as part of its overall inventory for internal or external reports; and,
    - (v) The Complainant’s performance objectives did not include managing inventory level of open correspondence or the efficiency of the correspondence processing.
2. Did the Complainant engage in protected activity under SOX on August 29, 2008 by stating to investigator Hunt from Respondent’s Ethics and Compliance Division “that the D950 system was inadequate for processing claims correspondence, [that the] reporting

process was manual and very time consuming, and that the limited reporting capabilities inhibited the accurate reporting for external / internal stakeholders as well as for employees' productivity" and that there was not a quality program in place to measure the effectiveness of employees' work.

3. Did the Complainant engage in protected activity under SOX on September 26, 2008 by verbally advising J. Wade that the claims with open correspondence logs were not recorded internally or externally, though WellPoint has a practice to record such correspondence, and that the impact of not reporting such correspondence has an impact on representations that formed a part of WellPoint's liability and financial reporting in compliance with contracts for Medicaid plans and other state-sponsored programs.
4. If the Complainant engaged in protected activity under SOX, was the protected activity a "contributing factor" in the termination of the Complainant's employment on October 21, 2008.
5. If protected activity under SOX was a "contributing factor", has the Respondent established by "clear and convincing evidence" that it terminated the Complainant's employment for reasons unrelated to the protected activity.
6. What relief is appropriate under the facts of this case.

### **POSITION OF THE PARTIES**

#### *Complainant's Position :*

The Complainant submits that she engaged in protected activity during telephone conversations with J. Wade "regarding the processing and deficiencies noted in the D950 Medicaid claim processing system." That included sharing "with her at that time we were not counting [the pending Medicaid claim correspondence that was in the D950 system] and the impact it had on WellPoint financial statements and also what it did from a contractual obligation that WellPoint had with their providers."

The Complainant reports that she was promoted from a position with Respondent's Human Resource Department to the Director of Customer Care in Savannah, Georgia, under the supervision of J. Wade in May 2007 and assumed responsibility for provider dispute resolution (PDR) and claims correspondence from medical providers in August/September 2007 timeframe. She argues that contracts with various State Agencies for processing PDR and claim correspondence, as part of State Sponsored Business (SSB) organizations involved with Medicaid, had performance based requirements that generated payment of specific performance guarantees by Respondent if processing did not meet timeliness requirements of the contracts, thus having an adverse financial impact on Respondent company. She argues that inventory management reports did not include pending PDR and claim correspondence entered into the D950 system. She submits that over 8000 PDRs discovered in Camarillo, California office became a dedicated project that was monitored separately from ongoing PDR and claim

correspondence and that the 8000 PDR and claim correspondence project was completed on schedule by October 19, 2007.

Complainant argues that she proved she engaged in protected activity under SOX by providing specific information to J. Wade during monthly meetings from May 2007 through September 2008, even though J. Wade would not recall any of the specific comments but could recall several aspects of the various conversations. She submits J. Wade is not credible because she would not validate the terms PDR and CMS. She argues that Respondent was aware, through J. Wade, of D950 system deficiencies, system integration issues inhibiting employees from meeting PDR and claim correspondence performance standards of SSB contracts, and the associated higher administrative costs affecting Respondent's revenue stream.

The Complainant submits that the June 20, 2008 letter and verbal complaint to the Ethics and Compliance hotline that Complainant had given instructions to employees to prematurely close contact logs was false and should have been known to be false by the investigators because of the inordinate volume of correspondence pieces alleged over the timeframe and because the complaint involved cases from California and Nevada which were not handled by the Savannah office.

The Complainant argues that based on her conversation with J. Wade on September 26, 2008 regarding open PDR and claim correspondence not being counted in the D950 system or manually to be included in the inventory report, J. Wade informed upper management which assessed the issue and adjusted Respondent's Consumer Business Unit's forecasted financial status for "unfavorable SSB PDRs variance and Bad Debt allowance by \$60.7 M." Complainant submits that this resulted in her employment termination by J. Wade, before the report of investigation by N. Hunt and M. McGee was completed.

Complainant submits that J. Wade terminated her employment "for allegedly instructing subordinates to prematurely close out open pending PDRs/claim correspondence before their resolution" and that "Wade provided ... no evidence to support the termination despite Wade's claims that there was overwhelming evidence" and that the Respondent "had no legitimate reason for its decision to terminate" her employment. She submits that shortly following her termination J. Wade directed her replacement "to add the open pending PDRs/claim correspondence to the weekly inventory report ... [but] had never directed [Complainant] to include the open PDRs/claim correspondence in the D950 system to the weekly inventory report." She argues that other employees who closed out logs without working them in violation of Respondent's policy were not similarly terminated.

*Respondent's Position :*

Respondent's counsel submits that "at no time prior to the [termination] decision being made was there any statements by [the Complainant to J. Wade] along the lines [the Complainant is] claiming. He submits that the Complainant "never raised any issue that there was securities fraud, violations of SOX, or anything along those lines."

Respondent's counsel submits that in June 2008, the Respondent "received multiple complaints that Complainant and [another manager] were engaging in serious misconduct by directing employees to close correspondence files before they were completely worked" in violation of WellPoint's Standards of Ethical Business Conduct and an investigation into the allegations was conducted by N. Hunt and M. McGee. He submits that N. Hunt and M. McGee determined the Complainant improperly directed employees to prematurely close correspondence logs, correspondence logs were prematurely closed, and Complainant treated employees unfairly, including confronting an employee who had made a confidential complaint to the Ethic and Compliance department.

Respondent's counsel argues that Complainant has failed to establish "that her belief that WellPoint was engaging in fraudulent activity was objectively reasonable and because her complaints to Wade did not amount to protected activity ... Second, Complainant did not establish that her alleged protected activity was a contributing factor to her termination." He submits that Respondent has "presented clear and convincing evidence that it would have terminated Complainant regardless of any alleged protected activity." He submits that two managers who discussed processing deficiencies with J. Wade, similar to those alleged by the Complainant as protected activity, were not terminated and that two managers who told employees to prematurely close correspondence, similar to the findings of the Complainant's activities, were terminated similarly to the Complainant. He argues that J. Wade was aware of the D950 deficiencies before the Complainant allegedly brought up the issues beginning 22 months before her termination and that such discussions were not a contributing factor to the Complainant's termination as demonstrated by the passage of time.

Respondent's counsel argues that the evidence establishes that in violation of establish policies, the Complainant, as a supervisor, confronted after the individual had made a confidential report to Respondent's Ethics and Compliance department implicating the Complainant in wrongdoing that led to her termination. He argues that the investigative report by N. Hunt and M. McGee established the Complainant improperly instructed employees to prematurely close correspondence and improperly retaliated against employees who reported the improper instruction to investigators. He submits this is "clear and convincing" evidence that the Complainant's employment was terminated for actions unrelated to any activity protected by SOX. He seeks to have the complaint dismissed with prejudice.

## **SUMMARY OF RELEVANT EVIDENCE**

### *Testimony of Complainant (TR 200 – 305)*

The Complainant testified that she assigned C. Quantana to be the person over Medicaid claim correspondence activity at the Camarillo, CA call center. C. Quantana reported discovering 8,000+ pieces of correspondence in file drawers that had not been logged into the D950 system or assigned to anyone for processing. The Complainant reported sharing the information during the August/September 2007 telephonic meeting with J. Wade and stating that of the 8,000 pieces of correspondence found, 85-90% were from providers in Ohio and Texas. She reported that she had not been trained on the D950 system at that time; but understood from C. Quantana that the

8,000 pieces of correspondence had not been counted, reported, or logged into the D950 system and that the D950 system was inadequate to support claims correspondence processing.

With regard to the October/November telephone meeting with J. Wade, the Complainant testified she reported to J. Wade that the Savannah call center “didn’t have the internal controls that was in the system” and that the CRC (provider relations community) personnel were calling asking for a special project to work on provider claims correspondence submitted that was not being processed. The Complainant also testified she reported concern “about the accuracy of reporting the claims and what was going on from a financial standpoint, because ... this was a liability that WellPoint had to pay these claims and ... a lot of the providers ... were saying that their claims were not being – they had not received payment on these claims.”

With regard to the March/April 2008 telephone meeting with J. Wade, the Complainant testified that she reported “issues with benefit administration and updating the [medical code] tables” that were preventing payment of provider claims on the first pass. She testified that all claims from a West Virginia provider “were all being denied because of one incorrect CPT code” where the provider was coded as an internal medical doctor verses a gynecologist and all his claims submitted were for gynecology services, so the benefit admins group had to update the CPT templet.

With regard to the June 2008 telephonic meeting with J. Wade, the Complainant testified that she talked to J. Wade about productivity concerning SOURCECORP where SOURCECORP would assign a DCN number to its correspondence, scan the correspondence and the submit the correspondence electronically to the Savannah call center for processing, thus bypassing the manual process in Camarillo of assigning a DCN and transmitting to the Savannah call center, thus eliminating a time delay. She reported J. Wade supported the concept, a budget was approved, and she was terminated before the revised process with SOURCECORP could be implemented.

With regard to the August 29, 2008 telephonic meeting with J. Wade, the Complainant testified the call was after N. Hunt had visited the Savannah call center. She testified her understanding that N. Hunt was coming from Human Resources to give training at the Savannah site because of known ethics problems and other issues; but he was also asking questions about correspondence processing so she “came to the conclusion that he was not there for a show-and-tell and that he was there to really handle an investigation. The Complainant testified that she called J. Wade shortly after N. Hunt left and that J. Wade “alluded to the fact that she wasn’t even aware that he was coming down.” She stated reporting to J. Wade “that someone in Savannah had called Carolyn and told Carolyn that, you know, there were allegations out there about us closing out logs prematurely ... [and] it didn’t make sense and I didn’t understand why anyone would make the allegation ... because we were not counting the correspondence that was in the D950 system.” She reported that J. Wade’s “first reaction was that, if Ms. Harper did it, we need to terminate Ms. Harper immediately because Ms. Harper knows better.” She testified that reducing the Savannah call center “inventory level or to reduce the number of correspondence we had and we were working on had nothing to do with what was pending in the D950 system. We were not trained to count anything in the D950 system.”

With regard to the September 26, 2008 telephone meeting with J. Wade, the Complainant testified the “conversation occurred when I had just left Mr. Hunt and it was at that time that I found out that I was implicated in the allegation. Throughout the whole time of his two visits there it was always told that Ms. Harper was the one that the allegation was against. And so, when I heard that I was being implicated in the allegation I was upset, I was angry, and I wanted to talk to Mr. Hunt about it” but he did not have time. She testified that she called J. Wade after N. Hunt left and told her “Hunt is basically telling me that I’m now part of the allegation and that I also instructed an associate to do it. And I told her that it is not true and that ... we had no motive to do that. We weren’t being counted, it didn’t make sense. I also told her about the hostile environment that Mr. Hunt created by saying he wouldn’t allow me to ask him any questions regarding what happened, why it – what was he basing the allegation on.” She reported asking J. Wade to “review the information, because it was hard for me to believe ... that anybody would close out a log without working and that we had instructed them to do that ... I tried to explain why we didn’t have a motive to do it. I also told her at that time too about the cost of containment.” She testified J. Wade “shared with me that she had just gotten a phone call from Mr. Hunt, that he had also told her that he found evidence that I was a participant in the allegation and that he was pursuing down that line ... pursuing the investigation from the Harper perspective as well as from the Johnson perspective.”

With regard to the August 29, 2008 conversation with N. Hunt, the Complainant testified N. Hunt came to the Savannah call center to do a show-and-tell with the associated based on requests made by the Complainant and “asked for an organizational chart ... [and] wanted to know who was doing correspondence in the site.” He asked about the Savannah site, some of the employees and correspondence processing ... I told him ... some of the issues that we were having with correspondence ... some of the D950 system issues [and] how it was inadequate to process correspondence. I told him about the employees ... complaining that they couldn’t meet productivity standards we had given them because of the system not being user-friendly and ... not enabling them to actually do what they needed to do in order to process the correspondence. I told him we had no internal, no quality program whatsoever and that every employee knew that we didn’t have a quality program and they [weren’t] being quality audited ... I basically [told him] at no time we told them to close out any correspondence.” She reported telling N. Hunt “that there was one project that we had going on and maybe someone misunderstood the directions and that ... when we heard about that I had Carolyn to go back and to talk to the associates and to work it out with the associates, to explain it to them ... we had thought it was all just one isolated incident with Ms. Reese.” She testified telling N. Hunt how reporting correspondence was a manual process and “it was very limiting and very cumbersome as to how we actually counted the correspondence and the impact that it had on our stakeholders from a productivity standpoint and that the D950 “system never gave us any kind of mechanism to do reporting.”

The Complainant testified that during the August/September conversation with J. Wade concerning the discovery of the 8,000+ pieces of correspondence in Camarillo, California, “At that point in time I was adding my comments that, in fact, that what we were doing and what we had found was against contractual – was a breach of contract and that the fact that those things was (sic) aging, they were more than 150 days old. ... I told her ... we never counted those documents at all. That’s the time I actually mentioned the fact about it being a fraudulent

activity and how it impacted the stockholders from a SEC standpoint.” She testified “we had no reason to close out, no motive to tell people to close out the correspondence log ... because it doesn’t impact anything. It [has] no impact whatsoever, other than it didn’t impact the reporting, but it also had the shareholders and our contractual obligations.” She testified that after J. Wade told her to fire Ms. Harper, “I quickly said to her the fact that we’re not counting them, that they’re not included in the reports that we’re sending out, that it also has an impact on WellPoint financial statement and the fact the liability that WellPoint had as relates to the correspondence that was in the D950 system that was not being counted anywhere ... I know that no one was adding anything to the numbers because I submitted the numbers, and then I also looked and saw what was being reported [to] upper management and I told her about the impact that it had on the stockholders and on the financial statements.”

The Complainant testified about concerns for the providers involved in the 8,000+ found correspondence “because they do not get – they were not receiving their payment and it also had to be a breach of contract because of the time, because of the age associated with it.” She stated that “it wasn’t until the September meeting and the August meeting that I talked about the stockholders, the impact on stockholders and the impact on the financial statements because of the way they was containing all those claim correspondence that was not being counted.”

The Complainant testified that she was the Human Resource manager for J. Wade as it related to her Columbus, Georgia organization before becoming the Director of the Savannah call center. She stated that during the work in Human resources her conversations with J. Wade were open, frank and with back and forth dialog. She stated she went into “Savannah knowing that there were going to be issues, we just didn’t know the magnitude of it. And, as I found out the magnitude of different issues as it relates to even just the call activity, I felt very uncomfortable in calling Ms. Wade and sharing those issues with her ... [but] my conversations with her during my one-on-one ... were not minimized and I did not hide anything. They were frank, to the point, and I shared everything that I found ... and all my opinions and things that I knew was impacted by my findings ... So I didn’t [necessarily] tell her what the problem was. I also shared with her what I thought the impact of the problem was and then suggested some options of thing we could do to correct the problem, that’s all.”

The Complainant testified that the first visit to Savannah call center by N. Hunt August 29, 2008, was under the pretense of giving an ethics show-and-tell to the employees because of behavior, ethics and compliance issues of which she was aware from her earlier duties in Human Recourses. She stated she did not realize N. Hunt was doing an investigation until he asked about correspondence.

The Complainant testified that she met with N. Hunt on September 25, 2008, after being called by J. Wade when she was supposed to be on vacation. She reported arriving at the office after talking with J. Wade by telephone “from the time that I left my house all the way until I got to the office.” She met with N. Hunt and testified “it was the first and only time that I ever heard that I was even implicated in the allegations as relates to the telling, or instructing, employees to close out logs prematurely.” She reported N. Hunt “was very hostile during that particular meeting. He closed the meeting and immediately he said he had a plane to catch.”

The Complainant testified that the Savannah call center work was around telephone calls, claim processing and correspondence. She reported that “M. Williams was primarily responsible for all telephone activity as relates to the D950 line of business [and that] I supported her in the Savannah site with phone calls in the early mornings until the California line of business came up.” She stated D. Mosher “was responsible for processing all the claims that came in” which had a lot of issues related to the different initial “clean” claims that came in. If there was an issue with a clean claim, the providers would contact their provider relations representative (CRC) who would call her as manager over correspondence. She reported that there were special projects for providers who were not receiving payment for their claim activity. She reported clean claims went to D. Mosher’s shop through SOURCECORP with which there were a lot of problems. A lot of the clean claims did not show up in the database so they did not get paid. A lot of the claims that were paid, were paid erroneously or were inaccurate because of the D950 system or associated processing. She stated the issues with the clean claims caused a lot of provider dispute resolution (PDR) transactions to occur on the back end, which was correspondence. She testified that “the volume of work and the amount of adjustment that resulted from handling the written correspondence dictated I have someone in my shop who knew how to do adjustments” so she “sent two people to California to be trained on doing just adjustments, that was their full-time job.” She reported that “in order for us to adjust those claim(s) we had to use the same D950 system that [the Mosher] team was using, which was very manual, which was very intense, which was very time-consuming.”

The Complainant testified that during her termination meeting she was told she “was being terminated because I was aware of Ms. Harper giving instructions to associates to close out correspondence prematurely.” She reported she asked for tracking numbers of the correspondence involved “because I was shocked by the comments that she was making and the fact that they found so many pieces of correspondence ... that was closed prematurely.” She reported “I could not believe such a thing so I walked away and at that time I also put WellPoint on notice ... that I was going to get an attorney immediately and ... that Carolyn did not tell anybody to close them and I was not aware of her telling anybody.” She reported that once she put WellPoint on notice that she was going to get an attorney, “Ms. Wade escorted me out of the building.” She reported that she and Ms. Harper contacted an attorney within 30 days and he asserted it was a SOX claim.

The Complainant testified “it is my belief that I was terminated because of the protected activity, that my engagement in protected activity with Ms. Wade during the timeframe, and that the fact I was told I was terminated because I was aware of Carolyn Harper Mickle telling people to close out correspondence logs was definitely pre-textual.”

On cross-examination, the Complainant testified the 8,000 pieces of correspondence found in California were found in 2007, were reported to J. Wade, and appropriate actions was taken to address the issue. She later testified that people worked overtime and the issue resolved before the investigation by N. Hunt began.

She reported that N. Hunt’s first visit to Savannah was in the August 13 or 14, 2008 and that she did not know if she was aware at that time if someone had called the WellPoint ethics and compliance section. She testified “I think Mr. Hennessey is what made me aware that he called

ethics and compliance. When I initially called him into the office I did not know he had said that he had actually called” but she heard during the conversation he had gone to ethics and compliance. She testified that when she learned he had gone to ethics and compliance she stopped the conversation. She stated that she was not in meetings with N. Hunt with others present. She stated she believed there were discrepancies in N. Hunt’s notes and what he typed. She agreed that N. Hunt was from WellPoint’s separate department of ethics and compliance, his job was to conduct investigations and that he talked to a number of employees from the organizational list she supplied. She agreed that N. Hunt’s typed notes indicated that she had told certain employees to close correspondence logs, “but his handwritten version doesn’t say that at all.” She stated that she believed N. Hunt misrepresented facts in his report.

Based on the question involving recall of a conversation with an OSHA representative and the Complainant “telling him that the first time you had raised any issue with correspondence not being recorded was at your exit interview, the Complainant testified that she filed a claim with OSHA and spoke with an OSHA representative around June 2010. She reported that she read the OSHA investigator document and “saw a lot of discrepancies there. My mouth flew open when I read the fact that she said that I did not say anything to anybody until I had left or something ... I question the document that’s in the OSHA document.”

The Complainant testified that the correspondence never handled a clean claim and that the problem with coding in the West Virginia doctor case was fixed. She reported that prior to her termination she “was given more budget [through J. Wade] to try to come up with a solution to try to get the correspondence ... to the agents’ hands in a more timely fashion than it was.”

The Complainant testified that she had supported ethics and compliance investigations in the past “and we did notify the person they were being investigated” but could not say when the individuals had been informed, only that they had been informed by the time she was brought into the investigation. She testified that she was not informed she was under investigation by N. Hunt and M. McGee until “on the last day of their visit as they were walking out the door, the last meeting that they had before they had to catch a 2:00 flight ... they notified me that I was part of the investigation.” She reported two meetings with N. Hunt after the August 2008 show-and-tell visit, specifically on September 25 and 26, 2008. During the first meeting she told N. Hunt that she had no knowledge of any allegations that correspondence was being closed prematurely and the next day reported she had talked to J. Hennessey about the allegations because she recalled that conversation overnight. She testified that during the first interview on September 25<sup>th</sup>, she was not aware “of an allegation that logs had been closed prematurely.” She reported recalling after the first interview she had talked to J. Hennessey “about why he was asking people about correspondence ... and I told him, after he told me he was saying that he felt people were coding things out incorrectly, or prematurely ... I went to try to explain the process and he said, I’m really not interested in all of that and I don’t want to hear it because I have already called ethics and compliance; and, I said, well the meeting is over with.” She stated that the meeting with J. Hennessey took place in the conference room for the discussion “based on information that Ms. Harper shared with me from Ms. Sanders ... (and) Ms. M. Reese ... that she might have done something incorrectly in the sense that [J. Hennessey] was asking her questions about correspondence.” She testified that J. Hennessey’s “whole focus in the call

center to support us, was basically on the telephone line of WGS. So I wanted to understand what was his ... purpose, what was he trying to do, ... what was (sic) the questions that he had.”

The Complainant testified that she was unaware N. Hunt had employees in California review the correspondence logs until she got the results after being terminated. She denied saying to N. Hunt at a meeting that it would be fine for him to go through the correspondence log because he wouldn't find any that were closed without being fully worked. She also denied that N. Hunt put a stack of correspondence on the table and said if he went through the stack he wouldn't find one that was not closed without being fully worked. She testified “I did not say that to him because I knew that the fact we didn't have any internal controls in the system, I knew anybody could close out logs regardless, and they could close out for any reason and that everybody – the system was open to the point that even people in California or anybody out here might have closed out a log. So what I had said, what I see in terms of might have been an audit on correspondence logs but they wouldn't find not one that was closed out for any reason ... I did not say he would not find one.” She testified that I knew that the D950 system lacked the internal controls that would inhibit anyone from closing out a log at any point in time.” The Complainant testified that N. Hunt interviewed employees who worked the telephones who were asked to do a special project related to correspondence.

The Complainant testified that she knew T. Hall who was terminated and that she was part of the termination and present in the conference room during part of the termination process but left for other meetings after the Human Resource manager was unreachable. She reported that Ms. Hall was still in the conference room after her two meetings. She stated that it was not correct that Ms. Hall was not allowed to leave the facility for a period of time and that no one restrained her physically.

The Complainant testified that she never processed correspondence and does not know how to use the D950 system. She testified that her knowledge of the functionality of the D950 system is based on what she had heard and that she had never used the D950 system. She testified that the “D950 was the only system that was used for Medicaid processing ... there was other systems that was used for Medicaid claims” not correspondence.

The Complainant testified that she was the head of the Savannah facility for processing correspondence and telephone calls. She stated that from her previous background in Human Resources she understood how terminations are handled and how employees who have gone to Ethics and Compliance should be treated and that retaliating against such employees is improper.

The Complainant testified that when she applied for work with WellPoint she indicated that she had an MBA. She stated that she thought she had the MBA at the time of application but found out later she is one course short of completing the MBA. She reported that she did not receive a diploma for the MBA. She stated that she took accounting class and understands basic accounting and understands that when reserves are created they are only estimates and not exact. She testified that in meetings with J. Wade and N. Hunt she never quantified the financial impact that was going to happen because of the purported failure to report correspondence because “I don't know the value of the claims that was sitting in the D950 database that was not counted. I had no clue what the volume was or the value of that amount. So for me to do an estimation of a

cost standpoint, I had no knowledge of it ... All I know is that, from an accounting standpoint, that claims are a liability and I believe that because the number [of pending claims correspondence] were not being included, then they couldn't have been part of the reserves that was written out there.”

The Complainant testified that the Medicaid claims had a 52% adjudication rate on the first pass through the D950 system and that the correspondence they handled related to denied claims, incorrect payments or lack of processing yet so they are a sub-set of the claims presented for payment. She reported that the DCN number on correspondence only indicates when the document entered into WellPoint it is not a claim number. She stated “My issue is that the pendent work in process correspondence that was in the D950 system was not being reported ... in our weekly reporting process ... it was a work in process ... so it wasn't being counted in the number, in the inventory information I was telling Ms. Wade.” She stated that the work in process had financial impact from the liability perspective even though it is being worked and an ultimate conclusion will be made whether an appropriate adjustment to the claim is warranted. She testified that the D950 did not give reports indicating what correspondence had been logged in, what correspondence was in process, and what correspondence was closed. She stated “from a reporting standpoint, all we did was count what we could actually see, which was the correspondence that came to the center and that was the only thing on this desk that had not been worked and put into the [D950] system ... once correspondence was put into the system and once somebody worked on it, it was pending. That person couldn't count that correspondence. We didn't see that correspondence anymore.” The Complainant testified that the “only things been counted was what was we had received in and not assigned out, or was worked up that had not been put into this”

The Complainant testified that she knew R. Brintner, M. Reese, A. DiPlacito, F. Bates, S. Sanders, C. Arnstein and A. Madubuike from work in the facility. She reported being aware after the fact that each of the individuals had talked to N. Hunt. She stated that she believed they each had a reason to lie to N. Hunt.

