

Case Nos. 85525 & 85656

In the Supreme Court of Nevada

UNITED HEALTHCARE INSURANCE COMPANY;
UNITED HEALTH CARE SERVICES, INC.; UMR, INC.;
SIERRA HEALTH AND LIFE INSURANCE COMPANY,
INC.; and HEALTH PLAN OF NEVADA, INC.,

Appellants,

vs.

FREMONT EMERGENCY SERVICES (MANDAVIA),
LTD.; TEAM PHYSICIANS OF NEVADA-MANDAVIA,
P.C.; and CRUM STEFANKO AND JONES, LTD.,

Respondents.

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Case No. 85525

UNITED HEALTHCARE INSURANCE COMPANY;
UNITED HEALTH CARE SERVICES, INC.; UMR, INC.;
SIERRA HEALTH AND LIFE INSURANCE COMPANY,
INC.; and HEALTH PLAN OF NEVADA, INC.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State
of Nevada, in and for the County of Clark; and the
Honorable NANCY L. ALLF, District Judge,

Respondents,

vs.

FREMONT EMERGENCY SERVICES (MANDAVIA),
LTD.; TEAM PHYSICIANS OF NEVADA-MANDAVIA,
P.C.; and CRUM STEFANKO AND JONES, LTD.,

Real Parties in Interest.

Case No. 85656

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CERTIFICATE OF SERVICE

I certify that on April 18, 2023, I submitted the foregoing appendix for filing *via* the Court's eFlex electronic filing system.

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1 necessary procedures --

2 THE COURT: The same thing with car insurance.

3 MR. PORTNOI: Same thing -- oh, yes. There's been

4 a -- --

5 THE COURT: Because people driving as much.

6 MR. PORTNOI: Exactly. There's been a great deal --

7 same thing with car insurance and a lot has had to be rebated
8 as a result of that.

9 So the issue here is that that percentage is going to
10 apply no matter what. And so what you have is instead, you
11 have that that is -- what the experts were commenting on in
12 terms of you're going to see premiums go up, which is
13 essentially, if an input to health insurance goes up, then the
14 [indiscernible] the input -- rather, if the cost goes up --
15 the amount that either employer or insurance company has to
16 pay to medical providers goes up. Premiums will go up.

17 That doesn't open the door to, in any sense, to a
18 detailed explanation of defendants' size and wealth and so on.
19 That's just describing the industry as a whole.

20 And I would also point out that I don't -- you know,
21 my guess is that that testimony will probably be objected to
22 by plaintiffs. We don't even know in that testimony will come
23 in, when comes down to that -- when it comes down to that
24 moment.

25 Now, the other piece here to note is that TeamHealth

006001

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1 Plaintiffs also argued that they should be able to bring in
2 evidence of savings that were earned as a result of the shared
3 savings program. This motion has nothing to do with that.

4 We agree that plaintiffs may introduce evidence of the
5 amount that defendants saved when they paid TeamHealth
6 Plaintiffs less than full billed charges on any particular
7 claim at issue in the case. We also agree that TeamHealth
8 Plaintiffs can introduce evidence of the amount that
9 defendants' ASO customers -- MGM Grand, the Las Vegas police
10 department, and others -- saved on ASO claims; and the fees
11 defendants earned, based on the savings to those ASO
12 customers.

13 Granting this MIL has nothing do to do with that. It
14 will not preclude that presentation.

15 We contend that the evidence should be limited to the
16 amount earned and saved on the about 12,000 at-issue claims.
17 It should be limited to parties in the case. But that's not
18 what this motion is about. That's an argument that is not the
19 subject of a MIL. It probably will come up at trial.

20 But TeamHealth -- but so as a result, there's no
21 issue -- with respect to the arguments that were raised in
22 opposition -- again, there were two of them, one related to
23 the experts, one related to shared savings -- those are both
24 issues that are tangential and unrelated to this.

25 And I would ask that the Court grant the MIL.

1 And I'll stand aside for plaintiffs, unless you have
2 any questions.

3 THE COURT: Thank you.

4 MR. ZAVITSANOS: Good afternoon, Your Honor.

5 So there are a couple of MILs that are related. And
6 let me -- and I'm not doing all of them, so let me see if I
7 can put in a separate silo what I'm covering, and then
8 Mr. McManis is going to cover the others.

9 So on the issue of profits earnings, how much was
10 saved nationally -- I'm not going to address those. Okay?

11 I am addressing only MIL 17, which I believe they have
12 titled regarding size and wealth.

13 THE COURT: Right.

14 MR. ZAVITSANOS: Okay. So let me first address what
15 we're not going to do, and the part of the MIL to which we
16 agree.

17 We are not going to say to the jury at any point --
18 because, frankly, it's not effective -- I don't think -- we're
19 not going to say, You should award us this money because this
20 is a drop in the bucket for them. Look how big they are. We
21 are not going to do that.

22 THE COURT: Good.

23 MR. ZAVITSANOS: Okay. That -- and frankly, I've just
24 found that's not effective and it's not appropriate. So we
25 are not going to do that. Okay. So to that we agree.

1 Now, there are -- you know, the devil is in the
2 details here. And so the number of United subsidiaries that
3 are mentioned in a number of these documents are relevant.

4 Now, I don't think that violates the MIL, and I don't
5 think that's what that's directed to, but some of the language
6 tends to be a little broad in what they were seeking. So the
7 number of United -- within the umbrella of the United
8 companies, I think that's fair game. So for example, a
9 company called Naviguard -- and I think -- I think they have a
10 separate MIL on this -- so we'll pause on that one as well.

11 You know, I think Your Honor said it best the other
12 day, when you said this is two large -- two large players, and
13 you could see by the number of lawyers involved in this case.

14 THE COURT: And the quality of the lawyers.

15 MR. ZAVITSANOS: Well, yes, for sure, Your Honor. No,
16 no, these are excellent lawyers. And they're definitely
17 making us bring our A game as well.

18 So I don't -- I'm not really sure -- I mean, we're not
19 going to do that. We're not going to appeal to the fact that
20 United is one of the larger insurance companies.

21 Now, there are -- I think we are going to have some
22 disagreement -- and we'll need the Court's guidance on this --
23 on, you know, how wide the net is on these savings. For
24 example, we don't -- you know, the 12,000 claims at issue in
25 this case, it's much broader than that, because, of course,

1 Mr. Haben, who is one of the people that we subpoenaed, that
2 is the subject currently of the stay at the Supreme Court --
3 he operated on a national scope, which included Nevada.

4 And we'll take that up in a little bit --

5 THE COURT: Can I interrupt you for a moment?

6 MR. ZAVITSANOS: Yeah, yeah.

7 THE COURT: Has the Supreme Court been asked to stay?

8 MS. LUNDVALL: The Supreme Court has been asked to
9 stay; they have not issued a stay.

10 THE COURT: All right. I misheard you for a minute.
11 Just needed to make sure I'm not in violation.

12 MR. ZAVITSANOS: Yeah, no, no, no, no, Your Honor.

13 Let me raise one other issue -- and I don't -- and
14 forgive me Your Honor, I don't know if this is part of my MIL
15 or Mr. McManis', because there is some overlap.

16 But I think we are going to hear -- and frankly, it's
17 in the documents as well -- that one of the justifications for
18 cutting the reimbursement was that they expected to lower
19 premiums and to lower the cost of healthcare on the consumer
20 side and on the employer side. Okay? So that's clearly fair
21 game -- as to whether or not that happened; what the real
22 objective was; whether premiums actually went up while
23 reimbursements were going down, contrary to what they were
24 telling people; and how they disguised some of these revenues
25 by recasting them, because when they instituted these savings

1 programs and their customers started getting very offended by
2 how much money they were making, they just called it something
3 else and baked them into the ASO fees.

4 I think all of that, which is -- which is right down
5 the fairway -- I think all of that is fair game, to the extent
6 that what they are asking is that we don't basically say this
7 is like a David versus Goliath -- which it's not. Okay.
8 You've got kind of King Kong versus Godzilla here; right?

9 I mean, frankly, if we did that, again, I don't think
10 it's effective, and frankly they could then get up and say,
11 you know, look who is accusing us of this.

12 So we're not going to do that.

13 But I think in terms of motive, why they were doing
14 this, what the agenda was, what was going on with this
15 reimbursements, and to the extent that that implicates
16 projections they were making about how much money they were
17 going to make, I think that's great.

18 THE COURT: Well, hang on. I think Mr. McManis still
19 has a couple of motions to address.

20 MR. ZAVITSANOS: I think that that's the next --
21 that's the next MIL that's going to --

22 THE COURT: Is that everything?

23 MR. ZAVITSANOS: That's the next MIL that's going to
24 come up. This -- this was No. 17, I think, Your Honor.

25 THE COURT: He argued 17 -- or 20 --

1 MR. PORTNOI: I would still argue more on 21. I tried
2 to restrict my argument to 17, Your Honor.

3 THE COURT: Well, I thought you argued all three.

4 MR. ZAVITSANOS: So -- so --

5 THE COURT: Did you just argue 17 or --

6 MR. PORTNOI: Yes, Your Honor.

7 THE COURT: All right. Then it is Mr. -- then you're
8 done.

9 MR. ZAVITSANOS: The only thing I thought I heard was
10 about profits. And I don't think 17 dealt with profits.

11 THE COURT: Got it.

12 MR. ZAVITSANOS: So if counsel -- yeah, so I'll sit
13 down.

14 MR. PORTNOI: Your Honor, I apologize if I, by trying
15 to make things easier, we made them more complicated.
16 Sometimes the best intentions don't lead to [indiscernible].

17 I think that having listened to my able counsel's
18 argument, I just don't believe that we are in substantial
19 disagreement here -- or any disagreement here. I think that
20 our MIL didn't target to say they couldn't say that we had --
21 that UHG, our parent company, had other subsidiaries.

22 I certainly agree that if we're saying -- if our
23 witnesses are saying that the motive for anything that we do
24 is to keep premiums down or protect our members, they're
25 allowed to challenge that and say, as any for-profit company

1 would, you have a profit motive, don't you?

2 I think that however, that there's a difference
3 between the sort of David and Goliath narrative.

4 Obviously, we filed this MIL before we knew
5 Your Honor's ruling on our ability to talk about TeamHealth.
6 That would have been a different presentation in that case,
7 but I do believe that at this point, given the narrow issues
8 that as part of MIL 17, I would ask that the Court grant it.
9 And I don't think it's going to interfere with the topics that
10 plaintiffs seek to raise.

11 THE COURT: All right.

12 So I'll grant 17 reciprocally.

13 MR. PORTNOI: Thank you.

14 THE COURT: Okay. Let's now go to 21.

15 MR. PORTNOI: Okay. So 21, it's obviously closely
16 related. That's why we wanted to put it next to it. But this
17 is a little bit more specific in the sense that it refers to
18 corporate filings. And in particular, it refers to 10 -- it
19 refers to 10K filings, which we have a better clarity on
20 because the parties have made more progress on the
21 Exhibit lists, since we filed our MIL.

22 But we don't believe there's any basis to put in front
23 of the jury these Securities and Exchange Commission filings.
24 And when this MIL was filed, in addition, UHG was still a
25 party. UHG was the only entity that filed -- that made such

1 filings, because it's the only entity that is a
2 publicly-traded company.

3 After we filed the Motion for Summary Judgment, UHG
4 came out of the case. But we still have the Form 10K. It's
5 come up in some depositions. It's on the exhibit list.

6 For reference, a Form 10K is a federal securities
7 form. Any publicly-traded company files the 10K on an annual
8 basis, files a 10Q on a quarterly basis, and an 8K when
9 certain major events occur.

10 The annual 10K, it provides a comprehensive review of
11 a company's business and financial condition, including an
12 audited financial statement. These usually run about 100 to
13 150 pages in a single spaced, in a font that Your Honor would
14 sanction a litigant for using in any brief because of just how
15 small that it is.

16 We don't really -- you know, we don't believe there's
17 any probative of these 10K filings, or indeed of any other
18 securities filing -- other than to describe, again, the
19 overall size and wealth of the companies. That's why we put
20 these two -- why we asked to put these two motions next to
21 each other.

22 But, you know -- and just to be clear, as I read the
23 omnibus opposition to this *Motion in Limine*, I don't see any
24 reference to the corporate filings. I don't actually see any
25 reference to MIL 21 in the opposition. So I'm not sure that

1 it is opposed.

2 But we moved it in limine because we cannot see
3 anything that is possibly relevant and because we think that
4 it only would serve to cause the jury to award a verdict on
5 the basis of the wealth of defendants.

6 THE COURT: Thank you.

7 MR. McMANIS: Good afternoon, Your Honor. Jason
8 McManis.

9 I think there's really two issues here. The first
10 being whether or not this *Motion in Limine* actually does
11 target the size or wealth or financial condition, as opposed
12 to other evidence. And the second, the issue about whether
13 it's United Healthcare Group or other defendants involved.

14 So I would like to start with that second issue. I
15 kind of have an excerpt from one of the exhibits, if I may
16 approach.

17 THE COURT: And throughout the trial, everyone will
18 have permission to move about the Court freely. It seems to
19 streamline a jury trial.

20 MR. McMANIS: So Your Honor, this is from the
21 introduction of one of these 10Ks from Plaintiffs'
22 Exhibit 517. And what you can see here is the term
23 UnitedHealth Group, as defined in these documents, is defined
24 to include UnitedHealth Group, Incorporated, the defendant
25 that was discussed, and its subsidiaries, which are all of the

1 defendants in the case.

2 So the statements that are within the 10K, they are
3 party statements because they're made on behalf of
4 UnitedHealth Group, as well as the subsidiaries. So I think
5 that disposes of the party issue.

6 And certainly, we have no intention of using these
7 documents as a backdoor to violate some other ruling about
8 size and wealth. To the extent that they do contain that type
9 of information, that's not the type of information that we
10 intent to present to the jury.

11 But there are statements within these 10Ks that
12 discuss United's motivations with respect to out-of-network
13 payments. There are statements about what United may owe
14 providers if they challenge those out-of-network payments.

15 And I think that's -- that is relevant evidence to the
16 precise issues in the case. And I don't think that excluding
17 the documents wholesale, simply on the basis of other
18 information contained within these admittedly lengthy
19 documents, is the right approach.

20 So I would submit that there is a way to use these
21 documents, whether it's in a redacted form or removing, you
22 know, certain schedules that contain that financial
23 information that Your Honor has already ruled on, would be the
24 easiest way to address the other *Motions in Limine*, without
25 excluding the relevant portions of these documents.

1 MR. PORTNOI: Your Honor, again, just looking at this
2 introduction, the first thing to note is that while the term
3 we is defined to be UHG and its family of companies, that
4 doesn't make the family of companies the speaker, so if that's
5 they're [indiscernible] statements about the parties in this
6 case, that doesn't change the fact that it is an out-of-court
7 statement by a nonparty about issues in this case and
8 inherently hearsay -- because that may have been true when UHG
9 was a party. And that's why our MIL didn't raise hearsay,
10 because at the time UHG was a party. It is not a party at
11 this time, so what this would be is perhaps out-of-court
12 statements offered for the truth of the matter asserted by a
13 nonparty.