The Complainant testified that she had no understanding on how WellPoint calculated their reserves and had not discussed the topic with J. Wade in any discussions with her. She stated that she did not use the term securities fraud with J. Wade but “used the term that stockholders were being impacted and that financial statements were not correct.” She reported not using false claims Act with J. Wade. She stated that she had seen the service contract for South Carolina but did not know how many medical providers were involved in South Carolina but the volume was very light, activity very low, from the July startup to the October termination date.

The Complainant testified that “I knew that the contract had a performance guarantee associate with the work that we performed ... [which] included the phone component and the claims component.” She stated she believed there was a performance guarantee to the correspondence component. She testified that she stated to J. Wade “when the fact that we were not counting the pendent transactions and the impact that it had on the financial statement, and the financial statement was being restated because they're not giving accountability for all the liabilities out there, that's shareholder fraud ... I can't remember the exact words that I said but I told her

about the shareholder being; the fact in the financial statements were not reflecting any reserve for the claims that was in the D950 system.”

The Complainant testified that she was never interviewed by J. Wade as part of the Ethics & Compliance investigation by N. Hunt and M. McGee. She reported that she had not met or spoken with N. Hunt or M. McGee before their investigation.

On re-direct examination, the Complainant testified that she did not realize M. McGee was from the Human Resources division when she came to the Savannah during the investigation. She reported that there was a time limit to perform adjustments for Medicaid claim correspondence from the State of Texas and at one point processing in Camarillo was not timely and “our transaction increased the amount of performance guarantees that we had to pay for the State of Texas because we did not process it timely; and, so it happened on more than one occasion and I ended up doing was putting a process in place where the State of Texas Medicaid claim correspondence, when they came in, that we specially handled them ... and we had one person totally dedicated to handling the State of Texas Medicaid claim correspondence” in order to avoid increasing the amount of money WellPoint had to pay for untimely performance. She testified that based on the events with the State of Texas it was her “belief that every state contract had some sanctions or some penalty associated with processing claims from a timely standpoint” as well as “penalties associated when calls and things were not handled or processed correctly or on a timely basis.” The Complainant testified that she “didn’t see [answering telephones] as the most important part of a state contact. I think paying the providers gets a lot more attention than answering the phone call.”

The Complainant testified that “there was no real tracking process [for correspondence]; we just counted them. There was nowhere to say that [a particular DCN numbered document] was still in-house ... [or it] was a work in progress or that it had been closed, no tracking process at all. All we did was count.” She stated that the number of receipts coming in every day were added to the unassigned file drawer but the drawer inventory count could not tell how many were received that day or tell how many had been processed the day before.

The Complainant testified that it was her belief “that claims are liabilities and that they need to be accounted for ... and I know they were not being accounted for ... nobody even thought about looking at what was pendent in the D950 system until I told Ms. Bowman and others that we had no motives to do it as it was not being counted ... and I restated it again in or around September.”

The Complainant testified that M. Reese came to her and stated that she may have done something wrong based on questions J. Hennessey was asking so she talked to J. Hennessey to try and understand what he was trying to do. She stated that she did not know if J. Hennessey had gone to Ethics & Compliance yet at that time or he was going to go to Ethics & Compliance.

On re-cross examination, the Complainant testified that appropriate action had been taken to clear up the 8,000 pieces of correspondence found in the file cabinet in California. She stated “it is my testimony that the penalties that [was paid to the State of Texas] ... was not talking about initial claims coming from the drawer. We had not processed any initial claims ... we only

handled claim correspondence that had been processed and the provider had sent it back to us for a reason.” She stated that Medicaid claim correspondence sitting in the D950 was not being accounted for in the reserves of the financial statements as a WellPoint liability even though they had a dollar impact associated with them. She testified “I feel that because it was claim correspondence that the liability and the reserves should have been accounted ... [that is] the value of the Medicaid claim correspondence that was sitting in the D950 system or in processing.” She testified that when she talked to J. Wade about uncounted Medicaid claim correspondence she meant “because [claim correspondence] was sitting out there and was not being counted, that it impacted WellPoint’s shareholders” and used words to that effect, including using the word shareholders.

*Testimony of Anne Bowman (TR 41 – 100)*

Ms. Bowman testified that she was a Savannah call center manager from May 2007 through October 2008 and assumed duties as manager for Medicaid claim correspondence when it began arriving in Savannah in January 2008 when it was implemented. There had been a special project that did not have to do with Medicaid claim correspondence arriving in Savannah. There were eight employees in Savannah doing the Medicaid claim correspondence then.

Ms. Bowman testified that a DCN is a document control number that reflected the date a document was received and was placed on a document when the document went through WellPoint’s imaging area and was entered into the D950 system. Medicaid claim correspondence would be received in Savannah for processing with a DCN on the correspondence already. The Savannah associate would record the DCN on the contact log manually so the document would have both a DCN and a contact log number on it. The associate would then look at the correspondence, decide what had to be done, and complete the work.

Ms. Bowman testified that she was trained to count Medicaid claim correspondence by looking “at the amount of work that we received, and the amount of work that remained on agents’ desks that they had not worked yet, and anything that was in the file cabinet drawers, and that was our work and that was how we counted them.”

Ms. Bowman testified that during her first meeting with N. Hunt, she was told he was investigating an allegation that the Complainant had told agents to close out contact logs and wanted to determine if that was a true statement. She reported meeting with N. Hunt three or four times and receiving telephone calls from him at home. She stated in one telephone call at home N. Hunt asked her to pull contact logs for S. Sanders, T. Edwards, A. DiPlacito, A. Madubuike and T. McClure to determine whether or not they had been closed erroneously. She reported that she only found one piece of correspondence out of around fifty that had been closed with no explanation. She stated that she did not share with the Complainant that she was reviewing the contact logs for N. Hunt because she had been told not to do so “because the allegation was that [the Complainant] instructed people to close contact logs prematurely and that the investigation was regarding that and that I was not to share it with anybody.”

Ms. Bowman testified that during the January 2008 to October 21, 2008 there were three projects going on. One was pre-screening where copy people were allowed to open Medicaid claim correspondence and determine what needed to be done but that was stopped after a short period of time because “the correspondence agents felt that the helpers were not doing an adequate job.” The second project was to look at the correspondence and determine whether a previously processed claim had to be adjusted for payment or take money back. The adjusters make the claims adjustments from the correspondence agents’ payment or money back determination. She reported that the third project involved using underutilized morning phone answering people to assist in working on Medicaid claim correspondence to give them busy-work.

Ms. Bowman testified that during her termination interview she was “told that the reason that I was being terminated was that I had failed to check on the status of the investigation, and as a member of management I was required to do that.” She stated that she was working with the Ethics & Compliance department and was aware of the status of the investigation did not feel she had to call them. She reported that she was told during the exit interview that she would be eligible for unemployment insurance even though the termination letter mentions misconduct.

Ms. Bowman testified that as the manager of Medicaid claim correspondence she would talk to field liaisons, called CDRs, between WellPoint and the providers. The CDRs would get information from providers about claims issues and bring the information and issues to her to get those claims put through the system.

Ms. Bowman testified she had advised the Complainant that the reporting of inventory with the D950 system was very manual and time consuming. She stated she recalled complaining about there being no communication between microfilm system and the D950 system; that her people encountered numerous issues doing research on the D950 system; and that sometimes her people would go into their contact logs and find correspondence had been closed by other representatives. She reported that anyone could go into a contact log and close it, or work on it, or put some kind of entry in there and there were a number of reasons why that would occur. She stated that “when an adjustment was requested or information was sent to the cost containment area ... the contact log could be closed” on her end. Ms. Bowman reviewed CX 30 and stated that closing a contact log when overpayment is requested is one of the events which would result in closing a contact log without a final document going to the provider being done by her agents.

Ms. Bowman testified that she told N. Hunt during his investigation that she felt she was being retaliated against because the Complainant ‘had expressed great disappointment in me not being able to get – my words – a handle on this whole correspondence situation. It was bigger than it was represented to be and I know [the Complainant was] disappointed in me and that was expressed. If you’re being excluded from team or staff meetings was one of the ways it manifested.” She reported that from the questions that were being asked by N. Hunt, after her report to him of her audit of contact logs showed only one was closed out without explanation, you could tell that the investigation was moving away from premature closing of Medicaid claim correspondence toward one of trying to find evidence regarding Complainant.

On cross-examination Ms. Bowman testified that she worked at the Savannah call center from 2005 to 2008 and J. Wade was her immediate supervisor from May 2007 to October 2008 and that part of her job was to keep J. Wade informed of what was going on at the call center. She stated that a frequent topic among management members at the Savannah call center and elsewhere were problems and issues a lot of people had with the D950 system; it was a known issue within the organization, and she shared the issues with the Complainant. Ms. Bowman testified she told N. Hunt during his investigation that there were deficiencies with the D950 system and that it was a very manual process.

Ms. Bowman testified that to her knowledge all correspondence at the Savannah call center was processed and “We processed what we got.” She explained that CX 30 was a 2006 e-mail and that she supervised S. Sanders at that time until she was changed to report to C. Harper-Mickle around August 2008. She stated the 2006 e-mail instructed that correspondence tracking was to be left open as long as it took to completely resolve the issue raised by the correspondence. She stated that the 2008 e-mail involving G. Neri was about closing overpayment s only and did not discuss other types of claims or correspondence. She understood that only overpayment claims correspondence could be closed and other types of correspondence could not be closed until resolved.

Ms. Bowman testified that during the investigation she met with N. Hunt several times and M. McGee only once. She stated that she first met N. Hunt around mid-August 2008 when he came to Savannah to conduct interviews. During that visit she told N. Hunt she was very concerned about retaliation from the Complainant. She stated she did not have firsthand knowledge but had heard that certain managers had advised associates to close the contact logs without working them. Later she learned that it had actually happened and the only question was who did it and whether the person assigned to the contact log or somebody else had gained access. She testified that she was called at home while on vacation by both S. Sanders and M. Reese who reported they had received instruction to start closing correspondence and wanted to know if that was the right thing to do. She testified that she responded “no, that’s not what you’re supposed to do.” They also indicated that the issue had been reported to the Ethics & Compliance committee. She testified that she did not report the telephone conversations to the Complainant, J. Wade, Ethics & Compliance, or human resources because she did not have firsthand knowledge of such instruction to clos correspondence and she understood it had already been reported to Ethics & Compliance. Ms. Bowman testified that several days later N. Hunt called her at home and requested she perform an audit of the contact logs. She stated that she looked at the logs for specific associates during a one-week period after the allegations had been made. She reported that the only one of concern which was closed and “there was no way to determine why it was closed” but had been closed without being fully worked. She reported her findings to N. Hunt but did not share the results with her manager, the Complainant, because she was implicated in N. Hunt’s investigation.

Ms. Bowman testified that D. Mosher was a claims manager and T. Contreras was his direct report and neither had any authority over the Savannah call center or her. She stated that she did not know they had performed a separate audit or what their audit found while she was involved with N. Hunt’s investigation. She reported meeting with N. Hunt and M. McGee in mid-September and told them that things had worsened since N. Hunt’s first visit and she was now

being excluded from staff meetings by the Complainant and had been counseled improperly by the Complainant for not following up on a project even though peer managers had worse objective results. She testified that she reported to N. Hunt and M. McGee about a situation involving the Complainant and the termination of T. Hall's employment. She reported to N. Hunt and M. McGee that office morale (agents) had a feeling that anyone could be fired at any minute and she perceived general threats of intimidation or retaliation in the office.

Ms. Bowman testified that during the second meeting with N. Hunt two days later, she reported being contacted by S. Saunders and M. Reese about contact logs being closed improperly. She also told N. Hunt that she learned J. Hennessey had been the employee who called Ethics & Compliance. She stated she may have told N. Hunt that the Complainant was aware that J. Hennessey had been the one to call Ethics & Compliance. She reported to N. Hunt subsequently by telephone in October that she had received the silent treatment from the Complainant and was having only the bare minimum communication with the Complainant. She considered this was a stark change in treatment since she was participating in N. Hunt's investigation.

Ms. Bowman testified that at no time during the investigation did she tell N. Hunt or M. McGee that WellPoint was engaging in fraud, violating securities laws, breached state contracts, or violated the Sarbanes-Oxley Act.

On re-direct examination, Ms. Bowman testified that S. Saunders worked for her as a telephone associate and was transferred from her to C. Harper-Mickles around August 2008. She stated that Savannah began working correspondence in January 2008 and S. Saunders could have transferred to C. Harper-Mickles earlier than August 2008, during a reorganization. She testified that telephone associates were assisting correspondence during overtime and she thought S. Saunders reported to her when S. Saunders called her at home about instructions on closing correspondence. She reported that the calls from S. Saunders and M. Reese at her home surprised her and she was surprised they would have been told to close correspondence because the call center did not do it that way. Ms. Bowman testified that closing logs without working them "happened, and people could go into correspondence log and close it. And, yes, I was aware of it on a global issue, but nothing specific and not at anybody's direction." She stated that the call from S. Saunders and M. Reese about closing logs was just after the fact. She reported there was "a deficiency in the Diamond 950 system that allowed somebody who didn't own that log to be able to make changes to it." She reported that she did not personally know of employees in Savannah closing out logs without working them.

Ms. Bowman testified that as soon as claim correspondence came in the door the DCN number would be logged into the contact log system by having a contact log number assigned so it was visible in the D950 system. She stated that Savannah and California centers processed Medicaid claim correspondence under the Complainant's direction. She stated that it happened that correspondence was closed out without a reason.

Ms. Bowman testified that she felt retaliated against by the Complainant before N. Hunt arrived in Savannah to start his investigation and was related to Complainant's "disappointment in me about the whole correspondence issue" involving processing Medicaid claim correspondence and that the feeling of retaliation continued even after N. Hunt left. She reported the exclusion from

staff meetings was after N. Hunt had begun his investigation. She stated that there were meeting that included the other three managers but not her, though it was possible that those meetings did not involve her department.

On re-cross examination, Ms. Bowman testified that she reported to Mr. Hunt in mid-August that she already knew of the allegations about associates closing out logs improperly because of the telephone calls she had received before she met N. Hunt. She stated it was proper for any employee to take concerns to any member of the management team. She reported that she was aware of one log that had been closed without being formally worked but didn't know who did it or what their motives were. Ms. Bowman testified that the contact log is not used to determine inventory and the managers had not been instructed to use the contact log for inventory count. She was aware that someone from the telephone side of the Savannah call center could be instructed to close correspondence even though someone else may have been assigned to process the correspondence.

On re-direct examination, Ms. Bowman again stated that the telephone calls from S. Saunders and M. Reese were before N. Hunt's August arrival in Savannah and may have been as early as Memorial Day.

*Testimony of Carolyn Harper-Mickle (TR 101 – 161; 189 - 197)*

Ms. Harper-Mickle testified that from May 2007 to October 2008 she was responsible for customer service using a team of D950 system associates who answered telephone and then on August 1, 2008, she also became responsible for a D950 team for Medicaid claim correspondence. She reported that she was trained as a manager for the Medicaid claim correspondence by Ms. Bowman. She stated that she was trained to count and report Medicaid claim correspondence by Ms. Bowman "to manually count ... the hardcopy pieces of claim correspondence that were either in the drawer or on the associates' desk that they had never touched, worked in any way." She reported she and Ms. Bowman interviewed applicants for Medicaid processing positions around October 2007 and the Savannah call center began processing Medicaid claim correspondence in January 2008. She stated that Ms. Bowman was trained on the D950 system and trained her in August 2008. C. Quantana came in from California and trained C. Meadows, who in turn trained the associates who were under Ms. Bowman at the time. S. Saunders worked D950 and WGS telephone calls for Ms. Bowman before coming to her in August 2008. M. Reese came to work for her in August 2008 and also took telephone calls.

Ms. Mickle testified that she first met with N. Hunt in August 2008. The main conversation "what was the atmosphere like in the Savannah office" and about the associates and some of the things that they had reported. We talked about T. McClure who had been falsely reported as by niece. We talked about "lots of little things that were happening in the office with employees; how they ... didn't like the scheduling and how they really just didn't seem to want to work. They just wanted to come in a get a pay check." There was no discussion or allegation about closing items prematurely. She reported the associates at the time as very immature and with poor work ethics.

Ms. Mickle testified that she met with N. Hunt the evening of the September 25, 2008 and discussed M. Reese's report that she had told associates M. Reese "was leaving against her desire." Ms. Mickle reported that she told M. Reese's immediate associates that Ms. Reese was leaving. She stated that at the end of the meeting, N. Hunt stated "some associates have alleged that management have instructed associates to prematurely close out contact logs and you have been implicated" and asked "have you ever instructed anybody to close out logs?" She stated she denied the allegations and had never instructed anyone to close out logs. She stated that she was instructed not to share any information from the meeting with anyone because it was confidential and ongoing. Ms. Mickle reported seeing N. Hunt and M. McGee one subsequent morning when she came to work and that she told them she was available if there were questions. The question they had was where was the hard copy of correspondence kept and the answer was correspondence had been moved into drawers in cabinets in a back room.

Ms. Mickle testified that when N. Hunt was in the office the second time she was called by S. Saunders from home who reported "I just want you to know that there's a rumor going around that [the Complainant] ... told associates to close out logs without working them" and that she did not want to come into the office because there was an investigator there and she "didn't want to get involved with that mess." She stated the following day or so, M. Reese told her J. Hennessey was asking her "questions about what we're closing out and how we're closing them out." She reported asking M. Reese "what are you closing out" and M. Reese replied "well, some of them I'm just closing out." Ms. Mickle testified she corrected M. Reese about the special project work and that the correspondence had to be completely worked and if an adjustment needed to be made and paper would be placed on top of the hard correspondence stating an adjustment was needed and the reason for the adjustment before the file would be given to one of the two adjusters, M. Byrd or G. Neri. She reported that the special project work was to use her morning telephone call employees to assist claim correspondence employees as arranged by the Complainant and A. Bowman. The telephone employees used were to look at the claim correspondence and if it had an adjustment notation paper, they were to "update the comments on the contact log to say that claim has been adjusted and then close the contact log ... if the claim had not been adjusted, they were to return it to me and I will return it to [A. Bowman]." She stated that she then went back and explained the procedure to "every person that was on my team" including T. McClure, F. Bates, D. Jackson, S. Saunders and A. DiPlacito. She testified that the timeframe was June and July 2008 and before M. Reese was approved by the Complainant to work on the special project.

Ms. Mickle examined CX 9 and stated it was unimaginable that they could have closed out 15,000 pieces of claims correspondence from January 2008 to October 2008 because they used the actual correspondence. She reported that for the special project her team was called together at the beginning and given detailed instruction on what they were to do in assisting the claim correspondence teams during the morning telephone period. Everyone was instructed as a group, except for M. Reese, who was not present at the time. The telephone team was never told to close claim correspondence. She denied ever bring someone to the Complainant's office to discuss "ethics and compliance and the closing out of correspondence files prematurely" for two hours. She denied processing correspondence for Nevada or California. She reported that California was not on the D950 system but was on the WGS system.

Ms. Mickle testified that she reported to the Complainant that the D950 system was inadequate to process Medicaid claim correspondence and that there was “no way to check quality on what the associates were doing, nor any way to get out of the system [information] for dealing as far as they worked and what they did not work.” She reported telling the Complainant that there was a lack of internal controls in place to ensure adequate processing of Medicaid claim correspondence and that anyone could close out a log. She reported that most of the claim correspondence received involved provider dispute resolution (PDR).

Ms. Mickle testified that she had worked for WellPoint for over 30 years and was at the Savannah call center from March 2005 to October 2008. Her prior work was at the Columbus, Georgia call center where she was supervisor of ITS claims. At Columbus she worked under J. Wade. She stated that she had been trained on inventory of correspondence by A. Bowman and that “in reporting inventory, only thing we reported was the new correspondence, hard copies that had never been touched ... we never counted the open logs.”

Ms. Mickle testified that her termination was on October 21, 2008. She was out sick that day and saw that J. Wade had called her while she was at the doctor’s office. She reported before she could call J. Wade, D. Andrews had already called and terminated her employment with WellPoint. She stated talking to J. Wade who said she was sorry and that she would try to have the termination date moved on paper to February so she could retain medical benefits and that she could use J. Wade as a reference. She reported D. Andrews gave the reason for termination “that an investigation had revealed that I had instructed associates to close out logs prematurely ... and that was a federal violation ... and that they were terminating me.”

On cross-examination Ms. Mickle testified that the Complainant was her supervisor at the Savannah call center and that the call center was basically one large room where the people on telephones and the people on correspondence worked in cubicles, though there was a break room and conference rooms. She stated that because of the way the D950 system worked, somebody who wasn’t assigned claim correspondence could go on the system and close out somebody else’s correspondence work if they wanted to do so. She reported that the original claims were processed by a separate department and that they processed subsequent claim correspondence where the provider disputes the denial of the original claim or the amount paid on the original claim. She reported that she never processed claim correspondence personally and it would not have been the Complainant’s job to personally process claim correspondence.

Ms. Mickle testified that she received ethics and compliance training at WellPoint , reviewed and understood WellPoint’s ethics and compliance policies, and understood that people could make complaints to the separate Ethics & Compliance. She expected that if a complaint was submitted to Ethics & Compliance and investigation would result. She stated that she did not know who made the call to Ethics & Compliance about closing contact logs prematurely until after she had been terminated.

Ms. Mickle testified that S. Saunders had told her of the rumor someone called Ethics & Compliance. She reported the M. Reese had come to her desk and was confused about closing logs because of questions from J. Hennessey. She stated that M. Reese said she was just closing out some logs and that she went back to M. Reese’s desk and they went through a few claims to

see if they had been processed, which they were. She then instructed M. Reese “to go back through everything on your desk with these instructions that I’m telling you now” in order to correct any improperly closed claim logs.

Ms. Mickle testified that she told the Complainant she had learned that someone had made a complaint to Ethics & Compliance and that J. Hennessey was asking questions about closing logs. She reported that the Complainant talked with J. Hennessey after those two reports. She stated that as a manager she would not talk to a person about going to Ethics & Compliance nor would she go straight to Ethics & Compliance either.

Ms. Mickle testified that she did not personally make any complaints to Ethics & Compliance on anything, including violations of security laws, violations of Sarbanes-Oxley, violations of state contracts, or violations of the False Claims Act. She reported that she did not tell N. Hunt that WellPoint was engaged in fraud but did state to N. Hunt that “we had not instructed associates to close out logs prematurely.”

Ms. Mickle testified that after she was terminated she became aware that an investigation was done where other people looked at the actual contact logs from the Savannah call center. She stated that she “never connected the dots” between M. Reese telling her about contact logs being closed prematurely and N. Hunt’s presence in the Savannah call center. She restated that she could not imagine that the Savannah call center had closed 15,000 pieces of claims correspondence from January 2008 to the date of that report in early 2008. She reported considering a “backlog” to be correspondence that was not completed in the time usually provided to associates to complete the task; for correspondence it was 14 days, so at 15 days the correspondence becomes backlogged. She reported that the number of correspondence in the drawer was counted and reported to the central desk and they knew how much was completed, so efficiencies of the team could be determined.

Ms. Mickle testified that she did not have any conversations with J. Wade during N. Hunt’s investigation; other than on the day she was terminated. She stated that after she was terminated she and the Complainant retained the same attorney and that she reviewed and approved a letter to WellPoint drafted and sent by the attorney to WellPoint. She agreed that the letter did not refer to violations of security [exchange] laws, violations of SOX, or references to fraud or false claims. She stated that the intent of the letter was to get WellPoint to review the investigation and reinstate her and the Complainant to their old jobs. She acknowledged that the written complaint to OSHA written by the attorney only referenced a September 26, 2008 conversation as a basis for the SOX complaint.

On re-direct examination, Ms. Mickle testified that the D950 system lack the ability to put out activity reports and backlog could not be determined until an actual count of correspondence was performed. She reported it was all manually done . When received in the Savannah call center people would have to look at the DCN to determine the date the claim correspondence was received by WellPoint and manually put that date in because the D950 did not even have a field for entering the received date data. Open inquiries were not counted for reports. She reported that from August 1, 2008 to September 2008 they would get “special projects” which were really a large number of claims correspondence from the same provider who would look at claim

submissions and determine that none, or a large number of claims, had not been processed or paid and would request action on a large number of prior claim submissions in bulk. She stated that the D950 was the only system with which her team had to deal.

On re-cross Ms. Mickle agreed that the DCN number was assigned in the mail room, the D950 did not capture a date, and the only way to determine when the correspondence was received by WellPoint was to look at the DCN. The correspondence was received from California and may be a week or two old before it was received in the Savannah call center and given a contact log number in the D950 system and the D950 would think it was received the day the contact log number was entered into the system in Savannah.

On re-direct examination Ms. Mickle testified that once she took over the claim correspondence team, “they wanted to tell me every little problem” they had. She stated that the DCN assigned by SOURCECORP in the mail room would not be in the D950 until logged into the D950 by Savannah associates.

On re-cross examination Ms. Mickle testified that she did not know what higher management looked at to determine dates correspondence was received and had never worked in the finance or audit department of WellPoint. She stated it was well known in Savannah that the D950 had gaps in receipt time and it would not always be easy to connect the dots.

In response to questions from this presiding Judge, Ms. Mickle testified that initially contact log numbers were assigned by the claim correspondence associate assigned the correspondence. Then when the telephone associates were receiving calls from providers and could not find the claim correspondence involved, one associate was assigned to put contact log numbers on the claim correspondence as it came into the Savannah call center.

When recalled, Ms. Mickle testified that training people on Medicaid claim correspondence and the D950 system “was after the January 2008 connection of us doing the correspondence in the Savannah site” and the actual training was short and within three to four days. She stated that she constantly solicited help from C. Meadows to work with an associate when a contact log was found closed without comments and to review the correspondence with the associate and see what happened with it and why it was closed without being totally worked. She stated she chose C. Meadows as her operations expert in the D950 system and assist in D950 training because “Ms. Meadows was very efficient and did her job very well.”

Ms. Mickle testified that she remembered Ms. Meadows complaining to her about associates “having not done all they should have done to complete the contact log ... [when] some provider was calling in.” Her concerns were “associates were just not completing their work as they had been instructed and as she had trained them.” She reported that C. Meadows would assist her in distributing claim correspondence to the associates; that C. Meadows would handle telephone calls from irate providers; and that C. Meadows helped with the complicated claims correspondence when the correspondence could not get processed. She stated that C. Meadows was used to process the claim correspondence from South Carolina because of all the performance guarantees and contractual guidelines that had to be met and we knew C. Meadows would get it done correctly. C. Meadows was doing Medicaid claim correspondence from South

Carolina when that contract first started up and “once the implementation phase had ended, [C. Meadows] was not assigned permanently” to that South Carolina correspondence. She indicated the implementation period for the South Carolina contract was probably 30 to 45 days in the June or July 2008 timeframe.

On cross-examination Ms. Mickle testified that on a routine basis an operations expert would report that they had found a log, or found two logs, that an associate had closed without working the claim correspondence completely. She stated that before A. Bowman came into correspondence she, as the morning manager, would distribute claim correspondence for associates to work. She stated that she believed the South Carolina contract came in July 2008.

*Testimony of Cynthia Meadows (TR 162 – 188)*

Ms. Meadows testified that in 2007 she was a customer service representative for WellPoint and in January 2008 became an operations expert. She reported that she was trained on handling Medicaid claim correspondence by representatives in California and then subsequently she trained associates in the Savannah call center. She stated that as an operations expert she also answered day-to-day questions on Medicaid claim correspondence processing that Savannah associates presented to her. She reported that most of the Medicaid claim correspondence was from providers and required adjustments to be done after extensive research. She reported that she did not hear anyone in management tell associates to close claim correspondence without processing them first and did not hear any such rumor. She reported that claim correspondence was received in the mail and then it would be logged into the D950 system with the DCN or MOH number so it could be tracked. She stated that training an associate in Medicaid claim correspondence processing took less than a day.

Ms. Meadows testified that claim correspondence came into the office and was counted for the number of pieces received that day. Then the correspondence was given to the person to log it into the D950 system so it could be tracked. After that it would be put into the file cabinet where “we would pull it out according to first-in/first-out.” She stated it was not likely that the correspondence was not logged into the D950 when received because the correspondence was counted on receipt and it all had to match up. She reported that if someone closed out a contact log for a piece of correspondence without putting in information into the contact log it would not be possible to tell why that piece of correspondence was closed. She stated that since the contact log entry numbers had to match up with the number of claim correspondence pieces received; two different people were involved – one did the contact log number opening on receipt and another would close the contact log after processing. Ms. Meadows testified that the D950 “went away a long time ago” and she uses the WGS system. She reported that the D950 system was replaced approximately in 2009.

On cross-examination Ms. Meadows testified she has been employed by WellPoint since January 2005 and that she is an operations expert in the Savannah facility. When she was a customer service representative she was not management. When she became an operations expert in January 2008 she managed claim correspondence distributed to agents, trained the agents and also did correspondence processing. Her supervisor was C. Harper (Mickle) in January 2008.

Ms. Meadows testified that the Cost Containment group was a separate group in WellPoint located in California in 2008 and now located in Indiana. She reported that she “loved the [D950] system. It worked for me. I was able to determine a lot of things.” She did not remember ever discussing concerns about the D950 system with either the Complainant or Ms. Mickle. She stated she could not remember any time, between May 2007 to October 2008, when correspondence was not logged at the Savannah center. She reported that correspondence should be fully worked before it was closed and that closing correspondence before it was fully worked was wrong.

Ms. Meadows testified that she never had any conversations with J. Wade and was not present when the Complainant may have had conversations with J. Wade. She stated that she was not interviewed as part of the 2008 investigation in Savannah and that she was not involved with the decision to terminate the Complainant’s employment.

On re-direct examination Ms. Meadows testified that the D950 system was better than the system now in use and that she could tell why a claim was denied on the D950 system. She reported that if a person was new to the D950 system it was difficult but not when you had learned to navigate through it. Training on the D950 system was less than a day and then associates would come to her as operations expert for additional help, as needed. You had to actually put the DCN into an open field in the contact log on the D950. She denied associates complaining to her about inability to meet production standards in terms of D950 system limitations; but people did complain about the D950 system because they did not acquaint themselves with the system. She denied that associates asked for extra training and did not recall working contact logs for associates because of their inability to do so.

Ms. Meadows testified that she received a training manual and paperwork instructions on correspondence processing during her training in California. She reported changing and altering the training manual for use in training associates in the Savannah facility. She stated that in the 2008 timeframe in Savannah, one associate would enter contact log information in the D950 system then the correspondence was passed to another associate to work the correspondence. It was possible that still another associate would close the contact log for the correspondence.

On re-cross examination Ms. Meadows testified that the D950 system had the capacity to add a DCN number. She stated that she worked claim correspondence from South Carolina and was unaware of any issues related to that correspondence. She stated that she thought Cost Containment used the same system in 2008.

*Testimony of Marissa Byrd (TR 315 – 333)*

Ms. Byrd testified that during the November 2007 to October 2008 time period she worked as an adjuster in WellPoint’s Savannah facility. She stated that she trained for one week late October in California with an associate to become an adjuster. She reported that when a provider sent in a PDR, it was usually for reconsideration for payment of a claim or where the provider had made a correction to a claim, such as in the diagnostic code, date of service and place of treatment. In most cases the claim would be adjusted so the provider received a payment. She testified that she was never instructed to close a contact log before adjusting a claim or before completing the

work on correspondence. She stated that she made no entries in the contact log when she would adjust a claim because it was not in her job description; the job was with the correspondence team. She would put comments in the text portion of the claim and not the contact log.

Ms. Byrd testified that after the one week training she began adjusting claims and the trainer monitored her work for about 90 days. She stated the feedback from the trainer was good, though “it was shaky in the beginning because I was still new to it; but, by the time it was all over and I was released, it was fine.” She reported that she did adjustments on a full-time basis and that G. Neri was another person who did adjustments in Savannah. She recalled a period when T. McClure, S. Sanders, D. Jackson and A. DiPlacito from C. Mickle’s team assisted the correspondence team. She stated that those team members would often ask questions about stuff that can be adjusted or not. She denied hearing conversations that the team members were uncomfortable with the activities they were doing or that they had been told to close out correspondence prematurely before it had been worked.

Ms. Byrd testified that associates on the correspondence team were assigned different states and each day the associates would get new work that corresponded to their state. They would go through the correspondence. Some had to go to medical review, some had to go to claims adjustment and some could be immediately done by responding to the provider. In adjusting a claim she would work off the associate’s paperwork, see if the claim could be adjusted or not, made adjustment entries, and put the paperwork in a folder in the out box. In 2007 the correspondence that was being worked was for Wisconsin and was work done during overtime and on weekends as a special project with special training for it.

On cross-examination Ms. Byrd testified that when correspondence is received it was give a document control number (DCN) that stayed with the document. She reported that she became involved as an adjuster after someone in claim correspondence had determined the claim needed adjustment and sent the paperwork to her. She stated that “many (sic) correspondence came in that I didn’t see.” She stated that there is a department that handles overpayment of claims that is handled in California, not in Savannah.

On re-direct examination Ms. Byrd testified that she remembered a time when there was concern about claim correspondence being held open for a long period of time and they received permission from overpayment to close the log when the correspondence was forwarded to their department and they would take it from there. She stated that she was not sure if looking at the contact log in the D950 system would disclose if an adjustment had been made because of the passage of time and now working on a different system. She reported in the D950 system there were many different screens to pull up and they were not linked so information had to be physically input. She reported liking the D950 system and reported “it’s not a system that was more up-to-date. It was more of an old school system for the simple fact it was not internet-based. It was more manual. It wasn’t hyperlinked or anything to that nature. So it never went down, so I thought it was very user-friendly. But a lot of associates did not like it because ... you had to pull up so many different screens just to get to what you actually needed.” She reported she liked that the D950 system lacked a lot of internal controls that would keep people from verifying or changing data.

On re-cross examination Ms. Byrd testified that the D950 system did what it was supposed to do.

On re-direct examination Ms. Byrd testified that the D950 system was very manual and it was easy for an associate to make mistakes. She stated there were times the information in the D950 did not match the paperwork she received in adjustments and she would make the entry accurate.

*Testimony of Jennifer Wade (TR 334 – 461)*

Ms. J. Wade testified that she is currently employed by WellPoint as the Vice President of Operations in Columbus, Georgia, where she has “a multi-functional unit that handles the end-to-end processing for all of the State of Georgia employees ... and account of roughly 550,000 members, as well as direct responsibility for all the health care exchange call centers across WellPoint.” She has been with WellPoint for almost 29 years. During the period from May 2007 to October 2008 she was the Vice President of Consumer Service Operations where she had a team for state-sponsored business (Medicaid), a team for senior business (Medicare), and a team over individual sales. She had approximately 2,200 people on the Medicaid team and reported to G. McCarthy who was the Senior Vice President of Operations. She stated that during 2007 the leadership team within the state-sponsored business team was reviewed and assessed and replaced. She came into the team and was allowed to hire the people who would report directly to her. For the Savannah facility she hired the Complainant for the call center activity, retained M. Williams, and hired D. Mosher to be responsible for all of the original claims activity.

Ms. Wade testified that WellPoint had responded to several request for proposals and sold contract to five states at one time and during the initial implementation of those contracts there were challenges along the way. Perot Systems was contracted to provide the D950 system for that particular book of business and the D950 was not as robust as originally thought. Some backlogs developed on the claims side and the telephone side had unusually high average speeds of answers; so the management team was replaced and she was brought in to clean up and restore thing to our traditional service levels. Perot owned the D950 mainframe processing platform as a hosted system where Perot would do the technical coding with some WellPoint technical access.

Ms. Wade testified that the “D950 was the operating system that handled original claims as well as it contained the benefits or how the claims were adjudicated, also as well as the provider contracts.” She described the Savannah facility as an open format in a rectangular building with “just a sea of cubicles, and then around the walls you would have training rooms, meeting rooms, [and] a break room.” Prior to her arrival, she understood that the Savannah call center was dedicated to telephone calls; though there was also a medical management team there that was not under her direction. She considered correspondence to be an inquiry that could be in written form or a question asked over the telephone.

Ms. Wade testified that the state-sponsored business was the WellPoint internal name for the Medicaid contracts that WellPoint administered for the particular states involved. They were a third-party administrator. The state provided the membership role, the benefit parameters and authority for WellPoint to draw against the state’s bank account to reimburse for payment to providers. WellPoint would adjudicate the claims and make the initial payment to providers and

be reimbursed by the state involved. She reported that Savannah handled telephone and written inquiries from Medicaid members and providers concerning benefits, how a claim is adjudicated or need for prior authorization. They did not handle original claims, which were handled in Camarillo, California. Members may call in about general questions on ID cards and benefits. Providers called to verify membership, requirements for prior authorizations, check claims status, and co-pays. Telephone calls are routed based on the state involved and query posed on the automated answering machine.

Ms. Wade testified that with large customers, like states, it is very common to have minimum performance expectations in the contract. The expectations are typically around claim payments and include claim timeliness and accuracy. On the customer service side it would include speed of answering the call within 30 seconds typically. For the states, performance “guarantees are monitored monthly and then assessed quarterly and then annually is when we would settle up with the state if a penalty was due.” The time to answer a telephone and the length of time a service representative is on the line is tracked by WellPoint.

Ms. Wade testified that annually every employee has to take a web-based course on ethics and compliance training. There is a course for front-line associates and another more detailed course for managers. Concerned employees can go to their direct supervisor, human resources or a “whole separate department of ethics and compliance people” with an 800 number and e-mail address. Complaints can be made anonymously. If an individual violates the ethics policy, usually there’s an investigation. The ramifications of violating the ethics policy depends on the severity of the action and can go from coaching, verbal warning and up to termination.

Ms. Wade testified that when claims correspondence is received in the mailroom it is stamped with a document control number (DCN) containing the Julian date and year received. The DCN is important because timeliness begins when the correspondence hits our building. The mailroom then routes the correspondence to the department that would handle it. With the D950 system, a contact log is initiated for that correspondence and assigned to an associate. The associate then goes into the appropriate screens in the D950 system to resolve the question asked. If the question is simple, such as asking for a new ID card or a provider’s directory, the issue is resolved sending a written response out immediately with first contact with the correspondence. If an investigation is needed, it might go to the medical team for medical issues, or to the adjustment team if underpayment of a claim is involved, or to overpayment recovery team if an overpayment is involved. She stated that claim correspondence is closed out when the issue presented is resolved and a written or verbal response, or a financial response in underpayment adjudication, is sent to the provider involved.

Ms. Wade testified that when claims first come into WellPoint they are auto-adjudicated, also known as “first-pass.” They may be submitted electronically from providers or on paper claims. During auto-adjudication, the system goes through a series of edits and if nothing flags out for further investigation, the auto-adjudication results in a payment being made or a claim denial. Almost half of claims are auto-adjudicated without human interaction. The other half of auto-adjudication claims come out with edits and claims examiners manually adjudicate the claims involved. This first-pass process is in a department separate from the follow-on queries that may

occur after first-pass results are sent out. The Savannah facility did not handle first-pass claim processing.

Ms. Wade testified that a “contact log” is the name that’s provided to the transaction in the D950 system where certain information is input and is a way to capture the flow of claim correspondence item as it is processed. The system will report event status and can tell when a log is created and when it is closed to generate timeliness reports. She stated that some providers had systems that generated not only an initial claim but also a tracer where the providers could track what they thought were outstanding items and query WellPoint on the item for status on a routine basis.

Ms. Wade testified that during the relevant time period there were approximately 35 million members of medical plans being serviced. There were 2 million individuals in the state-sponsored business, Medicaid program, of which approximately 371,000 were serviced through the D950 system. There were several different types of systems used by WellPoint in servicing the different health insurance programs. Most of the 14 states serviced with Blue Cross / Blue Shield had their own legacy systems. The systems used for the various contracts were separate systems, so an issue with D950 did not translate into a company-wide issue.

Ms. Wade testified that “backlog” involves “the certain set of inventory that you are going to be processing all the time ... whether it’s a claim inventory [or] a correspondence inventory ... you know what your receipts are; you know how many days’ worth of work you should have on-hand. If you have more than that, then that’s what’s referred to as a backlog.” The backlog can be used to adjust staffing levels at a processing center or adjust workloads between processing centers, like Camarillo and Savannah. The higher management is “monitoring constantly, where do I have work, where do I not have work, where do I have the right capacity, what’s my quality rates.” She stated the Complainant started work for WellPoint at Blue Cross / Blue Shield Georgia somewhere around 2002 and applied for the job in Savannah when J. Wade posted the job announcement on the company job placement web-site. She reported interviewing the Complainant for the Savannah job. She stated that some reports from the Savannah call center didn’t add up, there were some associate challenges, and turmoil at the site and WellPoint was evaluating whether to close or keep the site open. She reported WellPoint was “looking for someone with a good human resource background, who would understand and help us assess the associates as well as make sure things were handled appropriately” and the Complainant was selected to be the senior leader at the Savannah call center. As senior leader “she was expected to coach, counsel and guide her direct report [managers] ... was responsible for production management, meeting the goals of the team [such as average speed of answer] ... look for process improvements ... [and] make sure that you’re meeting the needs of our customers.” The Complainant’s direct report managers in the Savannah facility were C. Mickle, A. Bowman, T. Harrell and W. Stricker. The Complainant also had direct report managers in the Camarillo facility. At the time, there were about a hundred WellPoint employees in the Savannah facility out of the 40,000 total WellPoint employee number.

Ms. Wade testified that there were regularly scheduled meetings between her and the Complainant. Twice she went to Savannah and a couple of time the Complainant came to

Columbus, Georgia to meet; but most of the meetings were telephonic from August 2007 to October 2008.

Ms. Wade testified that people raised concerns about the D950 system about the lack of automation and function that was on the system. It got the job done; but was not as efficient as some of WellPoint's other systems. It gave a lot of flexibility in loading provider contracts with benefits but that meant it was cumbersome also. D. Mosher, C. Williams and the Complainant all expressed concerns with the D950 system. The Complainant was expected to raise her concerns because WellPoint was always looking for ways to drive efficiency and improve; how to work the process more efficiently or in a quality manner. There were a lot of discussions with the leadership team that contracted with Perot to hold Perot to the contract deliverables. Also comparisons were being done with other systems because the D950 was not a long-time system since the engagement was not what was expected. The D950 system "drove more staff ... and when you'd have more staff that costs money." The D950 system was ultimately replaced but it never failed to work or report inaccurate data. She stated that D. Mosher and C. Williams are still employed by WellPoint.

Ms. Wade testified that there were presentations made to senior leadership comparing the various systems. The D950 system was included as well as the WGS system used in California where the bulk of the 2 million members of state Medicaid programs were serviced. The issues were discussed and "there were definitely well known outcomes of these discussions because we certainly had to prepare a roadmap forward." She stated that in terms of adjudication, the D950 system in Savannah and the WGS system in California did not speak to each other.

Ms. Wade testified that when her team was assembled "they came with the directive ... let's get whatever is backlogged, let's get it identified, let's clear it up, let's move forward." She stated C. Quintana found 8,000 pieces of claims correspondence sitting in California and reported it to the Complainant who reported it to her. She stated that she was not pleased it was there but directed it be added to the inventory and worked, while expecting some to be duplicates of subsequent provider correspondence. Each piece of the 8,000 pieces had to be worked individually and the Complainant was directed to come up with an action plan. The Complainant documented a week-by-week process using overtime and flexibility of the staff for special projects. The Complainant implemented her plan and provided regular updates on the progress including e-mails to other people involved. Ms. Wade stated she kept her superior G. McCarthy and the President of the state-sponsored business, L. Polnar, updated on the progress by regular discussions. She reported she thought that the 8,000 piece claim correspondence issue was resolved in 2007, but some might have bled over into early 2008. She reported that C. Quintana is still employed with WellPoint, now in a management position.

Ms. Wade testified that at no time during the period the 8,000 pieces of claim correspondence was being resolved did the Complainant indicated it manifested some type of fraud on shareholders, mention shareholders, or breaches of state contracts.

Ms. Wade testified that in terms of performance guarantees in state-sponsored contracts, she was concerned about timeliness on the telephones but it's largely processing the original claims. Making decisions on original claims have nothing to do with the call centers. She stated that for

call centers she can pull up a screen remotely and look at how many calls are holding and how long the calls have been on hold. For tracking claim correspondence timeliness, there were written inventories from counting the file cabinets that were shared on a routine basis, reports of closed contact logs, a D950 report, and the ability to see open inquiries. She stated the associates would use their list of open inquiries to know what to do each morning and manage their time and work.

Ms. Wade testified that the system in Columbus, Georgia had imaging processes and electronic queues that permitted SOURCECORP to input to virtual queue, like an electronic in-basket. The D950 system in place in Savannah for about 1-1/2 years earlier was all manual and had no electronic transfer capability. This was all known prior to the Complainant being hired as the manager for Savannah.

Ms. Wade testified that the managers are seeing the work needs of the associates; the directors like the Complainant reviewed the managers' work and saw input reports; and she saw the information and if anything seemed off she would send an e-mail to the appropriate director noting the issue of concern and ask "what was the plan?" She reported there is a weekly "stop light" report dealing with goals – green was tracking toward goal, yellow meant you were getting a little off track, and red meant there were challenges and an action plan was required. She stated the goals were very metric based. She testified that while the Complainant was in Savannah, correspondence was being processed as far as she could tell and there were no reports of claim correspondence not being counted, not being processed, or not being paid.

Ms. Wade testified that Medicaid claims were paid under the stat-sponsored program by accounts set up by the states and that WellPoint was paid for contract services to the states by a totally separate accounting and billing process unrelated to the claims accounts set up by the states. She reported that claim correspondence processing has no direct connection to WellPoint's financial statements. She stated that in the first quarter of 2008 WellPoint paid over 85 million claims worth billions of dollars. Many questions are general questions and are answered without any financial transactions. A smaller subset of inquiries may involve additional payments or are refund requests or overpayments. If 15,000 pieces of correspondence were processed in Savannah in the beginning of 2008, it was a very small number of inquiries and may not even require adjustments, "so it narrows that volume down to where it's not material impact on the financials."

Ms. Wade testified that in late August, during a discussion, the Complainant suggested Ethics & Compliance come to Savannah for some general training and that when N. Hunt first went to Savannah it was for that general training. Up to that point the Complainant had never raise securities fraud occurring, or a SOX violation, or a breach of state contracts, or a fraud on shareholders, or used the word shareholders with her. She stated that when the Complainant informed her Ethics & Compliance was doing an investigation, she instructed the Complainant to just let them come into Savannah, do their job, answer their questions, and cooperate with the investigation. She testified that she had known both C. Mickle and the Complainant for a long time and did not expect Ethics & Compliance to find anything going on in Savannah. She expected Ethics & Compliance to report no problems. She stated that she did not start the investigation, did not met or speak with N. Hunt before the investigation, and did not met him

until the week of the formal hearing in Savannah. She expected managers to cooperate with the investigation and not interfere with the investigation. She reported there would be concern if a manager tried to find out who initiated the investigation because WellPoint's culture prohibits retaliation. It would be a violation of the ethics and compliance policies to approach someone who may have actually reported a violation to Ethics & Compliance.

Ms. Wade testified that in the August timeframe she had a discussion with the Complainant and learned that N. Hunt's visit to Savannah was not just for training but "there were concerns more from how people were being treated in that facility; concerns maybe some allegations of misconduct [favoritism ... typical employee interaction issues]; but not about closing of logs, just general how management was treating associates." She denied the concerns raised to fraud, security fraud, or stockholder fraud. She reported that she learned about the scope of the investigation in a conversation with N. Hunt in September. She was presented a summary of the investigation findings in late September or early October. She testified she was shocked by the findings, questioned N. Hunt about his findings and determined "what couldn't be disputed was there were these logs – they were closed inappropriately." She testified that she intentionally stayed out of the investigation so she could remain objective when the investigation was concluded.

Ms. Wade testified that during the whole August-September time frame, she and the Complainant were copied on e-mails and knew something was going on, but not what was going on. They continued the formal monthly one-on-ones but also talked on a daily and weekly basis. She reported that the Complainant never raised counting correspondence as an issue during those conversations. She reported that there was a point in time N. Hunt informed the Complainant she was a subject of the investigation and the Complainant then called her very upset and denied the allegations stated by N. Hunt. She testified that during the conversation the Complainant did not say she was a whistleblower, or mention concerns of security fraud, or of stockholder fraud; though the statements were more in defense of her actions than someone reporting some other fraud. She testified that she received a memo of the investigation from N. Hunt that referred to a termination of an employee that had been handled inappropriately, general concerns with leadership and management style and judgment, and a lengthy conversation between the Complainant and J. Hennessey, who had made a complaint to Ethics and Compliance. She stated her concerns about the Complainant approaching the person who had made the report to Ethics and Compliance that caused the investigation.

Ms. Wade testified that at no time prior to receiving the report of investigation findings from N. Hunt had the Complainant indicated to her WellPoint was engaged in securities fraud, shareholder fraud, violations of SOX, breach of state contracts. She testified "Once I looked at the actual documents, the evidence was pretty overwhelming. And any of the single incidents were certainly causes for concern up to possible termination ... I couldn't argue that these items happened. I also couldn't argue that the logs were closed out inappropriately. And at that point, whether [the Complainant] directly had told somebody to close them or not, she's still responsible for that work center and at that point things are not being handled appropriately on the team. I felt like that was when, you know, the evidence was such that, okay, I accepted their recommendation for termination [of the complainant and] for Ms. Harper [Mickle] as well. The recommendation for Ms. Bowman was that she would be placed on a written warning [but] I felt

very strongly, that with Ms. Bowman there were two associates who had come to her as a leader on that team and said, we do not feel comfortable with what is going on. At that point, as a manager of the organization [Ms. Bowman] should have taken that [information] and moved it forward; and instead she did not. And so I felt like that particular incident ... warranted termination as well.” She reported that as a manager you cannot just ignore reports of concerns involving wrongdoing because that, in essence, condones the behavior.

Ms. Wade testified that the Complainant never came to her to report there were rumors that people in the Savannah office were closing logs prematurely. She testified that prior to her receipt of the results of N. Hunt’s investigation, the Complainant never indicated to her there was fraud going on at WellPoint, or SOX violations, or breaches of State contracts, or securities fraud, or mail fraud, or wire fraud, or False Claims Act issues, or shareholder fraud.

Ms. Wade testified she disagreed that there was no motive to close logs prematurely. She stated that discussions were held on a regular basis concerning the stop light report, inventory measurements and backlogs. Depending on the type of work involved, a 5 to 10 days work supply was expected to be on hand. Inventory was regularly measured and if there was an excessive backlog, action plans were expected where expectations were set and numbers committed. She stated that if people were not meeting those expectations, then we had discussions on how are you going to course correct the problem. So that would be a motive.