14 Now that I understand, again, the opposition to the
15 MIL, it didn't actually include any opposition in the omnibus,
16 so we had no basis to know what it was. We still don't
17 really -- we still -- you know, we have excerpts of -- the
18 only excerpts that have been offered is this instruction. We
19 don't -- there still is nothing here that explains why any
20 piece of what's in there would be relevant, why any piece
21 would be important to any of the issues in this case.

22 So I would still submit that the corporate filings
23 is -- to the extent that -- that the corporate filings, which
24 are generally out-of-court statement should be precluded under
25 the MIL.

1 THE COURT: Good enough.

2 I'll grant it in part and deny it in part.

3 Very clearly, the fact that the ownership structure
4 comes in on both sides still subsidiaries of UHG. But if
5 there are things in the 10Q that are relevant to this case, it
6 may be -- it may be admissible. So I'll grant it, except for
7 the out-of-network. Anything in the 10K with regard to
8 out-of-network or the potential liability, if reimbursement
9 rates are challenged.

10 MR. PORTNOI: And we may be having a discussion on our
11 side, perhaps at a break. But one issue that we do want to
12 raise is with the grant in part and deny in part, whether you
13 have a practice as to then who is the prevailing party for
14 purposes of needing to get you a proposed order --

15 THE COURT: Okay.

16 MR. PORTNOI: -- because we want to do it in a timely
17 fashion.

18 THE COURT: Anytime it's granted in an any way, that
19 party prepares the order.

20 MR. PORTNOI: Okay. Thank you, Your Honor.

21 THE COURT: All right. So let's go over to --

22 MR. PORTNOI: I'm still back up here. So --

23 THE COURT: All right. So No. 22.

24 MR. PORTNOI: Number 22. So No. 22, I would submit
25 for the same -- it is kind of related to MIL 17, that arguably

1 could be argued together. And I do agree -- I do admit MIL
2 22, for the reason I said before, that really this is just a
3 question about thinking of overall profits, and especially to
4 the extent we're talking about profits of UHG [indiscernible].
5 We really run into -- we run into a risk that overall profits,
6 as opposed to revenues from the shared savings program or
7 savings from the shared savings program, overall profits
8 are -- ought to be out, because again, they aren't relevant to
9 any issue in this case, and would invite the jury to rule on a
10 basis that is improper.

11 THE COURT: Thank you.

12 MR. McMANIS: Your Honor, if I'm hearing correctly, I
13 think the profits specific to shared savings program or
14 out-of-network stuff, if that is not subject to this motion --

15 THE COURT: That's what I heard.

16 MR. McMANIS: -- then I think -- I don't think there's
17 any other real dispute beyond that point.

18 THE COURT: So let -- just be specific in the order
19 that there will be -- it's granted with regard to corporate
20 profits. But if in the event things in the 10K are relevant,
21 such as out-of-network or a possible challenge on
22 reimbursement rates, that needs to be carved out.

23 MR. PORTNOI: Okay. If I could just ask for one
24 clarification.

25 THE COURT: Of course.

1 MR. PORTNOI: I don't think I'm disagreeing. But it's
2 just that profits involve -- you know, obviously, if something
3 occurred at the end of -- for any corporation, at the end of
4 the year when you do your balance sheets.

5 I think what Mr. McManis is referring to, in which
6 case we agree, is the revenues from a particular program --

7 THE COURT: Right.

8 MR. PORTNOI: -- which is a term that makes sense.
9 Profits, you know, if you're talking about at that point what
10 is the -- what are the variety of different costs a company
11 has.

12 THE COURT: Is that correct? That's the way I --
13 that's what I understood.

14 MR. McMANIS: Certainly, I think that's partially
15 correct in that there is evidence specific to the revenue for
16 the shared savings program.

17 There's also testimony as to the specific -- the
18 profit that is specific to that program, as opposed to, you
19 know, what are --

20 THE COURT: Not the overall profitability.

21 MR. McMANIS: -- what are United's profits across the
22 board?

23 THE COURT: Right.

24 MR. McMANIS: So I think as long as -- whether it's
25 revenue or profit, as long as we're specific to one of the

1 out-of-network programs that's at issue, our position would be
2 that's relevant and that should come into evidence because it
3 goes to motivation and bad faith and things like that.

4 And so that's -- I don't know if there's disagreement
5 there, but that is what we think should come in.

6 THE COURT: Thank you.

7 One last bite.

8 MR. PORTNOI: Yeah. Our argument may be -- you know,
9 again, it might be at some point semantic at this point. It
10 may be that some of our witnesses or some of their witnesses
11 used the word profits.

12 But again, to us, we say because profits -- there is
13 no profits on a shared savings program, any more than there
14 could be profits on, you know, a coupon you take to the
15 supermarket and something you have to actually look at the
16 full balance sheets to think about profits. But I truly
17 believe that at this point it's semantic.

18 THE COURT: I think we're all on the same page here,
19 and I will enforce this at the time of trial.

20 MR. PORTNOI: Okay.

21 MR. McMANIS: Thank you, Your Honor.

22 THE COURT: Now, let's see, we were -- does that put
23 us to 20?

24 MR. PORTNOI: Yes. We go back to 20 from this one.
25 We do -- I do have a short presentation. This is an issue

1 that is obviously -- thank you, Shane -- that is important to
2 us, especially insofar as it raised certain constitutional
3 implications. There are some issues in here that Your Honor
4 has been briefed on before, that we will obviously try not to
5 belabor that point.

6 So what this -- what *Motion in Limine* relates to is
7 defendants' lobbying efforts. And in the way that it was
8 opposed, it also raises some of the issues that Your Honor is
9 already familiar with, with respect to Zack Cooper, with
10 respect to the Yale Study.

11 But at its core, the first thing we want to point out
12 here is that what we are talking about at the beginning is
13 lobbying efforts. We have seen in a number of briefs, and we
14 have also seen in a number of oral arguments, a lot of
15 discussion about United's lobbying efforts and efforts to
16 lobby Congress, efforts to lobby state legislatures, in order
17 to get surprise billing legislation, for instance.

18 And so, here, for instance, just having looked for a
19 brief [indiscernible], we have this briefing. For instance,
20 it says, United's response is meant to launch a large scale
21 public relations lobbying and legal campaign seeking to turn
22 public opinion against out-of-network providers.

23 This is the kind of thing we don't want to see in
24 particular in opening argument. It is not relevant to the
25 case. It's not relevant to what a rate of payment is. And

1 that's something that we want to head off.

2 In addition, and this is laid out carefully in the
3 brief, Courts have to be very careful -- the appellate courts
4 say the Courts have to be very careful in this area because
5 you risk that what you actually have is a jury hearing about
6 lobbying efforts, hearing about efforts to influence
7 legislators or influence public opinion and issue verdicts on
8 that basis. And then you have a verdict that is punishing
9 somebody for their -- exercising their first amendment rights.

10 The Noerr-Pennington doctrine, in particular, refers
11 to the right to petition the government for a redress of
12 grievances.

13 Lobbying is obviously one -- not the most popular
14 industry in America. However, so it goes that the Supreme
15 Court has held that there is a right, that lobbying is
16 encompassed in the right to petition the government for a
17 redress of grievances.