Ms. Wade testified that she had a telephonic conversation with N. Hunt and M. McGee about the investigation report she reviewed. She reported her superior in Human Resources, D. Andrews, also reviewed the investigative report and agreed with her recommendations on the actions required based on the investigation. She stated that “all of us were concerned and bothered by [the recommendation to terminate] because we knew the two of the individuals very well, and it’s certainly never easy to terminate somebody you have a long relationship with. None of us were happy about this, but we couldn’t argue with the facts as they were presented.” She testified that she pushed N. Hunt to ensure the results were accurate and her first reaction was to protect the Complainant. When the Complainant was terminated she tried to have human resources shift her termination date so she could meet the retirement age requirements, but was told it could not be done.

Ms. Wade testified that once a decision is made to terminate an employee, there is a checklist that is gone through. It includes human resources and legal drafting talking points; development of a script for a short meeting; a short meeting where she would tell each individual why they were being terminated. She would then leave the room and D. Andrews would come into the room and explain benefits like unemployment and COBRA insurance, and complete paperwork including an exit questionnaire that can be completed there or mailed back later. She reported her termination meeting with the Complainant was very short, about 5 minutes. She stated the Complainant wanted to engage in conversation and see papers; but she stuck to the talking points and the conversation was over, which is WellPoint’s policy. Ms. Wade testified that during the termination meeting the Complainant said she would sue but she did not indicate that fraud was being committed, SOX was violated, or securities laws were being violated. Her part of the termination meeting ended with the Complainant saying she was going to sue.

Ms. Wade testified that subsequent to the Complainant's termination she received a letter from the Complainant's counsel. She immediately sent the letter to the legal team. She reported that the letter did not allege WellPoint had engaged in securities fraud, or SOX violations, or False Claims Act violations, or fraud. She reported that she had never seen a completed exit questionnaire from the Complainant. She testified that the first time she became aware that the Complainant raise concerns about securities fraud and SOX was long after the Complainant had been terminated.

Ms. Wade testified that she also had a short termination meeting with C. Harper by telephone because C. Harper was not at the Savannah office the day she and the Complainant were terminated based on N. Hunt's investigation report. She stated that C. Harper did not raise concerns about securities fraud, SOX violations, mail fraud, wire fraud or the False Claims Act. She reported A. Bowman was also terminated for failure to address subordinate reports of impropriety and requests for help. She stated A. Bowman did not raise issues involving violations of securities law, SOX violations, fraud, False Claims Act issues, or breaches of State contracts at the time of termination.

On cross-examination, Ms. Wade testified inquiries come into WellPoint service centers either verbally or in writing. The written inquiries are correspondence. It was the written correspondence that was the subject of the investigation. She reported the Complainant had some responsibility for direct reports in the Camarillo, California office for telephone representatives and for correspondence representative and their respective leadership teams.

Ms. Wade testified that the Savannah office handled written correspondence, telephonic inquiries, and two people who did adjustments to claims. She stated there was a medical team in Savannah that did not report into their management team and that Savannah did not do initial claims decisions. She reported that customer service representative could not adjust claims because of a preventive measure to protect from one person being able to update records and pay claims, perhaps to themselves.

Ms. Wade testified that various State contracts have provisions for claim timeliness and prompt pay penalties required when a claim is not processed within a certain window of time. Interest is paid for prompt pay penalties. The time period for prompt pay penalties can stop if the provider submits additional new information during adjustments; however, if the error was by WellPoint the time period includes the whole time period. She reported WellPoint has a robust chart that lists performance guarantees and penalties and that is why it is so important to use the original document received date in tracking performance. The minute a document hits our building it is time and date stamped. As long as the original date stamp is used to measure claim timeliness, the correct prompt pay penalty can be made. As long as you are paying penalties correctly, there's nothing wrong with that. The documents that were found in California had original receive dates so if an adjustment was part of that inventory, the correct penalty could be made. She reported her belief that the Texas contract had a prompt pay penalty for adjustments to claims and that a number of States had prompt pay penalties for original claims; but she did not know if there were such penalties for subsequent claim adjustments inquiries for States other than Texas. She testified that formal appeals of a processed claim was handled by another division under L. Polnar and if an appeal was received in written correspondence it was

immediately sent to L. Polnar's team. She reported CX 25-d was an e-mail that referred to the number of appeals that were isolated and sent to L. Polnar's team for processing, which included adjustments where required.

Ms. Wade testified that the D950 system was not robust but it met the requirements for processing Medicaid. She restated that the Medicaid population served was about 371,000 and that staffing was adjusted as appropriate. Every Medicaid member was important.

Ms. Wade testified that the Complainant was hired because of her strong human resources background and that her responsibility included help with direct reports and to help coach and counsel employees. She reported two visits to the Savannah facility while the Complainant was there. The first visit was a general visit. The second visit was to conduct the terminations of employment. She stated that the service team was larger than the claims team and required two directors, one was the Complainant and the other was M. Williams. D. Mosher was responsible for initial claims. She stated that the Complainant and M. Williams had similar roles and she would let them divide up the work with telephone inquiries and written correspondence. She reported that M. Williams' correspondence work was with the WGS system, though M. Williams handled special projects and was present when the D950 system was implemented, though she could not testify with certainty that M. Williams used the D950 system for some written correspondence.

Ms. Wade testified that she had given a presentation on some of the limitations of the D950 system and "was also a participant on several work groups [with] a number of other people on our team." She stated that she was aware that personnel in Savannah had been trained on both the D950 system and the WGS system. She stated she would not be surprised if personnel in the Camarillo office were similarly trained.

Ms. Wade testified that she did not know how long state-sponsored business had been around; but the original WellPoint company was part of Blue Cross of California. She did not know the exact date the Savannah facility was opened. In Savannah the WGS system was also used at times, especially for the California based Medicaid and some other states being on the WGS system.

Ms. Wade testified that the financial impact of written correspondence that used the D950 system in Savannah was very, very small because of the number of claims processed in relation to the number of written correspondence requiring adjustments and the corresponding limited dollar value. She reported in one quarter 84 million claims were processed and that the bulk of the billions in dollars of claim payments are made on the initial claim. Subsequently, a smaller number would have telephonic inquiries or written correspondence inquiries requiring adjustments for underpayment or overpayment, and of those an even smaller number involve state-sponsored Medicaid claims. She commented on C. Harper's testimony that C. Harper doubted that the Savannah facility had processed 15,000 pieces of correspondence from January to her termination in October 2008. She stated that adjustments after initial claims had been paid "may only be paying out an additional \$100.00." She stated that when the billions of dollars paid on millions of claims is compared to \$100.00 being paid on a few thousand adjustments as a result of written correspondence in the D950 system, the financial impact of those D950 written

correspondence inquires is very, very small, which is a possible link that is not material against the total volume. She reported that the financial division use very long algorithms to calculate financial reserves that consider projections of total claims dollars, medical trends, membership expectations and other activities that are all built into the financial formulas.

Ms. Wade testified that she could not testify as to the dates the Complainant made contact with J. Hennessey to discuss his questioning of Savannah workers on processing written correspondence. She testified that the first she learned of the Complainant confronting J. Hennessey was when the investigation report was presented to her and “it was less about a time frame but more the fact [the Complainant] had approached somebody [the Complainant] felt had reported [the Complainant] to ethics and compliance and had questioned him extensively.” She reported that she did not see any documents related to the investigation until the summary memo.

Ms. Wade testified that the Complainant had called her very upset and concerned about allegations the Complainant had directed employees to close logs prematurely. She reported that she did not recall the date the Complainant had called but it was before she had seen any documents related to the investigation that was ongoing at that time.

Ms. Wade testified that she did not recall if she walked with the Complainant following the exit interview; but did recall she had left the room after going through the talking points to termination and that D. Andrews then went over the remaining paperwork with the Complainant.

Ms. Wade testified that when the Complainant began her written correspondence team processing, the written correspondence was shifted from D. Mosher to the Complainant and the written correspondence team transferred to the Complainant at the same time. D. Mosher’s team then concentrated on the remaining initial claims processing. During the replacement of the prior management team, unworked written correspondence was found and there were a number of backlogs which required a strong organization to come in.

Ms. Wade testified that she recalled the Complainant’s statement about deficiencies in the D950 system. She stated that 8,000 pieces of Medicaid correspondence sitting unworked was not appropriate and that was the reason the discovered correspondence was brought into the inventory so it could be addressed appropriately. She stated that under the State contracts there was an obligation to process their work and that was the reason there were performance guarantees as part of the contracts. She testified that she had discussions with her boss before taking the assignment as a director about the challenges of the Savannah work environment, but not specifically about the D950 system. She stated that both she and the Complainant knew they were walking into Savannah site “situation that was kind of a clean-up need.” She stated that she did not know the specifics about why the prior management team in Savannah had been terminated.

Ms. Wade testified that the serviced “States were aware that we had challenges based off of discussions. We had regular meetings held with the state. Sometimes operations was a part of those meetings, and sometimes they were not ... they were aware that [special projects were] going on. We also reported appropriately against any performance guarantees that were required by the contracts. Penalties were paid as far as the terms of the contract ... I am aware ... that

there were payments against performance guarantees ... I was not part of those discussions; however I was aware that the sales team assigned to each state had regular update meetings with the states on performance and any challenges ... that's part of the routine large group administration of a contract." She testified that the first penalty listed on page 3 of CX 25-d had to deal with the timeliness of processing clean, initial, claims using information from the D950. The second entry involving Ohio required an automated letter to be sent to the provider on the status of the claim within 30 days unrelated to the D950 system, the provider portal for Ohio had a different system. She reported that as the backlog of claims from August 2007 were added to the system, the overall timeliness of claim processing deteriorated because of the older claims being added. Penalties would be paid for the quarter and then as the backlog was processed and new work came in the timeliness began to recover. She testified "as we started to recover and move forward, claims were flowing. Providers would come now and say 'could you look at this book of business for me?' [and] that's where the special projects would come through ... if a claim had not been processed and that it was an original claim, then it would have been processed by [D.] Mosher's team. If there was an adjustment ... [there were] two dedicated resources within Savannah that could reprocess if adjustment was needed."

Ms. Wade testified that she did not recall a conversation with the Complainant regarding not counting pendent written correspondence in the D950 system. She testified that she did not remember the Complainant telling her there was no motive for the Complainant or C. Harper to do the acts alleged. She stated that she "received regular weekly reports that represented the breakdown and the aging of open inquiries ... we also had the compliance teams that also did reporting. The compliance team are the ones that actually did our performance guarantee reporting." She stated that reporting came from a variety of sources, not all automated. In the Savannah site there was a manual countdown of cabinets as well as a report from the Complainant. There were reports made off the contact log report that was generated off the D950 system.

Ms. Wade explained the matrix in CX 24, page 3, indicated that the State Sponsored Business (SSB) Division (Medicaid) contain the September 2008 operating gain and forecast variance as well as the quarterly operating gain for the quarter ending in September 2008 and the forecast variance for the quarter. The foot note indicates that SSB September 2008 operating gain "was unfavorable to their plan by \$60,000,000 due to unfavorable PDR reserves and bad debt allowance. So what a reserve is, if you know that you've got something going on and a particular bump in the business, the actuary team and the finance team meet with the business team, and based on everything that is going on, you book a reserve ... and also too, the bad debt allowance means that, when we have something like we've spoken before." Ohio bought benefits and the implementation team, unrelated to the systems, caused the payments to be made a different way, so the sales team went to the site and went through each benefit, an entire audit and retroactive changes to benefits as identified were made, and a report was generated from auditing all the claims that were paid. Then the owner of the division would make a decision "to say WellPoint is not going to recoup those funds, we're going to write those off. So that's where the bad debt allowance was." She reported that the matrix "is a snap shot in time of where [the division owner] is going, trends that he's seeing, things that he had made a course to correct and adjust. Also too, this is for total SSB. The Diamond 950 was not the only system. You have to remember, there [were] 2,000,000 members in the State Sponsored Business book of business.

There was Virginia that was on the CHIP system. You had California on the WGS system, and I think a couple of other states were on the WGS system. Then out of the 2,000,000 members, you had 371,000 on the Diamond 950 system. So [the numbers in the matrix] is not necessarily just Diamond 950.” She stated that on a quarterly basis 85-100 million claims flow through WellPoint’s systems. Provider dispute resolution (PDR) includes issues addressed by provider relations and contract representatives and not just written correspondence at service centers. Sometimes a provider has a specialty code issue. Providers have contract challenges that result in system changes and benefit updates off the provider loaded information. Sometimes there are special projects for providers or just settlements. PDR is not specific to written correspondence. “When you look at the volume of our [written] correspondence against the total exposure, based on my expertise, those dollars would be very small” and would not possibly count in the negative \$60,000,000 operative gain in September 2008.

Ms. Wade testified that “our [written] correspondence was counted. It was reported. We had timeliness reports that were generated off of it. We also had weekly inventory reports. ...[The managers] from Savannah counted [the inventory]. They reported it. We used original receive dates. We processed that correspondence appropriately ... the systematic reports, the open communication logs, counted [the pendent transactions in the D950 system]. I have the inventory reports ... that had the appeals numbers ... it shows the open inquiries.”

Ms. Wade testified that inquiries, both telephonic and written correspondence, are logged into the system by completing a “communications log” which is “like a template that you fill out ... where you document what the question was, what the resolution was, and then, when it’s completed, it’s closed out.” She stated that the Complainant would report the manual count of written correspondence inventory in filing cabinets that were not yet logged into the D950 system. She stated that the written correspondence already logged into the D950 system that remained open were reflected in reports generated by the D950 system.

Ms. Wade testified when she received the investigative report from H. Hunt she inquired about the breakdown of the data, who completed the audit (T. Contreras, a business team analyst who was an expert on processing and the D950 system), and how confident was he in the results of the investigation. She reported remembering D. Mosher being a business analyst on a team other than that of T. Contreras. She stated that she is experienced on several different systems and has a good working knowledge of systems but never used the D950 system or considered herself an expert on the D950 system. She reported that she did not see any of the actual audit results in the investigation but did see the summary of the results. She stated she was unaware until the first day of hearing that A. Bowman had performed an audit.

Ms. Wade testified that pendent written correspondence in the D950 system would have no financial impact “because the financial reports are culled from the claims system ... so, as they flow through the system when that adjustment was completed in the claim system, any financial obligations flow through the system appropriately, and so at that point would have been included in the financial results. The only thing not counting the [written] correspondence, it would probably make it a challenge to staff [the work]. You wouldn’t how many resources you needed. As long as there’s transactions [that] flowed through appropriately, any financial numbers would have been included.” She stated that there would be no financial impact if there was a pendent

written correspondence item that had not gone to an adjuster to be adjusted yet, since “the volume for this particular book of business [of written correspondence] was so minimal; plus not every piece of correspondence would have resulted in a financial transaction. And, even for the small subset that did result in a financial transaction, some would have been positive / some would have been overpayments. It would not have been a material impact.”

On re-direct examination, Ms. Wade testified that in her e-mail of August 3, 2007 in CX 25b, she was referring to the 4<sup>th</sup> quarter of 2006 and the 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2007 ending in June 2007. She stated that the events set forth in the e-mail all occurred before the Complainant was hired for the Savannah site in May 2007. She reported that the penalties referred to in the e-mail involved the interest penalties paid under state contracts because WellPoint held the provider’s money for longer than was expected to be paid.

*December 9, 2010 Deposition Testimony of J. Wade (CX 1)*

On December 9, 2010, Ms. J. Wade testified through deposition that she has been employed by WellPoint or a predecessor within the company operations for 25 years. She is currently the Vice President of Operations / Process Improvements for 14 months and prior to that was the Vice President of Consumer Operations for 2-1/2 years. She began with Blue Cross/Blue Shield of Georgia in 1985 and has progressed from clerical positions in the mail room to claims examiner, customer service associate, team leader, manager, director, regional vice president to current vice president. She obtained an undergraduate degree in Business Administration and Management in 2004 while working for WellPoint.

Ms. Wade testified that during the May 2007 to October 21, 2008 she was Vice President of Operations for the business segment of Consumer Operations. Within the Consumer Operation segment there was a division for “senior operations for state-sponsored business operations” and a division for “individual operations.” Responsibility for claims centers and call centers were within both divisions. Responsibility for enrollment and billing was also in the senior operations for state-sponsored business operations. She stated she had 9 subordinates reporting directly to her and she reported to Senior Vice President G. McCarthy, who reported to the Chief Operations Officer (COO) M. Boxer, who reported to the Chief Executive Officer (CEO) L. Glasscock. The Complainant was one of the individuals who reported directly to her.

Ms. Wade testified that for state-sponsored business operations there were claim centers and call centers. The Complainant was responsible for the customer service center in Savannah, Georgia, with its team and part of a team in Camarillo, California. The Complainant’s responsibility for customer contact included call centers where members or providers would call in and ask questions and/or submit written questions that were received by the team and completed at the center. She testified that she did not meet with the COO or CEO during the timeframe, but did have regular monthly meetings with her immediate supervisor G. McCarthy.

Ms. Wade testified that call center activity typically involves telephonic inquiries or written correspondence from providers and members asking questions. The questions can range from getting a new identification card or a provider directory to how a particular claim was processed. The associates working written correspondence do not typically have claims knowledge

processing. The customer service representatives would have training on how to respond to written inquiries but if a claim needed adjustment it would be sent to the claims-side versus retention in the customer service-side, though simple adjustments have occurred in the service-side. She stated that the Complainant was director for the call centers in Camarillo and Savannah and their shared call-in lines. Customer service representatives, a family of WellPoint job titles, were at both locations and could answer telephone calls or complete written correspondence.

Ms. Wade testified that “written correspondence is a question that a contact center receives from either a provider, a doctor or a hospital, or from a member or somebody acting on their behalf, and it’s a letter or it’s some type of document that comes in that asks the question of the contact center ... The first step is to read the document to discover what the questions is being asked, and then that gives [the associates], through a series of documented standard operating procedures, it gives them a level of steps of what they should do next to resolve the question. Ultimately, they’re going to log the question into the computer system. If they can answer it immediately, then they would document the steps they took and they would close out the inquiry. If they cannot answer the question immediately, then they follow the procedures to route the document wherever they need to go to get resolution and the inquiry remains open until it should be completed and finalized, which means the response goes back to whoever asked the question.” Questions from providers asking about particular claim payment information [are] known as a “tracer.” A response back on a “tracer” would include payment information and if the “tracer” included additional information it could result in an adjustment where the claim has been processed. If the associate processing the written correspondence researches the inquiry and determines that the additional information supports the claim being reprocessed, the document is routed to the claims team where the claim examiner would complete the adjustment activity, and if a remittance is appropriate, the mainframe computer system would create the payment and it would be mailed out of the central mail room. The remittance could be an electronic funds transfer or a physical check. She reported that the Complainant requested that written correspondence team was originally housed in Camarillo, California, but was moved to Savannah at the request of the Complainant.

Ms. Wade testified that the Complainant was the Director of Customer Service with responsibility for “oversight of the call centers to make sure that all inquiries, whether written or telephonic, were handled appropriately and processed timely and accurately for our Medicaid customers for the Diamond 950 system and for ... a piece for the call center that was on the WGS system.” Written correspondence handled in the Savannah call center used the D950 system. She stated that she has seen a variety of mainframe computer systems and the D950 is not one of the more robust systems. She testified that she had not personally paid claims on the D950 system so her opinions of the D950 system “is a result of people that reported directly to me ... the feedback that I had from my direct reports and from people in the business area was mixed. There were things about the system that they liked. There were things about the system that they disliked. The tools were not necessarily automated or robust, so sometimes there were needs for manual reporting on the system ... There were challenges with the system ... there were a variety of reasons for the challenges. So the feedback with the system was tempered ... we were a new team on the system and as we gained expertise, there were some things we found out it did better than others, but as a whole, it was not a system that was necessarily held in high

excellence against other systems ... I would have liked to have seen a more robust reporting package, but the functionality, the basic functionality, was there ... it would be difficult to run millions of members' applications through the system; however, we had a smaller concise team on that [D950] system" for the 371,00 member ID card carrying base. She stated that the California state-sponsored system was on the WGS computer system and the other state-sponsored memberships, of approximately 371,000 members, were handled on the D950 system; "within that Diamond 950 system, we used it to process claims and answer inquiries, whether it was telephonic or written ... including 'tracers'" which are typically a request from a provider saying that they had submitted a claim and are curious about whether it has been processed yet. She reported the D950 "was complex just because some of the processes and tracking the correspondence was manual. It did have an inquiry tracking screen that you would populate to capture the inquiry ... that met the needs. The challenge was tracking the volume and inventories within the system more than actual processing the correspondence within the system ... there were numerous system change request for [the D950] system" but could not recall if any were specifically for written correspondence processing and could not recall any budgetary requests for such. She reported that "there were investments in overtime and associate resources for correspondence. There were additional positions added for total customer service, whether it be for telephones or written correspondence, and any system requests were triaged against the volumes of the transactions, and certainly claims and telephones had a much larger volume perspective versus [written] correspondence."

Ms. Wade testified that claims come in on standard claim forms from hospitals and medical provider either electronically through a data exchange or as a document through the mail room. If the document is just a claim form, it is handled through the claim process. If there is writing on the document indicating it is not the first time the claim has come through WellPoint's process, it is handled as written correspondence. She stated that there was a quality control team that reviewed telephone calls and open inquiries from a quality perspective and if they found errors, that would be shared with the direct manager to share with the associate concerned. She managed quality control at a cumulative level with her direct reports, including the Complainant, using the regular monthly quality reports that came out.

Ms. Wade testified that she has found the Ethics & Compliance personnel to be very professional who follow strict protocols. She reported taking the annual ethics training and having limited involvement Ethics & Compliance investigations. For the investigation conducted by N. Hunt and M. McGee, she was provided an overview of how it would be conducted and if she had questions she would go to her Human Resources partner. N. Hunt and M. McGee "conducted the entire investigation and then came back to me with their findings." The investigation involved allegations against the Complainant and C. Harper, though she did not see the actual allegation, which is done to protect the integrity of the person who reported it. She stated that she made the decision to terminate the Complainant based on the results of the investigation. Ms. Wade testified that while she did not see the actual complaint, "the general working knowledge was there was an allegation that the management team, which included [the Complainant] and [C.] Harper, had instructed associates to prematurely close out written correspondence logs before they were finalized ... and there were also a couple of other HR type queries as a part of that investigation ... had something to do with the termination of an associate [T. Hall] ... and then another associate who had sent in a termination letter and how that was

handled within the unit. There were also some allegations of intimidation, retaliation, and favoritism.” She had a conference call with N. Hunt and M. McGee once their investigation was complete where they walked through their findings and made a recommendation. She then discussed the results and recommendations with D. Finkel, who was replacing G. McCarthy during a July to October 2008 time period. She stated that upon N. Hunt’s first visit to Savannah the Complainant called her with concerns about why N. Hunt was present in Savannah “and then later we discovered that there was an actual ethics investigation.” She reported several telephone conversations between she and the Complainant while the investigators were in Savannah.

Ms. Wade testified that the actual investigation was confidential and she was not provided a copy of the investigation. She stated her understanding that six associates had indicated closing correspondence log inappropriately, a subject matter expert audited some logs and about 60 were closed inappropriately. She did not remember any conversation where the Complainant “wanted to preview the output that [N. Hunt] was going to have from a sample standpoint’ of contact log review. She stated that the investigation by N. Hunt was the first investigation by Ethics and Compliance with which she had been involved during her career with WellPoint. Ms. Wade testified “I felt comfortable when the results were put back in front of me that they were accurate results, and they were verbal in nature. We discussed what were the options and we went through ...their recommendations and we went with partial of their recommendations along with an additional step ... An overview conversation was conducted by human resources and they walked me through what would happen as far as like the general procedures of the investigation ... The procedures seemed logical to me and I felt very strongly that we were probably in a good situation to let them come in and investigate and we would be as cooperative as possible.” She testified that “there was a telephone conference call that explained, through the investigation, they quoted the numbers of contact logs that had been closed inappropriately without the work being completed. They also walked through the results of some general overall human resource issues, and based off the results of the investigation, they recommended termination and I support their recommendation.” She explained that N. Hunt and M. McGee recommended termination for the Complainant and C. Harper and a written warning be issued to A. Bowman; but that she felt strongly that A. Bowman should also be terminated because associates had come to her with serious allegations and as a manager she did not do anything with those reported allegations. She denied having any concerns about any kind of violation of security and exchange commission rule violations since the allegations presented were operational in nature and concern matters against WellPoint policy and procedure. She reported never having such allegation made against her management team in her years with WellPoint; “any type of misconduct that I had been associated or had a working knowledge of in the past was at an individual associate level, not the management team level ... there have been times when an associate on my team would be terminated for not doing their job or following policy and procedure.” She testified that “there’s standard operating procedures and work flows out there established, of how to handle the system, and if something is closed inappropriately, it results in an error. So yes, there are expectations out there that if you receive an inquiry and you are supposed to work it completely before closing it out.” She reported quality control comes from the quality control audit team for the call center, quality checks and quality programs within WellPoint’s overall program, a centralized quality reviewer team, certain audit programs such as Member Touchpoint Measures (association measures for Blue Cross/Blue Shield), and certain outside audit reviews. She reported that there were a number of pretty standard tracking metrics

with the operating systems, such as claim timeliness, inventory levels, the average speed of answer that we answer our telephone calls, volume of open inquiries, and the age of those inquiries. She reported that the state-sponsored business metrics were compiled on a weekly basis and included automated reports and manual accounting reports, based on the functionality of the system. She used the weekly metric reports in managing her direct reporting personnel and for reporting to her immediate supervisor, who would discuss “what things were working well, what things needed to progress forward [and] when did we expect to be current on metrics.”

Ms. Wade testified to the state-sponsored business team under her direction of roughly 400-500 people, “As the team was formed, there were a number of well-established backlogs, so when the team was formed I was asked to lead the state-sponsored team, I complied my management team, and as a part of the interview process, we talked about that it was going to be a tough challenge, we had areas that needed cleaned up, and I was looking for a level of expertise that would allow us to develop the action plans and move forward to bring inventories, whether they be call or claim, [into currency] ... There was a large amount of overtime. There was a large amount of focusing on prioritization because we could not do it all at once. But, all in all, the team was able to successfully recover the performance, given the metrics that we were asked to meet.”

Ms. Wade testified that performance guarantees are contractual agreements establishing certain performance metrics. The external party comes to WellPoint and contractual guidelines are established for performance. There’s a warning level if performance is below expectations and a threshold level which will cause WellPoint to pay a financial penalty back to the customer because they failed to meet the contract. She reported that there were performance guarantees for the State-Sponsored Business and each state had their own unique set of performance guarantees. It would not be unusual for an individual state to have as many as five or six performance guarantees within the call and claim production areas. She testified that Texas was the one state to have performance guarantee paid out by WellPoint for State-Sponsored Business.

Ms. Wade testified that she was not familiar with the False Claims Act and that the investigation involving the Savannah call center was the only ethics and compliance investigation she was involved with. She reported that after the investigation was complete and three managers had been terminated, the on-site presence of human resource was increased, the team was reassigned to M. Williams, and management support was increased. She reported effort was made to move inventories forward, better communications with the business side was established, and a communications strategy was in place. M. Williams was on-sight to make sure work flows were appropriate due to the ethics nature of the complaint. Effort was made to make sure everybody understood the work flow for correspondence to make sure items were completed before any closure of inquiries and to make sure associates had the operating procedures and were clear on what they could and could not do. She stated that the reporting protocols were reworked and the reporting team was consolidated under A. Haynie to make reporting more robust.

Ms. Wade testified that the termination of three of the five managers in the Savannah call center was unusual and unfortunate.

Ms. Wade testified recalling a conversation with the Complainant involving the discovery of files in a filing cabinet and how to accommodate that. The result was to have managers do an actual countdown of files in the drawer as a manual accounting process and include those numbers in the weekly operating report. She stated that when the documents were discovered in a file cabinet, they were aged and had not previously counted in the inventory process. The discovered files had to be logged in with their original received date, an action plan had to be developed to deal with the influx of aged cases, and overtime and additional support was worked into the action plan. Once the discovered cases were made part of the inventory, they were expected to be worked in the normal manner. She reported no other discussion about inventory level and elements not being counted.

Ms. Wade testified the Complainant voiced concern about the ongoing investigation several times but was told to cooperate fully with the investigators and let the investigation run its course. She reported saying to the Complainant that when the investigators come back with their results of investigation, we would go from there; meaning she did not expect the investigators to find any foundation for the accusations and that the management team would come out clean.

Ms. Wade testified that when she terminated the Complainant's employment she considered that factor that the results of investigation showed inquiries were closed inappropriately without being worked and the factors around human resource challenges that were discovered through investigation interviews. She reported that she did not see the actual final report because it was part of the confidential files; but she had been walked through the investigation and results of the audit of closed inquiries through a telephone conference call from her office. She reported that after being walked through the investigation, the outcomes of the correspondence audit and results, as well the recommendations from N. Hunt and M. McGee, she gave her approval to terminate the Complainant. She reported the recommendations were to terminate the Complainant and C. Harper and issue a warning to A. Bowman. Ms. Wade testified she felt strongly that employment of all three of the individuals should be terminated.

Ms. Wade testified as a designated agent of Respondent that the Complainant's position involved oversight of the call centers physically located in Savannah, Georgia and Camarillo, California. The position objectives included responsibility for all management issues at the call centers; budgetary functions; responses to management on processes, inventories, and work flows; interactions with customers during on-site visits; and representing WellPoint on various committees or task forces inside WellPoint. She reported one of the selection strong points of the Complainant was her human resources experience that could be relied upon to develop the management team in Savannah since operational expertise could be learned. She stated that from interactions with the Complainant and inventory reporting, it appeared that the results were getting better, though there were concerns about the rate of staff turnover that was occurring. She reported that prior to the Complainant reporting to the Savannah call center, there had been a gap in management positions while WellPoint considered closing the Savannah call center.

Ms. Wade testified that she did not receive a letter from Complainant's counsel following the Complainant's termination; but was given a copy of the letter by D. Andrews. She stated she understood from D. Andrews that the letter had been turned over to the legal department.

Ms. Wade testified that WellPoint formed a task force to determine whether to move to a new computer system or to renew the very expensive D950 system contract. The discussion began around June 2008. Documents were created to compare central facets, the WGS system and D950 system functionally, it was not phrased as deficiencies. The task force comparison of systems included all aspect of operations and was not limited to correspondence; customer service functions were a subset of all categories evaluated. She stated that she was unaware of any WellPoint investigation specifically tied to the accuracy of correspondence reporting and that correspondence reporting does not have any direct ties to WellPoint financial systems. She reported her belief that one CSR employee was disciplined by WellPoint in 2007 to 2008 for performance or conduct violations, though she did not know of the specifics of that case.

Ms. Wade testified that from her operational knowledge, correspondence is tracked from inventory perspectives, but the information that would flow to the financial systems was actual claims processed because that effects monies that go out the door and would affect pricing and operational costs. She stated that she has a general knowledge of what financial reserves are and what they are tied to, but the financial division takes care of that.

*January 26, 2011 Affidavit of J. Wade (CX 27)*

Ms. J. Wade stated that during the period from April 1, 2007 through September 1, 2009 she was the Vice President of Consumer Operations for WellPoint, Inc.. She stated WellPoint provides benefits to over 34 million members across 14 states and that one of the specialized units within WellPoint is the State-Sponsored Business unit (SSB). The SSB unit provides managed care alternatives to members who are part of the Medicaid and Medicare populations.

Ms. Wade stated that in early 2007 she was assigned the Camarillo, California and Savannah, Georgia Call Centers to resolve a large backlog of correspondence that had built up over time. One of the reasons for the backlog was system limitations in the Diamond 950 (D950) which handled correspondence involving 371,000 members. The management teams in the two offices had been terminated because of their inability to manage and report backlog correspondence, among other reasons. She was tasked with assembling new management teams for the two call centers. She interviewed and selected the Complainant for the position of Director of the Savannah Call Center.

Ms. Wade stated that when the Complainant assumed her position in May 2007, she had a one-on-one meeting with the Complainant “to discuss the problems we were inheriting at the Camarillo and Savannah Call Centers, including the known backlog of correspondence ... [the Complainant was charged] with reducing the backlog in a timely and efficient manner and with ensuring that the correspondence was properly worked and resolved.” She reported delivering on March 5, 2008, “a presentation titled ‘SSB Claim System Challenges’ which outlined the challenges WellPoint was facing with the D950 system.”<sup>4</sup>

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<sup>4</sup> The Complainant failed to submit a copy of “Exhibit B” referenced by J. Wade in her affidavit as “a true and correct copy of the slides I used for that presentation area attached as Exhibit B.” RX 31 appears to include the referenced chart, though RX 31 lacks sufficient identifying information.

Ms. Wade stated that WellPoint entered into contracts to administer state Medicaid and Medicare benefits for Indiana, Kansas, Nevada, Ohio, South Carolina, Texas and West Virginia. The contracts were administered through the Camarillo and Savannah call centers. Only the state contract with California “required WellPoint to maintain any sort of productivity or timeliness levels in connection with the processing of Medicaid-related correspondence. All state contracts “contained various types of performance guarantees related to time to answer telephones or pay claims. Only South Carolina had a performance standard regarding correspondence processing timeliness.<sup>5</sup> She reported that Exhibit C demonstrates that WellPoint was well above the South Carolina minimum 85% processing of correspondence within 7 days of receipt requirement and well within the South Carolina correspondence accuracy and resolution range of 89% to 99% for 2009. She stated that no similar chart was maintained for 2008 and that “WellPoint was within the established goals for the South Carolina contract during 2008 as well and it was not required to and did not pay any sanctions to South Carolina during that time. Prior to 2008, WellPoint did not have any performance guarantees relating to the timeliness or accuracy of processing correspondence under the State contracts.” She reported that WellPoint also supported Blue Cross/Blue Shield of South Carolina in its relationship with South Carolina for which WellPoint reported the number of correspondence inquiries closed and the accuracy of the closures during certain time periods.

Ms. Wade stated that she received complaints about the short-comings of the D950 system and the correspondence processing process during bi-weekly staff meetings and regular one-on-one meeting with M. Williams (a Director in Indianapolis, Indiana) and D. Mosher (from the Claims Department in Camarillo, California). The discussions were ongoing for 18 months and included steps to resolve aging inventories and possible system solutions. She reported discussing similar issues with the Complainant during the same time period. She stated M. Williams and D. Mosher are still employed by WellPoint and had not complained of retaliation for discussing correspondence processing deficiencies.

Ms. Wade stated “At no time did [the Complainant] ever tell me that WellPoint or any of its employees were engaging in any fraudulent conduct of any type. Indeed [the Complainant] never indicated or made any statement suggesting that WellPoint was engaging in any conduct that defrauded, deceived, or intentionally misled any of its clients, shareholders, or any other entities or individuals. Had she done so, I would have promptly escalated such an allegation and endured that the Ethics and Compliance Department was aware of it so that it would be timely and appropriately investigated.”

*Testimony of Nathan Hunt (TR 462 – 591; 645 - 648)*

Mr. N. Hunt testified that he has been employed since March 2014 by Koch Industries located in Wichita, Kansas. His prior employer was WellPoint, Inc., for approximately 12 years, starting as an ethics & compliance analyst with the subsidiary of AdminaStar Federal and to ethics & compliance manager at the corporate office of WellPoint in Indianapolis, Indiana. He reported 50% of his duties involved conducting investigations into allegations of violations of WellPoint’s standards of ethical business conduct. He also provided a preventative role through training,

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<sup>5</sup> The Complainant failed to submit a copy of “Exhibit C” referenced by J. Wade in her affidavit as “a true and correct copy of a chart identifying the performance guarantees for State Contracts ... attached as Exhibit C.”

outreach and communications; and did other projects as assigned. His ethics & compliance group reported through the Vice President of ethics & compliance to the Chief Financial Officer with a dotted line reporting to the Board of Directors. The ethics & compliance group was independent of the operations side of the business. He reported that at the time of the investigation he was in training to become a certified fraud examiner with the Association of Fraud Examiners, a certification he has since achieved. Mr. Hunt testified that he completed well over 100 investigations while with WellPoint. If investigations involved allegations of harassment or discrimination they would be handled by especially trained personnel from human resources or worked in conjunction with those human resource personnel. Fraud by a member or provider would be investigated by another area.

Mr. Hunt testified that WellPoint had written standards of ethical business conduct and that every employee was trained on WellPoint's ethical policies and had to certify that they were aware of those policies and had completed the training. He stated that there were additional expectations for managers on which they were trained. He stated that ethics & compliance concerns could be reported to an 800 number published on every page of WellPoint's written standards of business conduct; reported to a P.O. Box address; reported to any member of ethics & compliance team; and reported to any member of management. Within the standards for ethical business conduct were anti-retaliation provisions because "there was not to be any retaliation tolerated by anyone, management or not, against someone who had reported a concern." He also stated that in the standard paperwork given to departing employees was "a confidential communication form [which] they had the option to complete ... and report anything that was of concern to them."

Mr. Hunt testified that his manager, J. Degnan, approached him to assign concerns/allegations reported to ethics & compliance in August 2008 concerning the Savannah, Georgia area and changed travel arrangements to go to Savannah and conduct the investigation. He reported that he was not originally assigned to staff the investigation; the initial work had been done by a colleague, C. Saunders. C. Saunders had spoken with the individual who made the initial complaint and also later with J. Hennessey when his written allegation was received. He reported that there was an anonymous letter that came in around July 2008 that outlined additional concerns about closing out contact logs. All three of the complaints related in some fashion to contact logs.

Mr. Hunt testified that his first trip to the Savannah facility was August 13 and 14, 2008. He went alone and without notifying the Savannah facility he was coming. The decision to go without prior notice was made in consultation with ethics & compliance leadership and in consideration that there were "multiple allegations coming in that a director was involved in some sort of misconduct." He stated that he arrived and talked with the Complainant about the facility and a place to meet with people. He reported that "it would not be appropriate for me to talk to a person who was involved in the allegation or the subject of the allegation and tell that individual what it was all about." He made arrangement for the Complainant's administrative assistant to have employees meet with him when he was ready, based on a list he comprised. He stated he did not inform Ms. J. Wade of the substance of the allegations when he went to Savannah in August 2008. He reported "one of my roles would be to determine (1) did anything happen, (2) ... was management aware of and possibly involved in the report, and [3] how high

would that go. So I theoretically needed to consider that [J. Wade] or any other level of management could have potentially been involved.”

Mr. Hunt testified that when he arrived at Savannah he met with the Complainant and she reviewed her professional background and the working of associates. She mentioned system problems related to the D950 system. The Complainant was a manager with some responsibility with the D950 system and what its processes did and that she was working on some problems with the system that they worked around. He testified that the Complainant did not connect the D950 system to securities fraud, financial fraud; and did not use the words security fraud, SOX, internal controls or False Claims Act, and that if she had used those words then there are procedures that would have had to be taken in relation to the investigation. Had SOX been used, a special procedure takes the issue directly to the Vice President of ethics & compliance, which was outside the scope of his, N. Hunt’s, responsibility, it would have been investigated at a much higher level than his level of investigation. The issues in this investigation did not go to the Vice President of ethics & compliance.

Mr. Hunt testified that RX 56a was a record of interview with J. Hennessey on August 13, 2008 made from handwritten notes and personal recollection. He stated for each witness he would take notes during the interview and at the end of the investigation in January 2009, write up memos of investigation for each witness. He testified that each memo was accurate for content and accurate reflection of his notes and mental impression. He met with 8 to 10 individuals at that time. He may not have prepared a memo for those employees that didn’t have much in them. He testified that during the August interviews “at least two individuals indicated that they had been advised to close contact logs and that they had recognized that to be something inappropriate and they had been directed to do so ... I know that at least one of them [said the Complainant] was the one who had directed them; but I believe it was both of those individuals. I really can’t be certain.” C. Harper was also implicated.

Mr. Hunt testified that he had a discussion of his preliminary trip to Savannah with his ethics & compliance leadership as he drove back to Atlanta. He also called J. Wade just to advise her that the investigation was still ongoing; it would have been inappropriate to discuss the investigation with her at that point. He stated J. Wade “responded as I would have expected a manager would respond, is that she wasn’t real happy about it, she didn’t want to find out there’s an investigation into an event she didn’t know about. But she also said ... we will go with whatever the data tells us and we will take whatever action the data tells us to take ... She was very clear that she would be very surprised if there was any misconduct would be, I guess, sustained or supported by the results of the investigation.”

Mr. Hunt testified that during his interview, J. Hennessey stated he feared retaliation from the Complainant. He reported that “there had been an incident where Mr. Hennessey had been asked, after leaving his work shift, to return to [the Complainant’s] office, and there was an exchange at that time where Mr. Hennessey was asked [by the Complainant] if he had made an ethics & compliance report.” He stated that on September 25, 2008, he specifically recalls asking the Complainant “if anyone had expressed concerns about correspondence logs being closed inappropriately prior to my site visits” and that she “indicated that no one had ever brought any concerns to her about contact logs” which he considered a denial since Mr.

Hennessey had been confronted by her. He testified that he asked the question in a specific manner because he knew of the J. Hennessey incident from several sources and wanted to see if the Complainant would embrace or deny knowledge of the concern.

Mr. Hunt testified that he and M. McGee had reviewed their preliminary findings with the Vice President of human resources and “we were given a very specific set of instructions to review with members of management when we were leaving the Savannah facility” on September 26, 2008. The meeting with the Complainant became more of an accusatory tone and it was an opportunity to say this is the allegation that has been made against you. The Complainant then “indicated that she had a conversation with Mr. Hennessey and that she had asked him about specifically why he had gone to ethics & compliance.” He reported that the Complainant’s conversation with Mr. Hennessey was not appropriate and that other witnesses had confirmed that the Complainant had at least an approximately one-hour meeting with J. Hennessey. He stated that during this final meeting he informed the Complainant that she was a potential subject of the investigation.

Mr. Hunt testified that there were many allegations made involving the Savannah facility. The termination of T. Hall was quite troubling. She sent a letter that was routed to him in which “detailed some concerning things in her termination, but it would primarily be concerns about ... leadership or management, not so much about the contact log situation. Her allegation was “she had been held, as she described it, basically against her will and that she had not been allowed to leave the facility for a period of about three hours.” He stated M. McGee from human resources in Louisville, Kentucky, was brought in to join the investigation because of T. Hall’s complaint. Part of the investigation in September 2008 was to review and investigate the T. Hall complaint. They also took time to interview people about the contact log situation. He stated “after we came back the second time, there was even more supportive information on [the contact log situation]. And the individuals came back with more specific information about who had asked them and what they had been asked to do and ... whether they felt that was appropriate or not.” He reported two individuals had witnessed A. Bowman being treated differently since the August 2008 investigation session and A. Bowman had made allegations of retaliatory activity. He stated his impression that the fear of retaliation was extraordinary in the Savannah facility on both the August and September 2008 visits. He stated associates, “without prompting from me, they would say that they feared that they would be retaliated against” by the Complainant and “it was a very palpable concern that was ... much higher than normal.”

Mr. Hunt testified that at no point through his final departure from the Savannah facility September 26, 2008, did the Complainant raise issues involving security fraud, SOX violations, breach of state contracts, False Claims Act, or stockholder fraud.

Mr. Hunt testified that sometime after he left Savannah facility in September 2008, he asked J. Wade to assist in finding a subject matter expert in the D950 system to help determine from a sample if those contact logs had been closed inappropriately. He was directed to D. Mosher who directed him to T. Contreras who agreed to do the evaluation. There was a targeted sample of contact logs based on the accounts of individuals interviewed who said the activity was going on in the early morning when C. Harper was the manager on duty or A. Bowman was on detail. She could not handle the couple of thousand she was given at first so the sample was decreased.

About 40% of the first sample had not been worked. Of the 60 in the second set of reports, approximately 40% of the contact logs had been closed in the system without being worked. He stated that “when we did a targeted sample of ... [contact logs] that we believed were closed during that time period in the way we thought that it happened, we had a very high failure rate on those.” He reported that he had asked A. Bowman in that same time frame to give an example of a contact log that had not been worked; but “she really had trouble because these were ones that deliberately had been hidden ... so the sample that she gave me really wasn’t conclusive.”

Mr. Hunt testified he consulted with M. McGee, counsel, the Vice President of human resources, and the Vice President of ethics & compliance as he prepared his report of investigation. He reported that this investigation was “extraordinarily thorough” because J. Wade really held the Complainant in high regard and really wanted to be absolutely certain as to what had happened. He stated “I worked this investigation more thoroughly than I believe any other investigation I have ever worked while employed by WellPoint.” He testified that J. Wade did not direct on how the investigation was to be conducted, people to avoid, or specific people to interview, with the exception of a referral to D. Moser when a systems expert was requested for assistance.

Mr. Hunt testified that RX 13 was the first report referencing the allegations related to the Savannah office received during the summer and fall of 2008. The 1<sup>st</sup> allegation involved inappropriate closing of contact logs and the investigation uncovered that the Complainant and C. Harper had directed that to occur. The 2<sup>nd</sup> allegation involved retaliation against J. Hennessey. The 3<sup>rd</sup> allegation involved retaliation against A. Bowman, who was terminated. The 4<sup>th</sup> allegation refers to a potential SOX violation involving an allegation that “management was directing associates to take calls from the wrong extension which, when he “looked into that what we found was that that was without merit ... but also that there were plenty of good reasons ... of why a call might be taken on a different extension.” The Complainant never identified herself as the person who made the complaint in the 4<sup>th</sup> allegation. The allegations on page 4 involved human resources and were basically handled by M. McGee, though he was present for that portion of the investigation. He stated that as reflected at the end of the report, allegations 1, 2 and 3 warranted a recommendation of termination for the Complainant. He stated “My role is to prepare the recommendation, if that’s appropriate ... and then management has to make the final decision of what should be done, and that can be any corrective action up to and including termination ... it was not my decision, I made the recommendation ... to [J.] Wade” though there may have been others copied on the report. J. Wade was the decision-maker in this instance.

Mr. Hunt testified that he did not have contact or speak with the Complainant after he delivered his investigation report and that at no time prior to delivering the investigation report did the Complainant raise any SEC violations, fraud, SOX or False Claims Act issues.

On cross-examination Mr. Hunt testified he reviewed the report and other relevant documents before testifying. He stated that during the investigation he reported to J. Degnan; that he began with WellPoint subsidiary AdminaStar Federal National Government Services in March 2002 in ethics and compliance; and moved to WellPoint corporate office approximately March 2007.

Mr. Hunt testified that his original plan was to travel to Atlanta and also do a show-and-tell as part of the objectives in visiting the Savannah facility. At the Savannah facility he did a meet-

and-greet as well as meeting with individuals he needed to pull off production for the investigation. He stated that his primary purpose for visiting the Savannah site was “to conduct the investigation into the allegations that had been made.”

Mr. Hunt testified that the CX 9, the letter complaint reporting inappropriate closure of contact logs, confrontation about reporting to ethics & compliance and continued fear of retaliation, was dated July 20, 2008 but received in WellPoint on August 4, 2008, before he was assigned to conduct the investigation. The letter was received in an envelope addressed to ethics & compliance and the CEO A. Brawley. The “B.C.” initials on the date received stamp are those of his colleague B. Clifton. He stated he would have likely received the letter from his manager, J. Degnan, in August prior to going to the Savannah facility. He stated the letter indicated the author was a call center associate that had been directed to close out contact logs in the D950 system by the site director. He stated he read the letter to say that 15,000 contact logs had been closed out just to move paper. The letter was an allegation that would initiate an investigation in WellPoint’s ethics & compliance department and was not considered as alleging an SEC violation; it was an allegation of production fraud, not a financial fraud. If the allegations were true, it could have been a potential breach of contract. He stated he was not an expert in the state contracts, but if the allegation were true it “certainly is something that would be of very deep concern, particularly to have a director implicated.” He reported that the allegation “specifically implicating a director in state-sponsored business was very troubling and very concerning” and “when coupled with the other allegations that we had coming in from the Savannah office” a travel to the Savannah office for face-to-face interviews was merited. The allegations in CX 9 alone “recommended coming and making a personal site visit to the office to see what we needed to do ... this is now a very serious investigation.” He reported that it was not his role to believe or disbelieve the allegations in CX 9; it was his role to investigate to see if there was any merit to the allegations.

Mr. Hunt identified CX 7 as being in his investigative file and that the handwriting on the document was his. He reported that it appears to be a partial record of individual production on certain dates from a spreadsheet indicating a total case production of 22,438. He stated “I don’t really recall at this point what this document was or what it was about.” He reviewed his August 20, 2010 deposition transcript (CX 2) and stated “the problem with the entire allegation turned out to be on its substance correct; there had been direction given by [the Complainant] and others to direct contact logs inappropriately in the Savannah office. There were not 15,000 by any number that I was able to determine.” He examined CX 7a and stated that he could not speculate to the grand total number of contact logs closed from January 2008 to October 2008. He testified “I was not able to substantiate 15,000; but, I was able to substantiate that contact logs were directed to be closed by [the Complainant, as] director of the Savannah facility.” He reported that to him a rate of 40% of thing being done inappropriately would be alarming, so a rate of 68% of thing being done inappropriately would also be alarming.

Mr. Hunt testified that he may have shared the nature of the allegations with A. Bowman when interviewed but did not recall if he informed her he was performing an investigation involving the Complainant or C. Harper. He did not recall whether he shared with the Complainant or C. Harper he was performing an investigation when he first visited the Savannah site. He stated that at some time after his initial visit he asked A. Bowman to provide examples of

inappropriately closed logs that were done while she was on “PTO” based on her self-report being aware of the allegations that managers had been advised to close contact logs. A. Bowman indicated there was 1 unworked case in 30 contact logs reviewed by her. The other review of targeted contact logs by T. Contreras in late September or early October was more troubling. He stated that in the second visit to Savannah “ I heard any number of reports ... that also indicated the contact logs were ... [being inappropriately closed] so I definitely would have a reason to continue that portion of the investigation.” He reported that A. Bowman only finding 1 of 30 contact logs was troubling; but was enough to keep the investigation open ... “we did additional interviews and we also had reason to continue to pull an additional sample ... that was targeted ... [on] the times when we believed, based on interviews, that [the Complainant] and/or [C.] Harper had directed people to close contact logs; and when we suspected that had happened, we gave that information to [T.] Contreras, who came back and confirmed ... that a significant portion of those that were closed, during the time that we suspected that they had been, were, in fact, closed improperly.” He stated that during the August 18, 2008 interview with A. Bowman she reported 4 or 5 people had reported to her that they had been instructed to close contact logs inappropriately.