18 So especially in a situation where we don't have any
19 property use for this type of lobbying discussion, where we
20 don't have -- and where it fits squarely within the
21 Noerr-Pennington doctrine, and no exceptions to the
22 Noerr-Pennington doctrine have been info'd, for this part of
23 the MIL, we believe that such discussion of lobbying or
24 attempts to influence public opinion should be kept out of the
25 case.

1 Another -- another example -- now, just to be clear,
2 there are exhibits. This is not something that we're merely
3 talking as well. We don't know -- again, exhibit lists are in
4 flux. But I wanted to make sure that you understood that
5 there -- you know, this is not just us looking at briefs. We
6 have a basis for this.

7 Where on their exhibit list we have seen discussions,
8 internal discussions about United's efforts to influence
9 Congress. We've also seen a number of our letters to
10 Congressional committees, letters to individual Congressmen,
11 where we have been advocating -- and in particular, for the
12 no-surprise act, which was an effort on Congress's part to
13 stop surprise billing. And in part from, you know,
14 [indiscernible] so we have a number of these exhibits.

15 We don't know how plaintiffs intend to use them as
16 time. But we do have these exhibits, which all relate to
17 direct federal lobbying efforts, which we contend would be
18 precluded by the Noerr-Pennington doctrine, and also are
19 simply not relevant to begin with.

20 Now, in addition here, however, plaintiffs have
21 raised -- and we raised in our motion, fairly, the discussion
22 of does that Cooper study, sometimes referred to as the Yale
23 Study, that Your Honor has heard quite a bit about already.

24 So we also would, as part of this, ask that that be
25 taken out of -- taken out, as simply, again, not relevant to

1 any issue in this case.

2 So let's just start with the fact that what --
3 relevant evidence has to be relevant to one of the disputed
4 claims. And where in the opposition brief, we have the
5 statement that we used Zack Cooper to sully the reputation of
6 the out of -- of out-of-network providers and TeamHealth
7 specifically. But this isn't a defamation case, and the fact
8 that there may have been reputational harm that is attendant
9 to us, discussing academics with Congress, with others, that's
10 not something the jury can compensate for here.

11 What we have, is instead about 12,000 at-issue claims.
12 We have to find up -- we have to determine whether United paid
13 at a rate that was below the proper rate of payment. If not,
14 the jury sets damages, we get the delta. What -- you know,
15 the fact that we work with an academic who subsequently
16 published a paper, who that paper made some news is not
17 relevant.

18 There is some evidence -- there's some allegation in
19 the opposition that United didn't tell Mr. Cooper about the
20 shared savings program. There's no evidence of that. They
21 never asked a witness -- we don't have a situation where we
22 know that somebody asked us about all of our programs, and we
23 didn't provide something. All we know is that we were asked
24 for certain data, and we provided it. And then that -- and
25 then that was used for the subsequent writing [indiscernible].

1 Now, again, the first amendment protects such
2 advocacy. It protects our ability to -- it protects our
3 ability to lobby. It also protects our ability to influence
4 the public discourse by talking with academics and with
5 reporters.

6 And in addition, what we have, the only claim this is
7 going to be relevant to in their brief, which I put up on the
8 screen, is the unfair settlement practices in violation of
9 Nevada law. It's irrelevant to that claim. There's a lot of
10 defendants that say, oh, well, in that, we get to show that
11 you did all kinds of terrible things there. But the thing
12 about Chapter 686 (A) is that it doesn't *mens rea* health.
13 It's not a bad faith insurance cause of action.

14 We have that from a number of sources. So it doesn't
15 matter what we were somehow doing along the side, talking to
16 academics and reporters. It matters what the rate of payment
17 is.

18 But more troubling is that if we are going to -- if we
19 are going to start talking about this and it's going to become
20 an issue, what Zack Cooper said, and whatever what Zack Cooper
21 said was untrue; and whether the fact that what Zack Cooper
22 said was untrue was caused by United.

23 That means that we are going to wind up opening the
24 door in this very tight trial time that we have to the Zack
25 Cooper study itself -- certain versions of which are on

1 Plaintiff's Exhibit list. But there are multiple versions of
2 these, and to look at all of the versions of the Zack Cooper
3 study and start to discuss what we have. So that's going to
4 put a -- if the Zack Cooper study is going to go to the jury,
5 we contend to contextualize the Zack Cooper study.

6 It can't just be that they get to make a presentation
7 about, Oh, what we said -- what we said to influence the study
8 without the jury knowing what the study is. We have a number
9 of statements that are going to come in that plaintiffs have
10 argued need to be out of this case entirely.

11 And that's part of the problem is that what Zack
12 Cooper is writing about is topics that plaintiffs have said
13 should have to be categorically out of this case.

14 So we have Zack Cooper's statement that TeamHealth was
15 one of the dominant forces in the market generally. That
16 Team -- that TeamHealth changed [indiscernible] -- was
17 publicly traded till 2016, purchased by the Blackstone Group,
18 whereupon it wound up, as will be seen elsewhere in the study,
19 after the purchase in the Blackstone Group, the prices that
20 they started charging went up precipitously.

21 Also, it's going to include discussion of the fact
22 that TeamHealth had to deal with accusations over higher and
23 more expensive levels of medical service than were actually
24 performed. You may remember part of what Zack Cooper is
25 dealing with is the fact that TeamHealth charges codes that

1 are not justifiable. And that becomes, when we start talking
2 about Zack Cooper, that becomes part of the issue in the case,
3 because that's part of the information that United was
4 providing to Zack Cooper, which we contend is truthful.

5 And if it's going to be contended that we were telling
6 a skewed story, we have to defend and say it is truthful. And
7 to do that, we have to proof the truth of the statements,
8 which is that there was upcoding.

9 But the other versions here, again, to point out,
10 TeamHealth, when TeamHealth enters a hospital, out-of-network
11 rates increased by 33 percentage points, and physician payment
12 rates increased by 68 percent, proving the point that it
13 wasn't rates going down on one side. It was charges going up
14 on the other side.

15 So again, when TeamHealth goes into a hospital,
16 increases out-of-network billing by 32.6 percent, the payment
17 rate going up \$269. And again, to point out, was the Zack
18 Cooper study part of advocacy? Of course, it was.
19 Mr. Cooper -- Professor Cooper's project was surprise billing
20 legislation. This is the conclusion of his study.

21 What is the appropriate policy response to surprise
22 out-of-network billing? A variety of states have implemented
23 different policies to protect customers. One of the most
24 innovative was introduced in New York. In 2014 New York state
25 passed a law to balance billing that requires insurers and

1 physicians to enter into binding arbitration to settle
2 disputed bills.

3 Funny enough, that's precisely what happened in
4 Nevada. That's precisely the outcome that TeamHealth
5 Plaintiffs didn't want to happen. That is also part of what
6 happened. This is all part of the advocacy that results in
7 that.

8 We don't think this should be in, to be honest.
9 Again, we don't think Zack Cooper, we don't think Yale is a
10 relevant topic to this case. We think it risks -- we think it
11 has potential reversible risk when it comes to First Amendment
12 issues. We think it's relevant to no issue in this case.

13 But if it is going to come in, then if the Zack Cooper
14 study is going to be brought into an issue, we do want to
15 point out that it will result in part of the undue prejudice
16 analysis to the extent to which it's going to result until
17 side shows, mini trials, waste of time, then we are going to
18 have to be able to make presentation on this study, and all of
19 the content of the study, Your Honor.