Mr. Hunt testified that he prepared typed memoranda of his interviews after the investigation report had been submitted because a senior peer did a QA review and “recommended that this is likely to be a pretty serious investigation and it would be a good idea if I went through while memories were relatively fresh and did a typed summary from my process.” He typed up the interview notes, dated them, and added them to the file with an initialed date of when they were added to the file. He believed there had been some litigation filed but was unaware it was a SOX case.

Mr. Hunt testified that he asked questions during the interview and M. DePlacito (referred to as “Amanda” by the Complainant) “answers were emphatic that she recognized what she was being asked to do was inappropriate, that she was being asked to close work inappropriately, and that she was directed to do so by management ... I can still hear her very firm affirmation of that as she spoke it. It was not questionable to me. ... Ms. DiPlacito was very clear that she was advised to close work inappropriately. ... she had been asked to close contact logs inappropriately and she recognized it as such and that, as she questioned it, she was told to do that.” He stated that M. DePlacito did the work on the files and did not close the contact logs without working them. She was counseled that she was not producing fast enough “and so to be counseled that she was not meeting the expectations performance-wise when other people were merely just going into the system and closing them and she was actually doing the work, was of concern to me.”

Mr. Hunt testified that his handwritten notes taken during an interview are not meant to be a transcript of the interview or anything like that. The type written notes and typed summaries are also not intended to be transcripts of conversations that took place. The intention of one was to take notes during an interview and the other was to provide a summary of the significant things learned during the interview. He stated “My summary reflects what happened and what we learned during that interview.” He stated that the investigation did not follow-up on an allegation by S. Sanders that some correspondence involved some kind of rework because at that point there was a pretty good understanding of what had happened and enough information that management needed to make decisions. He followed-up on the common denominator that “was

the inappropriate notifications to close contact logs directed by [the Complainant] and [C.] Harper.” He testified “Six people reported that [the Complainant] or Ms. Harper had advised them to close contact logs inappropriately.”

Mr. Hunt testified that “I remember talking to [C.] Arnstein ... she was another one whose statement was very, very clear. And I asked her several times over and over to say, are you absolutely certain that you were directed to do this ... Ms. Arnstein, I recall, was very clear that she recognized that she had enough of a training, or an understanding, to understand that what she was being told that the person wanted these closed immediately and to finish them later, and that she was told very clearly ... and to this day I recall that conversation.” He stated that when A. Madubuike was interviewed she reported being instructed by the Complainant to just log the contact logs as if they were worked but he could not recall further specifics. He reported his “responsibility is to capture what is the substance of the communication in that interview” with his handwritten notes and typed summary.

Mr. Hunt testified that the investigation report in CX 10 can speak for itself on findings related to the two allegations of retaliation indicated. He reported that there may have been questions about the alleged retaliation, J. “Wade certainly had questions and I tried to answer those the best I could.” He stated as to J. Hennessey, that “one of my concerns was that [the Complainant] had engaged in activity that could have been retaliatory with Mr. Hennessey ... He did not get fired; but it was a concern to me that [the Complainant] had called him in and basically inquired of him why he had gone to ethics & compliance ... which is not something I would expect of a member of management to do.”

Mr. Hunt testified that the allegation of a potential SOX violation involving phone calls made from different work stations was investigated and the allegation was considered to be without merit. He testified that RX 43 involved an interview where F. Bates “reported an experience of hearing associates taking calls on the wrong line and wrong work station. I never made any connection whatsoever to how or any possible way that could be a SOX violation; to this day I don’t even understand how that could even be considered such.” He stated he had no way of knowing if R. Balades was the individual who made the anonymous SOX complaint that was without merit.

Mr. Hunt testified that “I stand by the [investigation] report as being a summary of a very complicated and detailed investigation, the most detailed, or certainly one of the most detailed investigations in my 12 years conducting investigations for WellPoint. ... We put that together as very best that I could so that Ms. Wade could make decisions as she needed to, based on what we believed the information supported and what we believed, based on the allegations we could substantiate ... the report was to show the information that I thought Ms. Wade needed in order to make decisions basically for [the Complainant’s] employment, for Ms. Bowman’s employment, for Ms. Harper’s employment, and other corrective actions as needed.”

Mr. Hunt testified that it would be something that would happen during the investigation if he told the Complainant about the allegations against C. Harper during his second investigation trip to the Savannah site, September 24, 2008. He reported that he told the Complainant about her implication in the contact logs before he left to catch an airplane on September 26, 2008. He did

not recall the substance of the conversation; though the Complainant had been interviewed previously multiple times and was aware of the Savannah operations and the contact log problem.

*August 31, 2010 Deposition Testimony of N. Hunt (CX 2)*

On August 31, 2010, N. Hunt testified in deposition that he is employed by WellPoint as an ethics and compliance manager. He became a senior ethics and compliance analyst in February 2002 for WellPoint's subsidiary of AdminaStar Federal and was eventually promoted to ethics and compliance manager, with an 18 month period as risk mitigation manager. He became an ethics and compliance manager for WellPoint in 2008. WellPoint's ethics and compliance group is headquartered in Indianapolis, Indiana. As an ethics and compliance manager, he reports to the Staff Vice President for Ethics Compliance Investigations, J. Degnan, who reports to the Vice President of Ethics and Compliance, J. Bixler. He reported that he has conducted well over 100 ethics and compliance investigations for WellPoint and a portion of those investigations involved possible violations of an SEC rule or regulation and some have involved allegations concerning the False Claims Act.

N. Hunt testified that he had not previously performed an investigation for WellPoint involving allegations that Medicaid claims were not being processed in accordance with policy and procedures. He reported having a general knowledge of internal controls as programs, processes and procedures in place to ensure what the organization needs to do is actually done. It is management's responsibility to ensure controls are in place.

N. Hunt testified that in the 2008 timeframe, when an allegation is received it is logged into a database used by ethics and compliance, a paper folder is created to hold papers received, as much information is gathered about the allegation so it is understood, and leadership is consulted to determine who would be assigned to investigate the allegation and the most appropriate way to conduct the investigation. During an investigation, the individual allegation is addressed as objectively as possible and it doesn't really matter what an individual's past performance was. He reported ethics and compliance does not have access to an individual's personnel file, though perhaps human resources could be asked for a personnel file if it was part of the investigation. He stated he has not asked for an entire personnel file in his investigations. He reported that generally witnesses are interviewed in a reverse pyramid manner, where the witness who may not know much is interviewed first and then move on up to the person who is the subject of the allegation. Generally, the person who is the subject of the allegation is given an opportunity during the investigation to respond to the allegation; this gives the person to state their case and respond to the allegation.

N. Hunt testified that he was contacted by J. Degnan in early August 2008 concerning an opened investigation of an allegation by J. Hennesey that contact logs were being closed inappropriately and an allegation of retaliation. He reported he met J. Hennesey and had no reason to doubt the allegations made by him were true. He was asked to take over the investigation because he already had travel plans to be in Atlanta, Georgia on a different ethics and compliance investigation. The investigation had been started by J. Degnan and C. Sanders who had completed telephone contacts with J. Hennesey before he took over the investigation. When

assigned the investigation, he reviewed organizational charts, talked with J. Degnan and C. Sanders by telephone about their reported inquiries, and reviewed their notes. He reported closing the investigation towards the end of October 2008. During the investigation he was helped by J. Degnan, J. Bixler, D. Andrews, K. Fraser, M. McGee and legal support from R. Wertheimer. He reported that his general practice is that anything substantive to the investigation is included in the paper folder or electronic record of the investigation.

Mr. Hunt testified that it was not unusual in the course of an ethics and compliance investigation to receive allegations that would be investigated by human resources upon referral. He did not recall how additional allegations came in that were human resources concerns in this case. There was at least one allegation relayed to ethics and compliance that involved allegations for human resources and there was also concern over T. Hall not being permitted to leave the building after her termination. He reported that in general he seeks legal in-house counsel during an investigation when there is serious misconduct alleged.

Mr. Hunt testified that during the August 2008 to October 2008 investigation he gave updates that were generally done verbally. He had several conversations with J. Wade; one involved obtaining a subject matter expert in correspondence processing logs. J. Wade directed him to D. Mosher who directed him to T. Contreras who reviewed samples of correspondence contact logs. He also interviewed the Complainant, C. Harper and A. Bowman who were responsible for the areas involving correspondence contact logs, as well as a number of their staff personnel. He testified "part of the allegation that was originally made was that individuals had been advised by management, including [the Complainant] and/or Ms. Harper, to inappropriately close contact logs. We received that through Mr. Hennessey's allegation. We also received an anonymous letter that made a similar allegation." He state he did not find out who authored the anonymous letter.

Mr. Hunt testified that the Claimant had referred to problems he considered general management problems related to processing of correspondence logs, primarily dealing with a large backlog and a challenging system. The Claimant had reported a significant backlog of unprocessed Medicaid claims correspondence prior to her assuming her position in the Savannah call center, which he considered not relevant to the investigation. He reported being unaware of any allegation of correspondence being closed out prematurely prior to the Claimant assuming duties in the Savannah call center.

Mr. Hunt testified that the scope of his investigation grew during the investigation with the allegation the Complainant did not handle the termination of T. Hall appropriately; a letter was received that correspondence log were being prematurely closed; and a subsequent retaliation allegation was received.

Mr. Hunt testified that correspondence logs were a work record and closing them while incomplete would not be appropriate work conduct. He stated that WellPoint's standards of ethical business conduct contains a section on appropriately conducting work processes as well as anything that affect records or reports. He stated that as a general principle, if logs have not been appropriately worked, but reporting indicates they were closed, they are not going to be worked, which violates any number of principles, including the integrity of reporting. He

reported the contact logs were a work record to help track correspondence inquiries. He stated that he asked everyone interviewed about their understanding of correspondence contact logs. He did not think there was a written policy on processing contact logs because there was not one in his investigation folder.

Mr. Hunt testified that he had not been asked to provide information from his investigation to Ernst & Young nor did he recommend to anyone at WellPoint to inform Ernst & Young of any of his investigation conclusions. He did not recall having any conversations with anyone about the information gathered during his investigation might result in a liability to WellPoint. He did not have any concerns during his investigation about whether WellPoint was in compliance with state contracts. He stated that if he had concerns about the accuracy of WellPoint's financial reporting he would immediately raise it with management as a very specific concern, and if the concern was not taken seriously, he would contact his vice president.

Mr. Hunt testified that from his investigation he understood that a contact log is created after a piece of correspondence enters the building in order to track that piece of correspondence. The correspondence contains a problem of some sort that might be able to resolve immediately or might require extensive research to be concluded. If the contact log is closed before the underlying problem in the correspondence is complete, that would be an improperly closed contact log. He stated that an original allegation had been there were 15,000 improperly processed pieces of correspondence in 2008. He did not know who used the 15,000 number. He questioned the 15,000 number because he understood the backlog of correspondence was around 8,000 and it would be improbable 15,000 were processed incorrectly.

Mr. Hunt testified that he began the investigation with J. Hennessey since he had written the original allegation. J. Hennessey was a trainer, did not process correspondence, did not have direct knowledge of inappropriate contact log closing and directed him to R. Brinkner, who redirected him to associates with direct knowledge of correspondence processing and contact logs. He interviewed random people who processed or were able to determine who processed contact logs and the interviewed specific targeted people who were reported to have direct knowledge of the closing of contact logs. During the interviews he would generally ask about tenure of employment, assigned responsibilities, contact logs and how they performed their duties. At some point he would ask if they had knowledge of contact logs being closed inappropriately; and, based on their response, drill down how to recognize if contact logs were closed inappropriately. He determined that there was some training on contact logs by A. Bowman and C. Harper. He understood that there was a special project composed of personnel who normally answered telephone inquiries and who had been approached to close contact logs. He reported it seemed there were people selected to close out contact logs who did not receive training, several of whom remarked they didn't find out they were processing the contact logs incorrectly until a lunchroom break conversation with others normally assigned to correspondence processing. One of the individuals approached A. Bowman about how she was told to process contact logs and was told by A. Bowman it was incorrect and how to correctly close contact logs, which by implication meant they were not being processed correctly at the direction of C. Harper and the Complainant. He had no concerns that J. Wade was not providing adequate oversight regarding the processing of Medicaid claims correspondence. He was

unaware of any allegation from his investigation or from WellPoint's formal reporting mechanisms regarding J. Wade being involved in improper processing of contact logs.

Mr. Hunt testified that he was aware that the Complainant had some responsibility over the Camarillo office but he did not interview anyone in that office about processing Medicaid claims because there were no allegations that employees of the Camarillo office were involved. The investigation centered around instructions multiple associates reported receiving directly from the Complainant in the Savannah office, so there was no reason to expand the investigation to the Camarillo office. He stated he recognized the name C. Quintana as a manager in California who reported to the Complainant in the Savannah office.

Mr. Hunt testified that he unequivocally told the Complainant an allegation had been made against her. He stated that he and M. McGee had met several times during the investigation in Savannah and that during his final interview with the Complainant he asked the Complainant "why are multiple associates making this allegation that you directly told them that you gave them contact logs with the directions to close them inappropriately" and why did she feel implicated in the allegations. He reported he was not certain of what documents he showed to the Complainant at the time of the final interview; though at some point he had asked her and C. Harper "if I review these [contact] logs and if we're able to find somebody that can tell us whether they are worked or not worked, are we going to find that they are worked?" He reported being told "that they would be fine, that I would not find examples of unworked items" because the instructions from management had been clear. He testified that four employees who were brought stacks of contact logs and specifically named the Complainant as the individual who instructed them to close the logs without working them. Two other employees reported the same instructions from either the Complainant or C. Harper. He testified that during a second visit to Savannah S. Sanders reported she had been given a stack of closed correspondence and told to rework the correspondence even though they had been closed. Mr. Hunt testified that instructions to prematurely close out contact logs constituted "serious misconduct" based on WellPoint's standards of ethical business conduct.

On cross-examination, Mr. Hunt testified that each of the four employees who identified the Complainant as directing them to prematurely close contact logs had "indicated that it is very clear to them that [the Complainant's] intention was that these contact logs were to be closed without being worked ... they attributed quotes to [the Complainant] along the lines of these are your instructions, that they were not to question them, that they were just to close the logs." They reported they were given large stacks of contact logs and given the instructions to close them without working them by the Complainant verbally at that time and was done with each of the four individuals when alone with the Complainant. He reported two employees reported their concern about being told to close correspondence contact logs to A. Bowman, who was later disciplined for failing to take proper management action when the concern was brought forward. He stated A. Bowman's response was to tell the two employees to report it to WellPoint's department of ethics and compliance. He stated R. Brickner and T. McClure indicated that they had not been told to close correspondence logs prematurely by the Complainant.

Mr. Hunt testified that several allegations of retaliation were substantiated and there was a concern during the investigation of an environment that was retaliatory. He stated that the degree of concern in the Savannah office about retaliation exceeded anything that he had dealt with before in his professional experience conducting internal investigations.

Mr. Hunt testified that he instructed each interviewed associate that the interview conversation was confidential, that the associate needs to keep the information confidential, that he would keep the information confidential within the scope of his responsibility, and that he would not share specific individual names with management. Therefore he never told the Complainant the identity of the employees who alleged being told to prematurely close correspondence logs.

Mr. Hunt testified that during the three meetings with the Complainant, the Complainant referred to personnel problems such as speeding in the parking lot, attendance, behavioral concerns that would be a problem for any manager. He stated that the Complainant, A. Bowman, C. Harper and others were aware of weaknesses in the D950 system and that “everything I heard and in follow-up questions or any correspondence we had, told me that the [D950] system had known weaknesses that management had determined workarounds and that they were managing improvements in that process.” He stated he had no knowledge of the day-to-day use of the D950 system and his understanding was it was used to process correspondence logs and manage correspondence workload. He testified that the Complainant a concern that the D950 system did not provide a strong real-time inventory reading and that they were actually doing hand their report by manual count of the pieces of correspondence in storage and at individual work desks. He stated that he did not have any allegation that the weekly inventory reports were incorrect. He stated the interviews he conducted initially in August involved only the interviewee and himself. When he returned to the Savannah office in September, M. McGee was also present during the interviews.

Mr. Hunt testified that he took handwritten notes during interviews and subsequently typed them up around January 2009 upon the suggestion of D. Martin, who performed the normal quality review of closed investigations, because the hand interview notes were difficult to read. He stated that he had typed up interview notes in other closed investigations months after the investigation was closed. He did not audio record any of the interviews.

Mr. Hunt testified that the investigative report was begun by he and M. McGee summarizing our parts of the investigation then collecting it into one report. Drafts of the investigation report are saved in a computer file folder in his shared drive by case number. He stated that it would not be unusual for him to provide a draft report or summary report to his manager for recommendations and advice. Some discussions involved M. McGee and her manager, N. Hunt’s manager and legal counsel during review of initial findings. The D950 system was not within the scope of the investigation. He did not recall any discussion of a need to determine if prematurely closing correspondence contact logs had an impact on the accuracy of WellPoint’s financial reporting.

Mr. Hunt testified that he was certain that J. Wade was not provided a draft report of investigation. He state that during contact with J. Wade initially in the investigation, J. Wade “was very much of the opinion that she would be very surprised if anything of any allegation were to be confirmed against [the Complainant]. I could tell she held [the Complainant] in very

high regard. That really didn't change until we presented the findings of the report and of the investigation to Ms. Wade towards the end of the investigation." He reported that J. Wade had an action plan to avoid similar situations from happening again, though he could not recall the specifics of her plan. He stated the final version of the investigation report was prepared to file and was used for talking points with J. Wade and others involved in decision-making. J. Wade made the decision to ruminate the Complainant's employment. The recommendation in his report summary was to terminate the Complainant's employment.

Mr. Hunt testified that if an investigation substantiates an allegation that is serious misconduct, WellPoint's standards of ethical business conduct and human resource policies can lead to corrective action up to termination of employment. He stated that he had conducted over 100 investigations for WellPoint and at the conclusion of the investigations management has determined appropriate actions including verbal counseling, to do training, verbal warning, written warning, and termination of employment. He did not share his investigation conclusions with the Complainant since normally the results of investigation are shared with a member of management that is over the person who is the subject of an allegation. He did not share with the Complainant the results of the closed contact logs performed by Ms. Contreras; but did give the information to J. Wade. He testified that he selected a targeted sample of closed correspondence contact logs based on the six employees who indicated they were directed to close the logs inappropriately, the days the individuals were told to close contact logs inappropriately, and other criteria. He reported if one contact log was closed inappropriately it would be one bad operator, if multiple contact logs were closed inappropriately by multiple operators it would be an indication that support the allegation being investigated. Ms. Contreras ultimately reviewed a targeted sample of 60 closed contact logs.

Mr. Hunt testified that it was his understanding that any investigative activity is reported to the audit committee of the Board of Directors. He reported that if an associate has concerns about internal control irregularities or Sarbanes-Oxley they can call a posted telephone number that goes directly to the Vice President of Ethics and Compliance. He reported that throughout the investigation he consulted with J. Degan, the Vice President of Federal Compliance and Investigations about major steps taken in the investigation. He reported that he was unaware of allegations of improper Medicaid correspondence processing before the May to July 2008 timeframe.

Mr. Hunt testified it was his understanding of events "that as a results of the investigation were reviewed with Ms. Wade, Ms. Wade determined that [the Claimant's] employment would be terminated based upon her participation in directing associates to inappropriately close contact logs and retaliation and also for some of the human resources concerns that were also reported and investigated by human resources." He stated he was aware of two allegations that the Complainant had retaliated against employees. One allegation involved J. Hennessey being pulled into the Complainant's office by her after his shift ended and questioned for over an hour about why he had gone to WellPoint's ethics and compliance department about inappropriately closing contact logs. He testified that the very nature of such an event would not be appropriate management activity. He state A. Bowman also reported allegations of retaliation by Complainant after Mr. Hunt had been to Savannah in the form of being excluded from meetings and not spoken to which were also alleged by M. Settle who stated she witnessed the

Complainant treat A. Bowman differently as a member of management after A. Bowman participated in ethics and compliance interviews.

Mr. Hunt testified that it is normal procedure to retain a closed investigation file. He reported that both the Complainant and C. Harper had indicated that the investigators would find that all contact logs were closed correctly and that he relied on the subject matter expert to determine if the contact logs were closed correctly. He stated that based on the interviews he conducted there was a consensus among the associates that there was a quality assurance process for telephone inquiries during the May to July 2008 timeframe but there was no quality assurance during that timeframe for written correspondence inquiries. He reported that both direct correspondence managers C. Harper and A. Bowman stated there was no quality assurance process for written correspondence inquiries.

Mr. Hunt testified that one of the reasons that investigations are conducted “would be to ensure that we don’t have misconduct with regard to processes that are supposed to be occurring.” He stated that an associate who refused to close case contact logs without working them was A. DePlacido and was scolded for slow performance because she was unable to complete records as quickly as her peers who were given similar assignments, which she suspected had the opportunity to increase their productivity because they were closing logs without working the correspondence.

Mr. Hunt testified that he consulted with his leadership, legal counsel and human resources before he made the recommendation in the investigation report to terminated the Complainant’s employment “for advising associates to close contact logs inappropriately, for mishandling employee termination and for retaliation.”

*Testimony of Marissa McGee (TR 592 – 642)*

Ms. M. McGee testified that she has been employed by WellPoint for 21 years in the human resources department where she is now a human resources manager senior reporting to S. Hendricks. Investigations and associate relations is a big part of what she does in human resources. In conducting investigations “we’re interviewing different associates and different people, and if it comes down to interviewing the person that we’re actually investigating, then we’re just asking them questions like we’re asking anybody else. ... when it comes to the end of the investigation and the outcome, here’s the final results, ... here’s basically what the concern was, here’s what we found to be true in all of our investigations and all of our questioning.” She reported that in WellPoint’s policy under “expectations’ there is a list of conduct that could result in immediate termination, but the list is not all-inclusive.

Ms. McGee testified that she became involved with the investigation in Savannah when N. Hunt discovered concerns about the process in how T. Hall was terminated and concerns from those interviewed about the Complainant being intimidating, accusatory and retaliatory. There was also an incident shortly before her travel to Savannah involving M. Reese and how her resignation had been handled by her supervisor. At the time she went to the Savannah site to assist in the investigation, she had not previously met the Complainant nor previously been in the Savannah office.

Ms. McGee testified that the T. Hall termination involved the Complainant observing inappropriate e-mail on a computer and determining that it originated with T. Hall. The Complainant took T. Hall into a conference room, had two additional managers join the discussion, consulted with local human resources and notified T. Hall she was terminated. T. Hall was permitted to return to her desk to remove personal possessions. While at her desk the Complainant confronted T. Hall in the general work area and demanded she provide personal computer passwords. The conversation spilled over into another conference room near the exit. The termination process began about 1:00 PM and concluded around 3:40 PM. Ms. McGee stated that the decision to terminate should be made by the manager, after consultation with human resources, before the employee is even pulled into the room. The manager and human resource person completed the termination meeting together. The manager explains the situation and that “we have no other alternative but to terminate your employment.” The manager then steps out of the room and boxes up the individual’s personal belongings while the human resource person completes prepared paperwork and explains benefits to the individual. The manager comes back with the personal possessions which the individual confirms all items are in the box. Then the manager and human resources escort the individual to the door. The termination process should take approximately 30 minutes. She reported “we never allow an associate to go back to her desk just because of the disruption that causes.” She stated that the T. Hall termination “process was totally inappropriate” and gave the appearance that management was “really ganging up on the associate.” She testified that based on the events and the Complainant’s background in management and human resources, the Complainant’s behavior in the termination of T. Hall was a terminal offense.

Ms. McGee testified that she also interviewed C. Harper and the Complainant on making known to office personnel that M. Reese had resigned after Ms. Reese had asked her manager not to disclose that to anyone. She also interviewed A. Bowman about her concerns of retaliation by the Complainant. She interviewed the Complainant about confronting J. Hennessey and questioning him about filing an ethics and compliance complaint. She reported WellPoint policy strictly forbids the perception of intimidation as attacking and as retaliatory and that the Complainant’s confrontational action with J. Hennessey was a terminable offense.

Ms. McGee testified that at no time during her discussions with the Complainant did the Complainant raise concerns about fraud, the Sarbanes-Oxley Act, security violations, financial effect of correspondence, or breach of state contracts.

Ms. McGee testified that after her interviews were done in Savannah, she went back to her office location and made “temperature check” telephone calls to associates that were in the Complainant’s organization. She did a telephone interview with general questions on how things were going and if there were any concerns from a human resources point of view. She thought she interviewed 10 random associates. She reported some associates had concern about the Complainant – “I don’t want to be in a room alone with [the Complainant]; she’s very intimidating; she’s very accusatory, those types of comments.”

Ms. McGee testified that after she and N. Hunt finished their respective investigations, they drafted a report on how the investigation went, different situations or different concerns raised,

summary of findings, and recommendations. She reported the recommendation was made that the Complainant's employment be terminated.

On cross-examination Ms. McGee testified that her concerns about the resignation of M. Reese was of a management practice and that she would not have recommended termination of C. Harper over the incident. She reported C. Harper should have received some counseling or some coaching how to handle the incident. She stated that she was unaware if the Complainant and D. Kennedy had investigated the resignation of M. Reese at the request of J. Wade.