20 THE COURT: Thank you.

21 MS. GALLAGHER: Thank you, Your Honor.

22 So *Motion in Limine* 20 sounded like it was relating to
23 strictly lobbying efforts. And looking over the papers itself
24 and the presentation today, you realize United is quite
25 concerned about the Yale Study and Zack Cooper. They've been

1 concerned about it since the beginning, because we uncovered
2 that, you know, they manipulated; they hired somebody. They
3 manipulated the data that was being fed, to him to take part
4 in their narrative. And we know that their narrative -- we
5 had Report and Recommendation 5. We also had Report and
6 Recommendation No. 10, I believe it is, with respect to the
7 USC Brookings Institute. And those two are very similar,
8 because it's one after the other.

9 And it's all about United's corporate communications
10 and marketing strategy. It's not lobbying; it's marketing.
11 They have charts that have been disclosed in this case that
12 show, you know, the various versions of how aggressive they
13 can be in their marketing efforts to try and change and
14 manipulate public opinion. They also have lobbying efforts
15 that they wanted changed and impact legislation, but that's
16 not what the bulk of this motion is about.

17 What they are asking the Court to do is basically
18 insulate and let them hide behind the fact that what will that
19 I have had with the Zack Cooper and the USC Brookings
20 Institute study is they specifically were targeting
21 TeamHealth. Those documents make it clear. They were piling
22 on TeamHealth.

23 There are internal documents that talk about that
24 scheme and put in place -- and it started many years ago. It
25 started back in 2014. And it took step by step by step, but

1 it was part of a plan, part of a business strategy, part of
2 what they call, internally, their playbook, in terms of how to
3 eventually get to where they are now, which is nobody can
4 balance bill. And they're reaping a billion dollars a year
5 annually in revenue because providers like the Health Care
6 Providers cannot do that balance -- cannot balance bill. They
7 weren't balance billing, but they have no other remedy other
8 than to litigate.

9 And so when there's discussion about legislative type
10 of lobbying, that's one thing. And we put in our opposition
11 papers, there's -- for 2019, 2020, I think we put in there --
12 we would be agreeable to a two-way street that information
13 that was transmitted to is something that may fall within a
14 reciprocal limitation.

15 But that's not really what the bulk of this *Motion in*
16 *Limine* is about. It's trying to limit a state of mind, which
17 is always relevant with respect to punitive damages.

18 And so we have a punitive damages claim. And the
19 First Amendment certainly does not shield that.

20 And so the discussion about Noerr-Pennington is sort
21 of misplaced, if you will. You know, we know that
22 Noerr-Pennington can protect, but it's judicially little
23 created, and it's meant to grant antitrust immunity to private
24 parties who are petitioning the government to adopt laws that
25 may be anticompetitive. It's got zero application in this

1 case, Your Honor.

2 We are not before your Court with respect to
3 antitrust. And certainly United's efforts aren't
4 anticompetitive in the sense of their competitors. Right?
5 They're trying to impact Health Care Providers and get
6 legislation that will dictate what they can and cannot receive
7 in terms of payment.

8 But because they were able to secure that, it allows
9 them to put in place even more aggressively than before their
10 Outlier Cost Management Program and other programs that impact
11 out-of-network emergency providers. And it allows them in
12 their playbook, as you've seen time goes on, they keep
13 ratcheting down that threshold. It's not based on anything.

14 You know, it's almost incredible what other market
15 over time, over 5 or 6 years continues to go down -- one that
16 is being crafted and schemed in order to reduce that payment.

17 So the cases cited by United in terms of
18 Noerr-Pennington doctrine just certainly do not have
19 application here.

20 We know the Yale Study is marketing. We know that
21 directly from the documents. We should be able to use that
22 information in front --

23 THE COURT: And how would you use it, though? It's
24 not relevant to the rate of pay.

25 MS. GALLAGHER: Well, it's certainly relevant --

1 THE COURT: Or reimbursement rates.

2 MS. GALLAGHER: It's certainly relevant to how United
3 is treating the Health Care Providers specifically.

4 We know they have a scheme to target us. And that is
5 in the documents that have been disclosed in this case and
6 that were subject to Report and Recommendation and reply. It
7 goes to state of mind. It goes to their malice. It goes to
8 their oppression against the Health Care Providers.

9 THE COURT: Would it be in the case-in-chief?

10 MS. GALLAGHER: It would, Your Honor.

11 THE COURT: I'm having a hard time understanding why
12 it would be relevant.

13 MS. GALLAGHER: Well, and maybe -- let me maybe back
14 up a little bit with respect to how it's important overall.
15 So the study was meant to influence public opinion about
16 Health Care Providers.

17 THE COURT: So I -- I'm really -- I'm bogging down.
18 And I apologize to you guys. I've had a long few weeks.

19 MS. GALLAGHER: I totally understand, Your Honor.

20 THE COURT: What witness would be able to testify
21 about that?

22 MS. GALLAGHER: Which witness would be able to get on
23 the stand and talk about the Yale Study documents?

24 THE COURT: Mm-hmm.

25 MS. GALLAGHER: Well, we have certain witnesses of

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1 United's were deposed and asked about the Yale Study
2 documents. So if they're here live, if they're subject to --
3 I believe some of them are subject to the subpoenas that are
4 at issue. And then if not, obviously deposition testimony
5 with respect to that.

6 And then the documents are, you know, with the ones
7 that have been disclosed, have what I would call party
8 admissions in terms of what they say about the Health Care
9 Providers and how they were treating them. And then the --
10 you know, the evidence will come in that there was this
11 ratcheting down of the threshold.

12 And some of that information is very relevant and tied
13 to the connotations and the treatment that are outlined in
14 those documents. So we do think it is relevant to the case at
15 hand, Your Honor.

16 THE COURT: But in a punitive damages case or in a
17 case-in-chief? That's -- I know I keep asking the same
18 question.

19 MS. GALLAGHER: Right. I understand. And I would say
20 a case-in-chief. But I will certainly let one of my
21 colleagues --

22 THE COURT: Do you want to --

23 MS. GALLAGHER: Yeah, with respect to the unfair
24 settlement practices, I mean, the -- you know, those
25 case-in-chief in terms of how they were treating up. Let's

1 see, my colleague here.

2 MS. LUNDVALL: And also, Your Honor, the liability
3 phase for the punitive damages is part of our case-in-chief.
4 The second phase on the amount of punitive damages, those
5 pieces only deal with the parties net worth. But when you're
6 talking about liability for punitive damages as part of our
7 case-in-chief. And that's where [indiscernible] comes into
8 play. That's where state of mind comes into play.

9 THE COURT: All right. That helps, thank you.

10 [Indiscernible].

11 MR. LEYENDECKER: Your Honor, may I just add a bit on
12 the relevance --

13 THE COURT: Sure --

14 MR. LEYENDECKER: -- and the normal case-in-chief?

15 THE COURT: -- yes.

16 MR. LEYENDECKER: And this supports the idea -- of
17 course, if the kind of core question is what's the reasonable
18 value of the services? And we're saying they're targeting us,
19 right?

20 One very concrete piece of evidence -- if you look,
21 they paid us about \$250 on average per claim. All other
22 providers, same services, out-of-network, they pay a little
23 over 500 per claim. All in-network providers they pay around
24 300 per claim.

25 So this stark contrast between what they're doing for

1 us during the claim period and what they did for everybody
2 else during the claim period supports the notion that they're
3 targeting us. And the whole Cooper, you know, PR piece is,
4 Look at TeamHealth, bad actor. And all that goes to, well,
5 when their witnesses take the stand and say their rates are
6 reasonable, it goes to that issue.