Ms. McGee testified that retaliation is a serious offense. She stated that she could not recall any adverse impact that took place in regard to the allegation of retaliation against J. Hennessey. She reported that she was not present when N. Hunt conducted a telephone interview of C. Dow who managed J. Hennessey during 2008. She reported she did not review a typed version of N. Hunt's interview session with C. Dow (CX 21). She stated that she never saw N. Hunt's typed notes of interviews he conducted. She reported that "retaliation can come in many forms. Retaliation is not just that somebody lost their job or lost a transfer, lost salary. Retaliation can come also in the form of intimidation [and] harassment" and that the manner in which the Complainant approached J. Hennessey was inappropriate. She stated there was no adverse impact associated with the allegation related to J. Hennessey "other than him feeling uncomfortable and feeling like he was attacked and held in [the Complainant's] room and questioned for something that he really should never have been questioned about." Raising someone's voice could be retaliation. She reported that she did not recognize CX 4. She reported that it is not normal to address problems directly with an associate who works for a different superior; the issue is addressed manager to manager so the supervisor can address the concern with their managed associate and since the Complainant was not a supervisor over J. Hennessey, any concerns should have been addressed with J. Hennessey's manager.

Ms. McGee examined RX 54c and testified that none of the handwriting on the exhibit was her handwriting. She reported that she vaguely remembered the interview with T. Harrell regarding the T. Hall termination. She recalled someone supposedly told T. Hall to take the remainder of the day off and that T. Hall was on a final written warning. She recalled the C. Harper thought she was going into a counseling session with T. Hall and that she was not in the room when the termination statement was made to T. Hall. She stated that there is not a WellPoint policy stating a termination process; but "there is a practice, and the practice is very systematic and very respectful to the associate being terminated." Ms. McGee testified that the "decision to terminate someone's employment ... is made based on facts that you have already identified and based on conversations that you had with HR that says - here's what I have identified, here's the situation, this person is already on a written warning, she's got ... another offense, I'd like to move forward to termination. That's process. You make sure you follow these steps ... there's no better way. That's just how it really needs to happen." She reported sometimes termination decisions are made for violations of WellPoint policy and sometime for managers failing to maintain the higher level of behavioral expectations. She stated "from a management standpoint, managers are told that they have a higher level of expectation." She testified that termination decisions are based on the facts found in an investigation.

Ms. McGee testified that she took her own notes during the interviews and that she turned over her notes to the corporate legal office. She stated that the investigative was a final report and not something that she and N. Hunt continued to work from. The investigation was a list of allegation and recommendations. She reported that during her interviews in Savannah a few associates expressed feeling intimidated and uncomfortable with C. Harper and that C. Harper and the Complainant "are like one." She stated she would normally advise associates with concerns about management to go to human resources and heard from several associates that the Complainant was buddy-buddies with human resources because of her background in human resources.

*December 21, 2010 Deposition Testimony of M. McGee (CX 3)*

On December 21, 2010, M. McGee testified in deposition that she is a human resource manager for WellPoint. She reported that she initially performed recruitment and associate relations human relations duties the first 8 to 10 years with WellPoint. When WellPoint reorganized a recruitment team, her work in human relations was to support management with associate issues such as performance, conduct and attendance. She also provided support to associates with management issues involving unfair treatment. She stated she provides human resources support to information technology, group sales and underwriting, group enrollment and billing, and Med D enrollment and billing, all located in the Louisville, Kentucky area. Up until it was consolidated and moved in December 2006 she provided support to customer service. She reported that she gets very few ethics and compliance complaint in the Louisville, Kentucky area.

M. McGee testified that she assisted the compliance officer in interviewing associates on an allegation of premature closing of correspondence logs and in making recommendations for corrective actions. She was part of the discussions when the compliance officer reviewed the results with manager J. Wade. N. Hunt was the compliance officer contacted her and asked for assistance in the human resources aspect of an investigation he had started in Savannah. Her role involved the issue on T. Hall's termination treatment where the process was drawn out much longer than it should have been. She ran a query on recent terminations in the Savannah office in the August/September 2008 timeframe and learned there were 3 voluntary terminations and 2 involuntary terminations for misconduct. M. Reese felt that she had been wronged by C. Harper in making her resignation known to the Savannah office team and it could have been handled differently. She did not know of human resource policies being violated in the. Reese and T. Hall situations; but she would have coached the managers on handling it differently.

Ms. McGee testified that she did not pull any personnel files during the investigation; but did pull the Complainant's personnel file before the deposition at the request of D. Andrews, the Director of Human Resources. There was not much in the Complainant's personnel folder, new-hire documents, I-2 documents and term check lists form human resources, very routine documents.

M. McGee acknowledged that N. Hunt had become irritated during the last meeting held with the Complainant in M. McGee's presence. She stated that when inappropriate emotions are displayed during a meeting, one of the means to address the situation is to take over the

conversation and to take a break to give everyone a chance to calm down. She did not recall intervening in the last meeting where she was present with the Complainant and N. Hunt.

M. McGee testified that the number one issues that surfaced from customer service was attendance and production and quality. Production involved stats and number of calls taken. Quality involved whether expectations were met in areas such as answering the question asked, providing the proper welcome, and doing proper closings. She was not aware of any written documentation dealing with associates closing out logs prematurely; though she was aware of the corrective action process in general for associates not meeting company expectations.

M. McGee testified that during the interview process in the Savannah call center, N. Hunt kept his own notes of the interview and she kept her own notes of the interview. They then talked about each interview afterwards. She became involved in the interview process in September 2008. She reviewed N. Hunt's notes on the interview with C. Harper and testified that the contents were familiar to her and that it was an accurate reflection of what occurred at the interview. She was aware that N. Hunt had received information/anonymous reports prior to her being involved in the investigation; had not reviewed the written anonymous complaint; but was aware of the nature of the complaint about improperly closing logs that precipitated the investigation in Savannah. She later testified that she had not seen the anonymous letter before the day of her deposition.

M. McGee testified that she was familiar with SOX and that her involvement in her discussions with N. Hunt "focused on the inappropriateness of doing this and getting to the bottom of why associates were doing this, who was telling them to do this." She did not have discussions involving SEC violations, False Claims Act violations or other types of violations.

M. McGee testified that she help prepare the final investigation report with recommendations and is in agreement with the contents of the report. She shared the report with her Director of Human Resources, D. Andrews whose role would be to work with J. Wade on the final outcome, final action. She reported a brief conversation with M. Loeser of human relations for Georgia about any prior issues with the Savannah office involving C. Harper, A. Bowman or the Complainant. He had indicated the Complainant was quick to react and quick to want to take term or corrective action but would calm down after talking about alternatives to termination. During the investigation a report was run to determine which days of the involved months A. Bowman was not in the office and the contact logs for those periods were reviewed by N. Hunt; but she was not part of that process.

M. McGee testified that she was not surprised by the conclusions of terminations following the investigation because "WellPoint holds managers to a higher standard, higher level of expectations, and if something is going wrong in their area, they are ultimately responsible." She stated she was not surprised by the termination of A. Bowman "because of holding true to ethics and compliance's training to make sure that you report any suspicions, anything that you think is going on, and she did not do this." The original recommendation for A. Bowman was corrective action in the form of a written warning or something similar since she had a rather passive role in what was taking place in the Savannah office. She reported that in an interview A. Bowman stated she had received telephone calls from two associates about being told to close logs

improperly and that she did not further investigate or report the allegations because she did not know if the allegations were true. She reported J. Wade was the manager who made the final decision C. Harper and A. Bowman.

M. McGee testified that the investigation revealed that the associates in general feared retaliation and unfair treatment. The two allegations of retaliation were investigated and corroborated but not further investigated to completion from a human resources aspect. She reported that on the last day she and N. Hunt were in Savannah they met with the Complainant to let her know what the allegations were and to give the Complainant the opportunity to confirm or deny the allegations. She reported the actual results of the investigation were not shared with the Complainant and that such action was normal. She stated that when an investigation results in termination, the employee is told what the findings were and that as a result of the findings is employment is terminated. The underlying investigation documents are not usually shown to the individuals who are the subject of the allegations; though each investigation is different. M. McGee testified that she has participated in many terminations and if the termination is for cause, the individual is told "This is what we found. This is what is going to result in."

M. McGee testified that she saw a letter written by the Complainant's attorney on December 21<sup>st</sup> but does not remember how she obtained the letter for her investigation files. She took no action on the letter. She reported that she agreed with the final outcomes from the investigation into the Savannah office.

M. McGee testified that she was aware of the Complainant's 5 years of work in human resources before becoming the director of the Savannah office. She reported that after the investigation the Director of Human Resources, D. Andrews, had stated her opinion that the Complainant followed policy, she had coached the Complainant on her tone which was sometimes a little harsh, and that she had no reason to believe the Complainant had been violating WellPoint policies. She reported that the personnel files were not reviewed because the investigation issues were a standalone incident and if it was a violation of ethics and compliance and if it is serious enough, no matter how perfect a person may have been in the past it would not matter. She stated M. Reese was interviewed about her following instructions and that the instructions she received from C. Harper or the Complainant were very clear to close out the documents, though she was unable to provide e-mails she thought she had concerning those instructions.

*Copies of E-Mail Exchanges involving the D950 System and State Sponsored Business (RX 17, 32, 33, 34, 36; CX 25)*

These exhibits contain select e-mails July 25, 2007 to September 17, 2008; few generated by the Complainant.

On July 25, 2007, and email exchange began involving WellPoint IT and D. Mosher as Director of State Sponsored Business as a result of calls from Bristol Pediatric Group in Indiana concerning 119 EDI claims filed electronically on March 22, 2007. On July 26, 2007 WellPoint IT reported that lack of server space prevented processing of electronic filings on March 22 but that they were processed the next day; "but the Indiana prof file ... was missed." The missed file contained 2,288 claims, of which 119 claims belonged to the Bristol Pediatric Group. The 2,288

claims were to be processed the same day. D. Mosher reported to other managers that “IT is currently sweeping everything to make sure it only affected on Indiana professional file.”

On August 2, 2007, D. Mosher generated an e-mail request for approval to seek overtime assistance from associates in the state sponsored business team who were experienced in adjusting claims to assist in making adjustments in pending claims which had ballooned to 73,000 pending claims because of the receipt of 38,000 claims in the previous 5 days. He reported that he had no luck with Perot (vendor that provides and maintains the D950 system) in devising a solution to make mass adjustments. The Complainant was not involved in this email issue.

On August 2, 2007, D. Rhodes sent an e-mail to 8 managers, including J. Wade, which included a spreadsheet setting out the sanctionable performance standards for a Texas contract, WellPoint’s performance against those standards for the prior three quarters and related potential penalties, which in the worse-case scenario would have an exposure of over \$400k. He reported SSB Claims teams would be an important effort to whittle down the total claims inventory in order to meet state standards. The next quarterly report would end on September 30, 2007. The next morning, J. Wade forwarded the e-mail to D. Mosher, the Claimant, M. Williams and two others.

On August 3, 2007, G. McCarthy received comment on the “Weekly Senior SSB Status Report” indicating the SSB team had the “inventory goal built into the CMS CAP” but that while the SSB inventory was lower in terms of the number of claims, the dollar value of the inventory had increased which may indicate that the “toughest claims (which are usually high amount ones) are not getting the same through put as other claims.” She was requested to check on whether “the people are disproportionately working the easier claims to get the number of claims down.” G. McCarthy tasked J. Wade with the review. On August 3, 2007, J. Wade responded “My director, [D.] Mosher, detected 4 black holes in our EDI and reporting process for Diamond. One of the items located 12k claims. We have now captured these claims into our inventory and are processing them. [Mosher] conducted an end to end review of the process this week identifying several action times for tighter controls to the process. We are also partnering with PCDA (provider loads) ... to reduce the aged items. These are mostly tied to physicians so they shouldn’t be larger items. I’ll ask [Mosher] to take a closer look to be sure we aren’t missing anything. The lack of reporting for D950 really makes research challenging, but I’ll let you know what he finds.” On August 6, 2007, D. Mosher responded that he had “signed off on an enormous amount of high dollar claims in the last 2-3 weeks.”

On August 31, 2007, the Complainant sent an e-mail to L. Pollnow with a copy to J. Wade, M. Williams and C. Quintana on “D950 Correspondence Status.” She reported that “the current state and plan for recovery for the D950 correspondence” was attached (not submitted with RX 17 evidence). “The D950 correspondence is managed and handled by [C.] Quintana in Camarillo.” Questions were to be directed to the Complainant or C. Quintana. L. Pollnow replied on September 4, 2007 with direction to the Complainant to “prepare an alert for the CRC management, G&A and Compliance teams ... and get the alert out immediately. The CRCs need to be able to effectively communicate to the providers when they call to complain.” She noted the correspondence action plan did not “present a target date for being current. What is your

definition of current?” She addressed J. Wade in the e-mail stating “like adjustments, we need to have a higher standard on correspondence than on clean claims ... can you make that happen?” Subsequently, L. Pollnow e-mailed J. Wade agreeing that “MTM goals for inquiries – 90% in 2 days, 95% in 7 and 99% in 21 days” would work as processing standards for correspondence and assumed that WellPoint was not meeting any of the standards in the year to date in the D950 environment. J. Wade shared the e-mail with the Complainant “because I want you to see how important communication is. We have to make sure we have no unidentified issues without action plans. I know you didn’t create this, but we have to be sure to get it clean.” The Complainant replied she understood the e-mail and thanked J. Wade for the morning call on South Carolina. On the morning of September 5, 2007, the Complainant e-mailed L. Pollnow, J. Wade, M. Williams and C. Quintana the “D950 correspondence reduction plan” which provided “a weekly reduction schedule as well as our communication strategy to our key stakeholders. In summary, the aged and backlogged D950 correspondence inventory should be compliant by October 19<sup>th</sup>.”

On September 7, 2007, D. Mosher reported to over 71 individual, including J. Wade and W. Minga, on a “Claims Adjustment Update” indicating there were 68,454 claims in inventory which equated to 3.2 “days receipts on hand” (DROH) for which an increase of 8,000 claims was due to a D950 “configuration issue that caused claims to hold rather than adjudicate.” The root cause of the issue was identified and resolved, with auto-releasing of claim via a new batch claims release process in the next 48 hours. He indicated 12,349 claims over 30 days aged with 4,139 claims over 60 days aged, “which is our lowest aged amount over 60 days since we started our inventory reduction plan.” He reported the goal is to have all claims for all states cleared by September, with focus on Texas and 1,900 Indiana claims because Indiana had set October 1, 2007 as a hard date to clear all aged claims and WellPoint was vulnerable to additional penalties for missing quarterly metrics. D. Mosher stated the aged volume in D950 over 30 days old was 4,106 claims. He reported the current inventory for project adjustments was 26,798 claims and that project equaling 28,575 adjustments had been completed since July 15, 2007; the current inventory for customer service adjustment was 8,115 which was down from 9,300 two weeks ago. L. Kellum, Director of Ethics and Compliance reported to D. Rhodes, the Vice President of WellPoint Compliance Business Processes, to clarify the possible sanctions on Ohio claims processing and opined that if Ohio fined WellPoint \$20k per day, back to the first receipt of an Ohio claim, the sanction “would be in the ball park of \$6.8M.” D. Rhodes sent the e-mail to L. Pollnow, the Vice President and General Manager of State Sponsored Business, with the comment that the potential sanction language in the Ohio contract had been reviewed and WellPoint is “potentially at risk for non-compliance, going back to last year, not just from date of notice from them of our non-compliance. The e-mail string indicated that the “targeted date for the claims status to be live for OH is 9/21. At that time we will roll the application out to providers over a period of a few weeks, with all providers being on no later than the end of October ...,” the primary contact in e-business was made aware of the risk and told WellPoint must go live on 9/21. On September 13, 2007, L. Pollnow’s e-mail to 9 individuals, including D. Mosher, stated that a compliance alert on Ohio’s requirement “to supple notice to the providers on the status of all claims within 30 days” would be issued. She noted that the Ohio 30-day notice requirement was identified during the implementation planning process and operations noted it would be satisfied by providing a web-based query process but that web-based query process was not identified to the e-business owner and not pursued for Ohio until the issue

resurfaced in April, but now would not be available for Ohio until 9/21. He reported it was not known if Ohio would treat the lack of 30-days' notice as a contract failure but that the "Compliance [Department], in the future, will be compiling the Master List of Deliverables for each new state and will be responsible for assuring that the implementation process has effectively addressed 100% of the requirements." On the morning of September 14, 2007, J. Wade asked if an automated 30-day letter out of D95 could be generated for any claim over 30 days until the web-query access was set.

On September 11, 2007, J. Wade notified the Complainant, M. Williams and S. McDowell that there was a CCB (Call Care Browser) / D950 meeting on September 21, 2007, and asked her managers to "be sure to escalate the issues you don't get what you need from IT for basic functions. We have to start meeting goals and the month will be 2/3 over by then." J. Wade also sent an e-mail to D. Brown stating that the proposed functions that would remain on the D950 system that were not yet available on the CCB system "covers the bulk of our calls! They are not even giving us an 80/20 implementation." E-mails of September 12, 2007 indicate that senior managers were aware of limitations of the D950 system and that putting CCB on top of D950 would not remove the business rules or logic that runs the process. A query was made to identify the data points that are needed for the majority of service inquiries for SR and SSB Operations, if the D950 system could provide the data and if there were any inhibitors to enabling the data points for the CCB system.

On September 14, 2007 the Complainant provided a status report on the D950 Inventory Reduction Project to her peers and superior managers. She indicated the correspondence inventory as:

		Starting Inventory	Ending Inventory	Less than 30 days	31-60 days	61-90 days	91+ days
9/4/2007		8,976	8,976	48%	32%	17%	3%
9/10/2007		8,017	9,063	50%	38%	11%	1%
9/13/2007	Indiana	1,903			801	152	0
	Kansas	100			0	0	0
	Nevada	1,112			256	109	0
	Ohio	3,078			1,654	0	0
	Texas	854			32	322	101
	West Virginia	2,026			737	392	0

She reported that the team had been divided by current and aged items and that she had the Camarillo office transfer the West Virginia cases to Savannah for resolution because she was not pleased with the progress the Camarillo office had achieved.

On September 21, 2007 the Complainant reported by e-mail that the correspondence inventory had been reduced by 17.8% with no correspondence over 90 days and that the Indiana and Savannah sites had partnered to increase the number of associates working on the project. . She indicated "a process improvement opportunity was identified [involving corrected claims being

sent to SourceCorp for keying from the mailroom] and implemented which will have a significant impact on the volume of incoming correspondence.” She reported the correspondence inventory as:

		Starting Inventory	Ending Inventory	Less than 30 days	31-60 days	61-90 days	91+ days
9/21/2007	Indiana	1,814	1,749	696	877	176	0
	Kansas	138	138	138	0	0	0
	Nevada	974	834	406	382	46	0
	Ohio	2,668	2,530	1,371	1,159	0	0
	Texas	338	192	20	172	0	0
	West Virginia	1,982	1,874	256	1,226	392	0

On October 11, 2007, the Complainant reported that there had been an overall reduction in correspondence inventory of 81% since the September 10, 2007 inception of the D950 Inventory Reduction Project. She reported the correspondence inventory as:

		Starting Inventory	Ending Inventory	Less than 30 days	31-60 days	61-90 days	91+ days
10/11/2007	Indiana	1,023	249	249	0	0	0
	Kansas	247	271	271	0	0	0
	Nevada	210	144	144	0	0	0
	Ohio	871	516	516	0	0	0
	Texas	113	109	109	0	0	0
	West Virginia	555	408	408	0	0	0

On October 18, 2007, the Complainant reported that the D950 Inventory Reduction Project was complete and no further overtime would be required to complete correspondence. She reported the correspondence inventory as:

		Starting Inventory	Ending Inventory	Less than 30 days	31-60 days	61-90 days	91+ days
10/18/2007	Indiana	249	265	265	0	0	0
	Kansas	271	55	55	0	0	0
	Nevada	148	170	170	0	0	0
	Ohio	336	384	384	0	0	0
	Texas	81	88	88	0	0	0
	West Virginia	408	82	82	0	0	0

November 5, 2007 e-mails indicate WellPoint’s West mainframe had issues which impacted the Call Care Browser (CCB) application to the front-end of the WGS system to the extent that the Complainant notified J. Wade that she was letting agents who had volunteered to work overtime that day to leave the work area and that she would extend overtime to 41 agents at the Camarillo and Savannah site on November 6, 2007.

On November 13, 2007, P. Burke reported to 5 managers that she had met with SSB business to discuss cleanup of a large volume of misrouted Medicaid claims that had been sent to the WGS system by SourceCorp as host claims, causing error and age issues. She reported “EDI made changes in September that addressed the initial misrouting of electronic claims. The business feels there has been a huge improvement in the correct routing of electronic claims” She stated she was still investigating on claim in WGS, that a batch process would be soon completed to strip error data and the stripped data will be sent to M. Shaily to coordinate getting the claims keyed correctly. D. Mosher was assigned to get SourceCorp to immediately address the misrouting issues. D. Mosher forwarded the e-mail to J. Wade with the comment that “We are placing a lot of focus on Blue Card considering the backlog and routing issues we have experienced.”

On November 15, 2007, S. Efurud, the Director of Systems Support and Programs, sent an e-mail forwarding an attached “Ben Admin Issues List” to 6 managers, including D. Mosher. He described a spreadsheet of issues he intended to produce each week that would “be easier to understand what is going on with each issue.” D. Mosher forwarded the e-mail to J. Wade, the Complainant and M. Williams on November 16, 2007 with the comment: “FYI on the outstanding issues in configuration with over 780 issues. Some of the issues only affect 1 or 2 claims, but others affect more.” J. Wade asked D. Mosher “how do we get [the issues] identified and worked ... what can we do besides [overtime] for the next several months?”

On November 20, 2007, J. Ureda, IT Director for State Sponsored Business and Workers Compensation, advised J. Wade that SSB IT and Operations were working with Perot Systems on changes to the Call Care Browser to find a solution for provider changes and that it would “involve some cleanup work in the D-950 provider data base.” She noted that SSB Queue dollars would be used to cover testing and implementation that would carry over into 2008.

On December 21, 2007, J. Wade advised D. Mosher to address a single claim issue raised by West Virginia that indicated a processor had missed an attachment and failed to review the case report for the “hold queue” in a timely manner, leading to the claim not being paid for 2-1/2 months.

On January 9, 2008, D. Rhodes, Staff VP for Compliance Business Processes asked J. Wade if she would be comfortable in the South Carolina initiative if the WellPoint operating performance thresholds were set at mid-point of the contract ranges, including, no more than 4% of customer calls blocked, no more than 3.5% of the time all call trunk lines are busy, 91% of claims processed to approved status within 30 calendar days, 95% of all claims are processed accurately, and 96% of claim dollars are processed accurately. J. Wade responded to questions by stating that “we don’t measure inquiry accuracy at the individual SSB state level” and inquired of the Complainant if there was “the ability on D950 to measure the inquiry accuracy at the state level. The Complainant responded that “inquiry reporting is a manual process for all line of businesses that are on the Diamond system, and yes, we can report at the state level.”

On January 23, 2008, the Complainant notified J. Wade of the current work related D950 inventory levels was:

	Ending Inventory	Age more than 30 days	Days Receipts on Hand	Days Work on Hand
Camarillo Team	3,057	396	23.55	48.95
Savannah Team	3,026	1,394	21.78	32.26
(combined)	6,083	1,790	22.63	38.94

J. Wade responded that “the aging is not terrible considering how many days work you have. Looks like we need some [overtime] to bring it in line.”

On February 7, 2008, WellPoint Business Consultant for State Sponsored Business, G. Smith sent an e-mail 6 individual, including D. Mosher (but not to the Complainant), indicating that the claims pending payment authorization in the D950 system were approaching 14,000. She suspected an issue in the “authorization matching logic” and recommended investigating how authorizations are being loaded in WMDS and how provider ID could be added to authorizations. D. Mosher forwarded the e-mail to J. Wade with the notation “Have people jumping a little more around here because we just cannot sustain this type of activity.”

On February 27, 2008 L. Pollnow forwarded a February 7, 2008 e-mail to five individuals, including D. Mosher and J. Wade, reporting \$3,300,000.00 in interest had been paid by WellPoint in the previous 14 months. L. Pollnow commented that “we will pay less interest in Diamond states [in 2008] due to the wonderful job [D.] Mosher has been doing keeping claims current.” J. Wade asked what was driving the large increase in claims in January 2008; to which D. Mosher – in California it was being behind in over 30 days pending, cases which dropped to 6% in February, in Nevada it was because of claims originally denied for lack of authorization were returning, and for Texas it was due to the fee schedule being incorrect and delayed. J. Wade inquired if the interest costs could be divided between original claims and adjudication to “really help show the cost of all of the rework.”

On June 24, 2008, L. Lambert, Director of SSB Business Administration requested J. Wade “recommend a leader from your Claims and Customer Service areas” for involvement with the SSB 90-Day Outlook Project on Staff Development and Training that would include strategic discussions and future strategies. J. Wade asked D. Mosher, the Complainant, M. Williams and C. Weaver if there was someone below them who could work with L. Lambert as requested since each of the addressees “are working with Minga on the Ops excellence” (OE) initiative.