7 THE COURT: Okay. I got that. Thank you.

8 And then, Mr. Portnoi, you get to have two assistants
9 on this.

10 MS. GALLAGHER: I appreciate that, Your Honor.

11 MR. PORTNOI: I was going to say --

12 MR. LEYENDECKER: He's flying solo, Your Honor.

13 MR. PORTNOI: This is the first time I've ever gone
14 three to one. We don't even have three total attorneys in
15 this courtroom.

16 MR. LEYENDECKER: Mr. Portnoi, I would like to talk
17 [indiscernible].

18 MR. PORTNOI: You can come on my side.

19 Your Honor, I just want to say, you know, first off,
20 we didn't hear any opposition to the idea that if we bring
21 this in, the whole Cooper study is coming in. So that, I just
22 think we have to say it's settled, and also note that that
23 places the analysis of under -- undue prejudice, again, waste
24 of time in the alternative, because these are something that
25 will all have to come in.

1 But also, to really get into this, to quote something
2 I wrote down because it was really important to me, that this
3 was -- that Ms. Gallagher said this was meant to influence
4 public opinion. And then the only relevance we got -- the
5 only claim it was relevant to was punitive damages. Punitive
6 damages, which is a quasi criminal, which is to punish.

7 So what we are being -- what Your Honor is being asked
8 to do is to enable the jury to punish a party for attempting
9 to influence public opinion where there is no defamation claim
10 in this case.

11 THE COURT: I think, Mr. Portnoi clarified that part
12 of the argument.

13 MR. PORTNOI: Mr. Leyendecker.

14 THE COURT: Mr. Leyendecker.

15 MR. LEYENDECKER: Leyendecker. I'm easily confused,
16 but yes, I did, Your Honor. Thank you.

17 THE COURT: You clarified that.

18 MR. PORTNOI: Well, Your Honor, yes. The fact that
19 the -- how much we paid one out-of-network provider versus
20 paying another out-of-network provider, which is what
21 Mr. Leyendecker referenced, that's in the case. That has
22 nothing to do with the Zack Cooper study.

23 What the Zack Cooper study has to do with is us
24 communicating with a -- with an academic -- and again, as
25 Ms. Gallagher said, to influence public opinion.

1 Mr. Leyendecker clarified that, yes, that was part -- this is
2 all part of evidence of targeting overall -- that paying down
3 a certain rate and paying someone else another rate, that
4 shows targeting. And us wanting to influence public opinion
5 with respect to us seeing a single major emergency through a
6 staffing agency, and suddenly being acquired by a private
7 equity, and then enforcing radically, egregiously excessively
8 high rates. That's all information, yes, that was
9 communicated out. But that's all something that was meant to
10 influence public opinion.

11 We said this was marketing. We know what marketing
12 looks like. This was not something we put out in the
13 PennySaver. This was not something we put out in a Super Bowl
14 commercial. We communicated with an eminent Yale professor
15 who made his own judgment and wrote his own paper with other
16 academics who are also the authors of that paper.

17 So I do think that that is -- that is -- and I want to
18 also be clear in terms of a discussion about what the bulk of
19 this motion. The bulk of our motion was about lobbying. And
20 that was our point.

21 The bulk of the opposition was about the Zack Cooper.
22 And because it doesn't seem like we have a dispute on lobbying
23 in this case, the bulk of the argument has been about Zack
24 Cooper and the Yale Study. So the bulk of our motion remains
25 lobbying.

1 But I do want to be clear, Your Honor, that it does
2 remain that. What we -- what is being asked for with respect
3 to punitive damages here is to punish somebody for something
4 that is conceded by counsel was meant to influence public
5 opinion. Mr. Leyendecker did not contradict that. It's just
6 that we meant to influence public opinion. And also alongside
7 that, there was targeting because we paid them lower rates.

8 That doesn't change the fact that we're punishing
9 First Amendment speech, First Amendment advocacy, and that it
10 is not relevant to any issue in this case. It is not relevant
11 to the rate of payment in this case. And punitive damages in
12 terms of what is relevant still has to be tied, still has to
13 be tied to the actual claims that underlie it.

14 And that this is evidence that nobody, three attorneys
15 could not identify anything of punitive damages that this
16 would be relevant too. And as a result, it is not relevant to
17 any claim in this case. It is not relevant to punitive
18 damages. And it would be -- it would violate the defendant's
19 constitutional rights to have this entered into evidence.

20 Thank you, Your Honor.

21 THE COURT: I'm going to deny this *Motion in Limine*
22 for the reason that efforts to affect public opinion are
23 different. But it -- than an allegation of a target to a
24 company.

25 So I will caution the parties, though, I'm going to be

1 real careful about how anything comes in on this subject
2 because we have lobbying, we have public opinion. And then we
3 have an allegation that you guys basically manipulated
4 information to get a certain result in the study.

5 I don't know if any of that's true. But I'll give
6 them some latitude. And I will do it very carefully.

7 Now, does that take us to 24?

8 MR. BLALACK: It does, Your Honor. And I'm back up.

9 May it please the Court, Your Honor, I'm going to
10 address *Motion in Limine* No. 24, which is to preclude the
11 TeamHealth Plaintiffs from referring to themselves as doctors
12 or healthcare professionals.

13 And I'll just start with the headline, Your Honor.
14 The purpose of this motion is to prevent a misrepresentation
15 of fact to be made to the jury in the case of what this is
16 about, and to avoid the necessary jury confusion that will
17 follow, if they are misled into believing that the plaintiffs
18 in this case are actual doctors and healthcare professionals.

19 So that's the objective of the motion. And so I'll
20 just give you a little bit of the background, Your Honor.

21 The record in the case shows that the TeamHealth
22 Plaintiffs are not ER doctors, and they're not even Health
23 Care Providers. They are corporations that provide ER
24 staffing services to hospitals located here in Nevada.

25 So when you think of an analog to what the TeamHealth

1 Plaintiffs are, think of Manpower or Randstad or Adecco.
2 Those are all prominent, well-regarded staffing companies in
3 their own areas. They provide staffing services for a variety
4 of different professional jobs. They are -- they do not
5 provide -- they are not the provider of the service in
6 question, whatever that service may be, but they are the
7 entity that most would be -- the employer or the hiring party
8 to staff the need. That's what these plaintiffs do. They are
9 a staffing company.

10 And their subsidiaries, as the Court knows well now,
11 from a multibillion dollar company called TeamHealth, that's
12 owned by the private equity known as Blackstone. And these ER
13 physicians who bring the services, the disputed services in
14 this case, are independent contractors of the TeamHealth
15 Plaintiffs staffing. Okay. So those foundational facts are
16 the background for the motion here today.

17 Now, the plaintiffs in this case produced agreements
18 that they have with providers and explaining their roles. And
19 this is an example of one of them involving Fremont, where it
20 describes the roles that each of the parties play. It
21 describes the company and its role in contracting with
22 hospitals to provide staffing services in hospital facilities.
23 And it describes the provider as in the business of rendering
24 clinical services. It explains that the provider agrees to
25 supply physicians to perform a variety of any and all

1 physician services, as required by the company under the
2 facility contracts. And those facility contracts, Your Honor,
3 are the contracts between the TeamHealth Plaintiffs and the
4 hospitals whose emergency rooms they staff.

5 It describes that the provider gives information -- so
6 that those individual providers, independent contractor
7 providers provide information that -- to the staffing company,
8 as needed, so the staffing company can bill for the services
9 rendered by those ER providers. And then can [indiscernible],
10 if it hasn't -- it sets out in the agreement the obligations
11 of each to provide information for the bills collected. And
12 it makes clear that the parties are, not by virtue of the
13 agreement, deemed to be joint venturing partners.

14 Now, again, it's not disputed, Your Honor, that the ER
15 physicians in this case are independent contractors, as was
16 noted by Dr. Frantz, who is an executive of TeamHealth in the
17 western part of the United States. He gave testimony -- and I
18 believe it was subject to the motion earlier today. He
19 testified in his deposition that the physicians are
20 [indiscernible] independent contractors.

21 Now, the TeamHealth Plaintiffs intend to argue that
22 defendants underpaid them and that that caused a reduction in
23 compensation to the ER physicians in states other than Nevada.
24 You may have heard that in their surreply or motion to
25 supplement that they filed on summary judgment. We've got a

1 quote here from that here, Your Honor, where it talks about
2 the defendant's conduct allegedly causing physician pay to go
3 down. Again, the evidence they cited wasn't in Nevada, but
4 that's the basic thrust of the argument.

5 But that -- the notion that somehow the -- that
6 defendants' reimbursements have some direct relationship
7 between the TeamHealth Plaintiffs and the compensation of the
8 physicians is just not supported in the record. In fact, the
9 documents produced and the testimony of TeamHealth executives,
10 makes clear that if damages were awarded to the TeamHealth
11 clinics in this case, the damages are going to be paid to the
12 staffing. They're not going to be paid to the ER physicians
13 who rendered the services.

14 And in fact, Mr. Bristow, who will testify in the
15 case, he testified in a trial at which I believe my colleagues
16 from AZA were counsel and against another insurer, Molina, in
17 Texas recently testified about that relationship and described
18 how collections of claims payments are used to pay the
19 expenses of the doctors which includes just a fair
20 compensation. And Mr. Bristow described it here. And
21 everything that's left over constitutes a management fee,
22 which is basically the compensation that's kept as profit by
23 TeamHealth.

24 So what you see from this collection of evidence,
25 Your Honor, is there's a difference -- a very stark difference

1 between the provider who is running around the community
2 rendering emergency room services and the staffing company,
3 the role it provides and the role it plays.

4 And so from our perspective, it's just not appropriate
5 in this case for the TeamHealth Plaintiffs to stand up and
6 call themselves physicians -- or as has been the case
7 throughout this litigation, labeling themselves healthcare
8 providers, because they do not provide healthcare services.

9 And in response to our motion, Your Honor, they not
10 only disputed that question -- so I went and looked at some
11 materials they cited -- none of the documentary evidence cited
12 in their opposition states that they are -- that these
13 entities are providers of healthcare that actually render the
14 emergency services.

15 And in fact, if you look at the names of the doctors
16 who provided the disputed -- there's 12,000 disputed services
17 in this case, there's only one doctor on that list who
18 provided any service, and he's the -- he's the ER -- one of
19 the ER executives for TeamHealth. He's an executive of
20 TeamHealth who continues to do rounds. But the -- these
21 services were provided by independent contractors who are not
22 going to be witnesses in this case.

23 And so in their opposition, they claim that what we're
24 really seeking to do is disparage them by renaming them. But
25 we're not seeking to disparage them. And there's nothing

1 about asking a jury to be accurately told who they -- you
2 know, not be misled about who the parties are that is in any
3 way disparaging.

4 It's completely legitimate and reasonable function in
5 our economy for there to be staffing companies. Staffing
6 companies are appropriate, provide a valuable service, and
7 that's a good thing. There's nothing wrong with having
8 staffing companies. That's not disparaging. But that doesn't
9 mean that they're healthcare providers.

10 And so it's just a question of not misleading the
11 jury, because, of course, if they represent that they're
12 healthcare providers, you know -- let me back up, if they
13 don't represent they're healthcare providers, if they
14 accurately describe who they are, then we're not going to have
15 a side show about whether they're fairly representing who they
16 are to the jury.

17 But if witnesses get up there and call themselves --
18 call the plaintiffs healthcare providers, we're going to be
19 entitled to impeach them and show they aren't. And we will.

20 But that is not what this case should be about. And
21 with a simple admonition that they'll they should refer to
22 themselves as what they are --

23 THE COURT: And I totally understand your argument.
24 But keeping in mind that I would have to rule on this today,
25 all of you talk -- anything -- everybody talks about is

1 medical providers. It always -- all of the speech defaults to
2 that on both sides.

3 So how am I going to --

4 MR. BLALACK: And I would suggest Your Honor --

5 THE COURT: And I understand. These are three
6 professional corporations. I get it. And it needs to be
7 explained to the jury. But you guys --

8 MR. BLALACK: Well, I suggest Your Honor that you have
9 a template you can follow, and I'm showing it to you right
10 now.

11 In the Molina case that my colleagues just tried on
12 the same issue, representing affiliates of TeamHealth in Texas
13 against Molina, alleging they were undercompensated for
14 emergency services. Molina argued to the trial court in that
15 case in a *Motion in Limine* that the TeamHealth affiliates
16 should not be allowed to refer to themselves as providing
17 physician services and being doctors.

18 And I'm showing you the transcript, Your Honor. Here
19 from the argument, it says, look, it's in contrast to
20 referencing -- it's a branding issue. It's the contrast
21 reference to themselves, not as the plaintiffs and the
22 defendants, but the doctor plaintiffs and the insurance
23 defendants. It's so pernicious.

24 And then he goes on to say, it's the adjectives. It's
25 the constant branding of those things. It's used to pull down

1 the jurors natural sympathies that doctors say
2 [indiscernible]. He says, you know, how about just calling
3 yourselves the plaintiffs or ACFs, and we have doctors. And
4 that's fine. It's just saying they shouldn't be able to
5 rebrand themselves with adjectives. The Rules of Civil
6 Procedure call themselves plaintiffs, not doctor plaintiffs.
7 Call them plaintiffs.

8 And the Court asked, Anything else? No. And granted
9 the *Motion in Limine*.

10 And in that trial, they were not permitted to label
11 themselves as the physicians or ER physicians. They referred
12 to themselves as the plaintiffs and described what their
13 accurate role is.

14 And if we follow those rules here, then we'll have no
15 concerns.

16 And we're not going to be standing up arguing that
17 we're doctors because we employ medical doctors as medical
18 directors. United employs lots of doctors too. That doesn't
19 mean we're going to call ourselves medical professionals, and
20 they shouldn't be.

21 So for that reason, Your Honor, this evidence we think
22 is -- this motion should be granted because the alternative is
23 going to result in cross-examination and contesting this issue
24 in ways that are just a distraction and are going to cause
25 jury confusion when they're saying they're doctors and we're

1 saying they're not. And going through that exercise is just
2 not a good use of the jury's time.

3 Thank you.

4 MR. ZAVITSANOS: John Zavitsanos, for the HealthCare
5 Professionals.

6 Your Honor, let me begin with the Molina case.

7 Repeatedly throughout the trial -- now, I will admit,
8 I was -- I got to the trial a little bit late, so I can't
9 speak to what happened before I got there.

10 But from the moment I got there -- and I was in the
11 courtroom the entire time, we only referred to ourselves as
12 emergency room doctors. We had an emergency room doctor
13 sitting at the table with us, just like we were going to have
14 one here, Dr. Scherr.

15 So I guess counsel wants us to not disclose that he's
16 an emergency room doctor, that he treats people in the
17 emergency room. He doesn't want evidence coming in that --
18 will made a comment, which is pretty remarkable that Fremont
19 Emergency Services does not provide ER services. Well, if
20 that's the case, then why do they cut the checks to Fremont
21 Emergency Services. That's who they pay.