On September 10, 2008, J. Wade reported that the Consumer Service Operations Daily-Dashboard indicated 16,214 inventory of pending claims, of which 1,100 were aged. There were also 24,647 facet and 92,860 senior facet claims in inventory and 4,335 facet and 3,946 senior facet adjustments in inventory. The Complainant was not involved in this email.

On September 11, 2008, D. Mosher reported to 35 individuals (including the Complainant and J. Wade) that Operation Excellence (OE) initiative had commenced earlier that summer with Perot and WellPoint IT department and that the OE initiative included “a very important track ... focused on key technology and process improvements to ensure we don’t face additional challenges with unaccounted for claims” The track was named “Claims Black Hole” track and was designed to consolidate 4 D950 pending/held reports into one report including “all claims

holding/pending/unposted/unprocessed/etc. in Diamond.” He reported that IT and Perot had identified requirements for the consolidated report and tested it the prior week. He stated that as a result of the test report run, the report identified 9,779 facility claims for inpatients and outpatients that had not been identified in D950 reports previously. He indicated that his department would complete processing of the 9,779 claims by September 23, 2008 and reduce his department inventory to 24,000 by month’s end. He reported that “our stop gap reports” had identified all the unposted facility claims since implementation. He noted that many of the 9,779 facility claims involved duplicate claims and that there were a total of 2,100 facility claims “susceptible to interest” but he would not know how much interest until October 1, 2008. The e-mail chain indicates that D. Mosher’s report was forwarded to the Vice President of Accounting and Finance as well as the Chief Financial Officer. J. Wade commented on the e-mail that \$60,000 interest had been paid to Nevada in August 2008 because of a wrong benefit configuration found by the OE work group. The events reported by D. Mosher and J. Wade did not involve the Complainant or her area of responsibility for Medicaid telephonic inquiries and written correspondence inquiries.

On September 17, 2008, M. Reese from the Savannah service center sent an e-mail to J. Wade “regarding the unprofessional management at the Savannah, Georgia office.” She reported that she gave her resignation letter in confidence to her manager, C. Harper, on September 16, 2008, who then called the co-workers into the aisle and announced M. Reese’s resignation effective the end of the following week and showed the resignation letter to a co-worker who sits in M. Reese’s row. She considered C. Harpers’ conduct a violation of WellPoint ethics and compliance core values and wished that the actions be “addressed and dealt with according to company policies.” J. Wade responded by asking the Complainant “Please help me understand what happened,” and asking her supervisor D. Andrews to have D. Kennedy involved with the matter since M. Reese had addressed the matter to J. Wade.

*Other e-mails involving the Savannah Service Center (CX 30)*

On April 18, 2006, C. Harper, as Manager, Unicare/SSB Operations, sent an e-mail to A. Bowman, M. Reese, and 59 other individuals on “I/T Handling.” She stated that ITs should remain open as long as it takes to completely resolve the issues. Ideally the resolution would be within 10 days; but if not, the I/T was to remain open and checked on a daily basis to keep the I/T moving forward and prevent it from dropping through the cracks. She stated that an I/T that has not been fully resolved should never be closed and that a quality error can be imposed for such action. She stated that the I/T should be timely and accurately documented with information that directly relates to the I/T.

On October 14, 2008, J. White sent an e-mail to C. Meadows stating she had found “the email where we were advised to close overpayment logs.” The email referred to that dated April 17, 2006, from associate G. Neri where she asked S. Knutsen, of WellPoint’s National Business Cost Containment & Overpayment Avoidance, how to find out when an overpayment is completed so case tracking can be closed on overpayment requests, since the transmittal paper says the case continues to remain open. S. Knutsen replied the case could be “CCONT log” could be closed when the overpayment request is sent. G. Neri then directed revised overpayment request forms be used in the future because “we can also close our tracking when overpayment is requested.”

*WellPoint SSB Claim System Challenges, March 5, 2008 (RX 18)*

On September 13, 2010 four slides were reproduced and submitted as WellPoint SSB Claim System Challenges of March 5, 2008. The exhibit outlines known WGS/STAR system challenges as - no claim check or code review software; inefficient claims reporting due to no reporting dashboard, no top pend reason report, no daily or weekly adjudication report, lack of ability to report monthly corporate claims metrics, lack of ability for ad hoc reporting, and lack of efficient daily production reporting at the associate level; no claims auditing tool, frequent pricing and configuration issues; and low auto adjudication rates. The exhibit outlines known D950 challenges as – no claim check or code review software; inefficient claims reporting due to no reporting dashboard, no top pend reason report, no daily or weekly adjudication report, lack of ability to report monthly corporate claims metrics, and inefficient inventory reports not capturing all claims in the process; no claims auditing tool; no work distribution tool; no online knowledge database tool; no claim macros; no mass adjustment tool; too many steps in the claim payment process and lack of balance and reconciliation through those steps; frequent pricing and configuration issues; and lack of automated processes.

Current improvement activities for the D950 on March 5, 2008 included – new auto adjudication report being reviewed for accuracy in production; removal of the preprocessor to eliminate steps in the process to be completed by mid-March; new pend report in D950 to provide all necessary data to work pending claims to eliminate several spreadsheets used by operations to be completed by mid-March; new Perot auditing tool to effectively audit claims with estimated summer implementation; and new configuration to automatically deny claims when an authorization is not found in the D950 system (reported such claims currently held for manual review with 16,000 of 80,000 inventory were pending authorization).

## **DISCUSSION**

The issues involved in this case are centered on the tracking and processing of telephonic inquiries and written correspondence inquiries involving State Sponsored Business (SSB) contracts of state run Medicaid programs as overseen by the Complainant as Director of the Savannah, Georgia processing/call center. The inquiries included those questions posed by individual beneficiaries, such as insured status or need for new insurance cards, and questions from hospitals and other medical providers, such as patient coverage, billing status and billing disputes.

When written correspondence was first received in WellPoint, it is assigned a unique identifier number known as a document control number (DCN) which indicates the date received and a unique tracking number. The correspondence was then transmitted to the Savannah processing/call center either electronically or in original form. Correspondence involving initial “clean” claims requiring processing were sent to the section led by D. Mosher for claims adjudication. Other correspondence involving inquiries and dispute resolution were placed in a file cabinet to be assigned by managers to customer care representatives for processing as permitted by the workload. When assigned to a customer care representative, the correspondence was entered into the D-950 document tracking system on a “contact log”, also known as a “communications log” with the original DCN receipt date, contact log number, and

other identifying data. The D-950 mainframe system was provided and maintained by the Perot Systems. The D-950 system involved the use of a computerized program to record and track the processing of individual correspondence in the Savannah, Georgia call/service center. The “contact log” may be considered as a program document templet within the D-950 computerized system that permits processing dates and data to be stored and recalled for individual correspondence processed in the Savannah, Georgia call/service center. “Contact logs” were also generated for telephonic inquiries. The Camarillo, California service center used a different computerized system to record and track the processing of individualized correspondence known as the WGS system, which could not exchange information directly with the D-950 system.

As customer service representatives used the D-950 system to answer the written inquiry, the representative would describe the work steps done, through completion, into the contact log entry location for the particular correspondence worked. When the inquiry was completed, the customer service representative would note the correspondence as closed in the D-950 contact log. Until a contact log was opened by a customer service representative for individual correspondence received in the Savannah processing/call center, the D-950 could not be used to account for or track that particular correspondence inquiry. For inventory control of correspondence received with a DCN but not yet entered into the D-950 system by contact log entry, Savannah processing/call center managers would manually count the correspondence files physically in the file cabinet drawers awaiting assignment to a customer service representative and manually account for assigned correspondence files with customer service representatives that had not yet been keyed into the D-950 system through creation of a contact log entry.

The D-950 system was capable of generating reports that identified how many correspondence contact logs were being worked (open) at the time of the report, how many had been closed during a period of time, and the age of the correspondence item at various processing points based on the DCN receipt date. Supervisors, including the Complainant, were able to use the number of open contact logs, the manual count of correspondence in the file cabinets, and the manual count of the correspondence with representatives that had not yet been entered into the D-950 system to determine the amount of work on-hand and the need for increased staffing or overtime, thereby identifying any need to adjust staffing or workloads or create special projects to address increased backlog correspondence, that is correspondence that could not be expected to be completed within a normal work period of 5 to 10 days. An example of correspondence backlog requiring a “special project” involved approximately 8,000 pieces of claims correspondence found in the Camarillo, California office in 2007 that were sent to the Savannah, Georgia call/service center for processing. The Complainant was tasked with developing an action plan using overtime and flexibility of staff to process the 8,000 claims correspondence and provide her supervisor, J. Wade, with weekly processing reports. The D-950 system and reports of manager manual correspondence counts were also used by senior supervisors in other offices to track workload, processing times, and backlogs in the Savannah, Georgia call/service center.

Perot Systems was the vendor that provided and maintained the D-950 system with medical billing codes and payment rates. The D-950 system did not have automated imaging processes or electronic queues such as the system used in Columbus, Georgia. The D-950 was a manual input system without the ability to transfer stored data electronically. The D-950 system was considered labor intensive and time consuming when compared to other processing systems by

senior management. There were no controls on who could access contact logs in the D-950 system and make entries in contact logs, including closing open contact logs. The deficiencies in the D-950 system were well known by management and supervisors before the Complainant reported to the Savannah, Georgia processing/call center. In early 2008 a study group developed the “WellPoint SSB Claim System Challenges” faced with the D-950 system and the WGS/STAR/CHIP systems. The results were summarized in a slide presentation dated March 5, 2008. A taskforce was created around June 2008 to determine whether to move to a new computer system or renew the D-950 contract with Perot Systems. Presentations were then made to senior leadership of the various computerized processing systems that could be used by WellPoint. The D-950 system in Savannah, Georgia, was replaced in 2009.

WellPoint’s State Sponsored Business (SSB) involved entering into contracts with several States to service the respective state’s Medicaid program. The various contracts provided for servicing authorizations/billing/claim payment and adjustments to hospitals and other medical providers as well as response to individual state citizen-members on entitlements/identification cards/billing issues. The contracts generally provided for performance requirements, such as time to answer telephone inquiry, time for initial processing of claim, time for processing dispute resolution claims, and accuracy of responses. Where contract performance guarantees were not met in a timely manner, penalty provisions could apply. WellPoint personnel met on a regular basis with the various state SSB representatives to keep abreast of contract performance. Penalties would be paid where response times in the contract guarantees were not met. When the 8000 claims from Camarillo were added to the system, they were a backlog and overall processing times deteriorated such that a contract guarantee penalty was paid that quarter.

At the time relevant to this complaint, there were approximately 2 million Medicaid participants in WellPoint’s administered SSB programs. Only 371,000 participants were serviced in Savannah, Georgia and its D-950 system. Virginia SSB contract was on the CHIP system. California with the largest state participation was on the WGS system. Other serviced states were also on the WGS system.

**I. The Complainant failed to establish a prima facie case, by a preponderance of the evidence, that protected activity was a contributing factor to her adverse employment action.**

a. The Complainant suffered an adverse employment action on October 21, 2008.

The evidence established that the Complainant was an employee of WellPoint in the Human Resources Department when she was selected to become the Director of the Savannah, Georgia processing/call center in May 2007. The Complainant performed duties as the Director for the Savannah processing/call center until her employment ended on October 21, 2008. The Parties have stipulated that the Complainant’s employment ended by termination following completion of an August to September 2008 investigation into work activities in the Savannah, Georgia processing/call center. Accordingly, this presiding Judge finds that the October 21, 2008 termination of employment was an adverse employment action.

b. The Complainant failed to establish by a preponderance of the evidence that she engaged in protected activity.

The Complainant alleged in her complaint that she engaged in protected activity during telephonic conversations with her immediate supervisor, J. Wade over a period of time from August 2007 through September 2008.

She alleged that in August/September 2007 she reported the D-950 system was inadequate for correspondence processing, required manual intervention and work-arounds, lacked ability to generate inventory management reports for in-house quality assessments, and did not adequately provide for aged-inventory reporting, thereby impeding the timeliness productivity standards in State contracts; no internal quality assessment was performed on closed correspondence; there was no training documents to instruct associates in correspondence processing; and 8,000 claims had been found in the Camarillo service office that had not been logged into the D-950 system.

She alleged that in October/December 2007 she reported that some source feeds from EDI and SOURCECORP (correspondence received, DCN added, and then electronically transmitted to Savannah processing/call center for processing) fell into “black holes” and were discovered after a period of time such that the accuracy of claims inventory was an issue that the IT department should be involved to establish an internal control to alert when transmitted files are not received.

She alleged that in March/April 2008 she reported a lot of aged correspondence was because of an improper CPT code in the D-950 system pricing table and she was having a hard time getting Benefits Administration to update the medical codes, thus adversely impacting processing times.

She alleged that in June 2008 she again raised SOURCECORP feed issues involving front-end processing of correspondence.

After the Complainant was aware that an investigation was being conducted by N. Hunt involving closing correspondence contact logs without the correspondence being fully worked, she alleged reporting on August 29, 2008 that open/pending correspondence was not being counted in the weekly inventory for internal or external reports and that there was no motive to instruct employees to prematurely close the correspondence items.

She alleged that on September 26, 2008 she again stated correspondence inquiry inventory did not include any open work in-progress; open correspondence in the D-950 system was not being counted as part of the weekly inventory; only correspondence on assigned associate desks and unassigned correspondence logged into the D-950 system were counted; WellPoint was not counting work-in-progress (open) correspondence logs as part of the overall inventory; and her performance objectives did not include managing inventory of open correspondence or efficiency of correspondence processing.

The Complainant alleged that she reported on August 29, 2008, to N. Hunt as part of his investigation, that the D-950 system was inadequate for processing claims correspondence, the reporting process was manual and very time consuming, the limited reporting inhibited accurate

reporting for internal and external stakeholders and employee productivity, and there was not a quality program in place to measure employee effectiveness.

The Complainant testified that it wasn't until the August and September 2008, while defending herself because there was no reason to close open contact logs without properly working the correspondence, that she expressed her belief that open, unworked, correspondence was not being counted and added to WellPoint pending inventory such that it was "a fraudulent activity ...[which] impacted the stockholders from a SEC standpoint ... [and had] an impact on the financial statements because of the way they was containing all those claim correspondence not being counted."

For the Complainant to have engaged in protected activity under SOX, the Complainant must establish (1) that she had an actual personal belief (i.e.: subjective belief) that the conduct complained of constituted reports of mail fraud; wire, radio or television fraud; bank fraud; securities fraud; violation of any rule or regulation of the Securities Exchange Commission; or a violation of other federal law relating to fraud on shareholders under other federal laws; and (2) that a person of similar experience, training and factual knowledge would believe (objective belief) that a violation had occurred, is occurring, or is about to occur. *Sylvester v. Parexel International LLC*, ARB No. 07-123, ALJ Nos. 2007-SOX-039, -042 (ARB May 25, 2011) citing *Day v. Staples, Inc.*, 555F.3d 42 (4<sup>th</sup> Cir. 2008) and *Allen v. Administrative Review Board*, 514 F.3d 468 (5<sup>th</sup> Cir. 2008)

"A mere possibility that a challenged practice could adversely affect the financial condition of a corporation, and that the effect on the financial condition could in turn be intentionally withheld from investors, is not enough. For example, although a company that tolerates incompetence or poor management may not be acting in the best interests of its shareholders, a SOX-protected activity must involve an alleged violation of a federal law directly related to fraud or securities violations. 'SOX' protects shareholders from inaccurate reporting of a publicly held corporations' financial condition ... Providing information to management about questionable personnel actions, racial discriminatory practices, executive decisions or corporate expenditures with which the employee disagrees, or even possible violations of other laws ... standing alone, is not protected conduct under the SOX." *Neuer v. Bessellieu*, ARB No. 07-036, ALJ No. 2006-SOX-132 (ARB Aug. 31, 2009) citing *Smith v. Hewlett Packard*, ARB No. 06-064, ALJ Nos. 2005-SOX-088, -092 (ARB Apr. 29 2008) and *Harvey v. Home Depot U.S.A.*, ARB Nos. 04-114, -115, ALJ Nos. 2004-SOX-020, -036 (ARB Jun. 2, 2006); see also *Reed v. MCI, Inc.*, ARB No. 06-126, ALJ No. 2006-SOX-71 (ARB Apr. 30, 2008); *Stojicevic v. Arizona-American Water*, ARB No. 05-081, ALJ No. 2004-SOX-73 (ARB Oct.30, 2007) [poor management practices that could adversely affect financial condition and possibility that the effect of financial condition could in turn be intentionally withheld from investors is not enough to be protected activity under SOX]

The evidence established that there were times when claim correspondence was received by WellPoint and marked with a DCN identifier then sent to Camarillo or Savannah service centers and either sat in file cabinets for an extended period of time, such as the 8,000+ items found in Camarillo, or lost in the electronic transmission to Savannah, such as the incident involving SOURCECORP. The evidence also established that management supervisors reallocated

personnel assets and funding to address the unworked and untimely processed claims correspondence and oversaw the progress on completing the correspondence in a timely manner after discovery of the problem. The evidence also established that WellPoint worked closely with representatives for the respective SSB contracts and paid performance guarantee penalties on a number of occasions.

There is no evidence of WellPoint financial statements being manipulated to hide performance penalties paid, no evidence of stockholders being defrauded, and no evidence of intent by WellPoint to defraud stockholders.

The Complainant established that poor management oversight practices permitted claim correspondence to experience delays from the time the DNC identifier was placed on correspondence to the time the correspondence was completely worked and answered. Some delay was by local management failing to timely enter received correspondence into the D-950 system and route to associates to properly work the correspondence in a timely manner. Some delay was associated with the transmission of electronic files from SOURCECORP to the service center. Some delay was due to the vendor Perot Systems not having the correct coding and payment rate entries in the D-950 system. None of these delays rose to the level of fraudulent activities standing alone, though they might indicate that local and intermediate management might not have been performing in the best interest of stockholders at the time by creating events that had the potential of incurring performance guarantee penalties and decreasing profits. As noted above, poor management practices are not a SOX violation standing alone. There must be intent by management to defraud the stockholders through management's activity.

Here J. Wade testified to knowledge of the delays the Complainant pointed out and testified to payment of performance guarantees for those States where in such penalties were warranted under the respective SSB contract. Managers subordinate to the Complainant described the manner in which claims correspondence was handled and in some cases delayed. J. Wade and N. Hunt both testified that the Complainant never described activities by management as fraud on stockholders or SOX violations.

After deliberation on the evidence of record, this Administrative Law Judge finds that the Complainant has failed to establish that she engaged in protected activity within the meaning of SOX. Accordingly, her complaint must be denied. Since the Complainant has failed to establish that she engaged in protected activity, a separate analysis of Respondent's reasons for terminating the Complainant's employment need not be addressed.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. During employment termination meetings, Respondent gives departing employees a form asking them to report any ethics-related concerns.
2. In May 2007, Complainant received a promotion to Director of Customer Care, reporting to Vice President of Consumer Operations, Jenifer Wade, within WellPoint's State Sponsored Business ("SSB") unit. Wade made the decision to promote Complainant to that Director-level position.
3. Complainant was responsible for overseeing facilities in Camarillo, California and Savannah, Georgia and she worked out of the Savannah facility.
4. WellPoint encourages managers to have one-on-one meetings with their associates as part of the manager-associate relationship building process.
5. During 2007 and 2008, WellPoint had contracts with California, Colorado, Connecticut, Indiana, Kansas, Massachusetts, Nevada, New Hampshire, New York, Ohio, Texas, Virginia, West Virginia, and Wisconsin (the "State Contracts").
6. Respondent also obtained a contract with South Carolina in 2008.
7. "Performance guarantees" are provisions within a State Contract that establish certain metrics that Respondent must meet and, if Respondent falls below a critical threshold level of those metrics, then it may have to pay performance penalties.
8. Among other things, the State Contracts required Respondent to process in-bound telephone calls, claims (including adjustments), and claims correspondence from Medicaid members and providers.
9. Complainant advised Wade that Cindy Quintana in Camarillo had discovered approximately 8,000+ pieces of correspondence in a file cabinet that had not been logged into the D950 system, counted, nor processed.
10. Complainant admits that none of the 8,000+ pieces of correspondence could have related to the South Carolina contract because Respondent did not assume responsibilities under this contract until the following year.
11. A correspondence action plan was developed to resolve the approximately 8,000+ pieces of correspondence in Camarillo. The correspondence action plan included a communications strategy for key stakeholders.
12. Wade did not conduct any portion of the investigation. Rather Hunt and Human Resources Manager, Marria McGee, conducted the investigation(s) and discussed their findings with Wade after they completed their investigation.
13. Wade communicated her decision to terminate Complainant's employment to Complainant on October 21, 2008.
14. David Mosher and Minga Williams are current employees of Respondent.
15. As of the time of her termination, Complainant's annual salary was \$102,386.47.
16. Complainant filed this SOX complaint on January 20, 2009.
17. Respondent is a publicly traded company that administers health benefit plans and maintains contracts with several states to administer their respective state-sponsored health insurance programs.
18. Section 806, the employee protection provision of the Corporate and Criminal Fraud Accountability Act of 2002, the Sarbanes-Oxley Act of 2002, known as SOX, at 18 U.U. Code, section 1514(a) applies to all times relevant to this complaint.

19. The SOX complaint was denied by the Regional Administrator, Occupational Safety and Health Administration, Atlanta, Georgia, on May 19, 2010.
20. On June 23, 2010, Complainant filed a request for hearing before an Administrative Law Judge.
21. Respondent's specialized state-sponsored SSB unit, business unit, administers plans for members with Medicaid.
22. The D950 system involved use of a computerized program to record and track the processing of individual correspondence in the Respondent's call center from receipt to closed status disposition.
23. The Complainant met by telephone monthly with Jennifer Wade from May 2007 through September 2008 to discuss matters related to Complainant's position as the Director of Customer Care.
24. In June 2008, Respondent's ethics and compliance department received a verbal complaint from J. Hennessey alleging that workers at the Savannah call center had been instructed to prematurely close contact logs before working the underlying correspondence, and a written complaint making similar allegations was received in July 2008.
25. An ethics and compliance investigation of J. Hennessey's complaint was undertaken by Nathan Hunt in August 2008.
26. Both Nathan Hunt and Maria McGee met with Complainant as part of their respective investigations.
27. The Complainant failed to establish by a preponderance of the evidence that she engaged in protected activity within the meaning of SOX.

### **ORDER**

**The complaint filed by Complainant under the provisions of SOX on January 20, 2009, is hereby DENIED.**

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, Virginia

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original

and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1980.109(e) and 1980.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1980.110(b).

## ADDENDUM

### WellPoint Personnel Reference List:

L. Glasscock	Chief Executive Officer
M. Boxer	Chief Operations Officer
G. McCarthy	Senior VP of Operations
Clare Resnick	Senior VP, Chief Financial Officer, Consumer Business
Linda Pollnow	VP & General Manger, State Sponsored Business
L. Lambert	Director, State Sponsored Business
Jennifer Wade	VP Consumer Services, Senior Services, State Sponsored Business Operations
Anita Johnson	Director I, Customer Care Center, State Sponsored Business, Savannah, GA
David Mosher	Director II, Customer Care, State Sponsored Business, PMO Camarillo, CA
Minga Williams	Director II, Customer Care, State Sponsored Business, Indianapolis. IN
Carolyn Harper	Manager I, Customer Care, State Sponsored Business, Savannah, GA
Anne Bowman	Manager I, Customer Care, State Sponsored Business, Savannah, GA
Toni Hall	Manager I, Customer Care, State Sponsored Business, Savannah, GA
Cynthia Quintana	Manager II, Customer Care, State Sponsored Business, Camarillo, CA
Brenda Horsley	Manager, Claims & Customer Care, State Sponsored Business Operations
L. Lambert	Director of Business Administration, State Sponsored Business
Dan M. Rhodes	Staff VP Compliance Business Process, State Sponsored Business
Jim Bixler	VP Ethics & Compliance
Janet Degnan	Staff VP for Ethics & Compliance
Nathan Hunt	Investigator, Ethics & Compliance
Darlene Andrews	Director, Human Resources

Maria McGee	Investigator, Human Resources
Michael Loeser	Human Resources support to Savannah, GA
Shawn Freeman	Staff VP for Accounting & Finance, State Sponsored Business
Sabine D'Amico	Director, Accounting & Reporting, State Sponsored Business
Judy Ureda	Director Information Technology, State Sponsored Business & Workers Compensation
Gretchen Smith	Business Consultant, State Sponsored Business
Cecile Arnstein	Customer Care Representative, State Sponsored Business, Savannah, GA
Felicia Bates	Customer Care Representative, State Sponsored Business, Savannah, GA
Regina Balades	Customer Care Representative, State Sponsored Business, Savannah, GA
Rebecca Brickner	Customer Care Representative, State Sponsored Business, Savannah, GA
Myra Reese	Customer Care Representative, State Sponsored Business, Savannah, GA
Anya Cruz	Customer Care Representative, State Sponsored Business, Savannah, GA
Maranda DePacito	Customer Care Representative, State Sponsored Business, Savannah, GA
Amaka Madubuike	Customer Care Representative, State Sponsored Business, Savannah, GA
Sharon Sanders	Customer Care Representative, State Sponsored Business, Savannah, GA
Jimmie Hennesey	Claims adjuster, State Sponsored Business, Savannah, GA
Tanya Contreras	D950 System Subject Matter Expert
Other Persons:	
Mitch Collins	Regional Director, Unicare Health Plan of West Virginia, Inc.