22 I mean, his argument is akin to saying that the
23 Catholic Church in Nevada, which is a nonprofit corporation,
24 is not composed of clergy because it's a nonprofit; right?
25 That's what we do. We are emergency room doctors. This is --

1 I have to say, this -- I applaud them for all their *Motions in*
2 *Limine*. This one is just -- it's out there.

3 This is what we do. Now, a couple of other points,
4 Your Honor --

5 THE COURT: Hang on. If these three professional
6 corporations only hire ER doctors on a contract basis, and
7 don't have employees, then --

8 MR. ZAVITSANOS: We have -- no. We do have employees,
9 Your Honor. The nurses and the physicians assistants are
10 employees. The doctors are independent -- they are
11 independent contractors, because that's -- I mean, that's
12 frankly what they want. But they report to us. They operate
13 under our guidelines. They receive training from us. They
14 are all licensed emergency room doctors.

15 When we get retained by a hospital to provide
16 emergency room services, it is with these doctors. And
17 frankly, this is the way everybody does it in the industry.
18 It's not just us. But there are -- our competitors that also
19 staff other emergency rooms do it the same way.

20 So I mean, to request that we not call ourselves
21 emergency room doctors, I mean, I understand why they're doing
22 it, okay? Because, you know -- but that's who we are. I
23 mean, that's who we are. And so these are -- the arguments
24 that counsel raised, if he wants to -- he wants to use his
25 time making those points on cross-examination, fine. Okay?

1 That they're independent contractors and they're not
2 employees. But I -- I just -- I really don't understand it,
3 quite frankly.

4 Oh, and by the way, the other thing is, Your Honor,
5 where the money goes and whether they receive incentives or
6 bonuses and all of that, I think the Court's already ruled on
7 that. So I'm not going to retread that. And finally -- let
8 me just check here -- yeah.

9 That's all I have, Your Honor.

10 THE COURT: Thank you.

11 And the reply, please.

12 MR. BLALACK: Just briefly, Your Honor.

13 We absolutely have no objection, obviously, to a
14 medical professional, a licensed medical professional calling
15 himself a doctor and identifying themselves as an employee of
16 TeamHealth, if that's true.

17 In the case of Dr. Scherr or Dr. Frantz, who are
18 executives of TeamHealth, they'll take the stand and they'll
19 say, I'm a doctor, I'm a licensed doctor, I'm a medical
20 professional, I'm an employee executive of TeamHealth. I
21 still practice medicine. That's all fine. That's not who --
22 that's not what we're debating.

23 We're talking about, however, 12,000 disputed claims
24 rendered by hundreds of physicians, as we just have talked
25 about, virtually every one of which is an independent

1 contractor. And for the same reason --

2 THE COURT: But the PAs and the nurses are not.
3 They're employees.

4 MR. ZAVITSANOS: That's right.

5 MR. BLALACK: That's right. But --

6 THE COURT: That's a distinction.

7 MR. BLALACK: I agree. But to my knowledge, I don't
8 know that we have any disputed claims in this case that
9 involve services that were rendered by PAs or -- there may be,
10 but it's certainly not been offered. And there -- there's no
11 evidence in the record regarding --

12 The only thing I'm aware of that's being presented in
13 this case involves emergency room services billed by a -- and
14 rendered by an M.D., so maybe there is somewhere. But to my
15 knowledge, this is about ER services rendered by M.D.s.

16 THE COURT: All right.

17 MR. BLALACK: And for the same reason that the trial
18 court in Molina, maybe -- maybe the order was not enforced,
19 but that I can't speak to. Mr. Zavitsanos was there. I was
20 not. But I just showed you the order granting a *Motion in*
21 *Limine* exactly like this one, in a case mirroring this one.

22 THE COURT: Good enough.

23 MR. BLALACK: So we would ask for the same relief,
24 Your Honor.

25 THE COURT: You're standing. Did you have something

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1 more?

2 MR. ZAVITSANOS: Yes, Your Honor. I forgot to mention
3 one important point that I think might be dispositive. And my
4 apologies. I can't read my handwriting. My apologies.

5 So without getting too much into the legal weeds, the
6 legal owner of Fremont is a physician. It is not TeamHealth.
7 Okay? And there are -- that's part of a much longer
8 discussion, but it gets into kind of the corporate structure
9 issues that the Court has already ruled on. But in terms of
10 who is the -- the legal owner of record is a physician.

11 THE COURT: Good enough.

12 You know, I am going to deny this *Motion in Limine*
13 only because of the way that the professional corporations are
14 set up.

15 But let me caution the plaintiff. You need to be
16 really clear with the jury that these are organizations that
17 staff ER rooms in hospitals under contract.

18 MR. ZAVITSANOS: Yes, Your Honor.

19 THE COURT: All right.

20 MR. ZAVITSANOS: Yes. Thank you.

21 THE COURT: And this is a good time for a break. It's
22 2:27. I'm going to ask for a little longer break. I'm going
23 to ask for 2:45. Because I had that meeting over lunch, I
24 didn't get to eat lunch. So 2:45, and then --

25 MR. ZAVITSANOS: Thank you, Your Honor.

1 [Recess taken from 2:27 p.m., until 2:47 p.m.]

2 THE COURT: Thanks, everyone. Please remain seated.

3 MR. BLALACK: Thank you, Your Honor.

4 THE COURT: And I am breaking the rules by bringing a
5 soda in.

6 I've heard that you all went down to C3D?

7 MR. BLALACK: Some of us did.

8 THE COURT: Everyone think it's workable?

9 MR. ZAVITSANOS: Yes, Your Honor. It is fabulous.

10 MR. BLALACK: Yeah. That will be fine, Your Honor.

11 THE COURT: Good.

12 And is Judge Denton will use this room Monday, but we
13 should have 3C for the spillover jurors. And we are trying to
14 set up BlueJeans so that they will be able to have access to
15 everything we are doing in 3D. Brynn has been working on
16 that.

17 MR. BLALACK: Perfect.

18 And Your Honor, just as a related note, we've
19 discussed -- my colleagues and I on the other side -- have
20 discussed the timeline for sending you topics for voir dire.
21 And what we proposed and we can put it in the stipulation as
22 needed, we would both submit to the Court, if the Court would
23 indulge us, tomorrow at 5:00 the proposed topics.

24 THE COURT: You can have them to me Monday morning.

25 MR. BLALACK: Okay.

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1 THE COURT: I need to unplugged this weekend.

2 MR. BLALACK: Okay.

3 THE COURT: So --

4 MR. BLALACK: Okay. Perfect. That will work even
5 better.

6 THE COURT: We don't start jury selection until 11:00.

7 MR. BLALACK: Correct.

8 THE COURT: And I need to knock off today at 4:30. So
9 if we need to finish, we can do that Monday before the jury
10 selection starts.

11 MR. BLALACK: Perfect, Your Honor. I actually think
12 we are, knock on wood, on track to finish today, hopefully.

13 THE COURT: Let's go to 25 about the one October
14 incident here.

15 MR. PORTNOI: Thank you, Your Honor.

16 I think that this -- this and MIL 24, obviously, they
17 all represent the fact the -- that on both sides, the events
18 with respect to the [indiscernible] for healthcare providers
19 respectfully expect the jury to have. I think it was on
20 Tuesday or Wednesday, Ms. Robinson referenced the fact that
21 her father was an ER doctor. My husband has been spending
22 this week with working in the graveyard shift in the ER and
23 it's the same for many in the Valley, which is not the safest
24 place to be --

25 THE COURT: Wow.

1 MR. PORTNOI: -- from my perspective, sitting here
2 away from him.

3 So we obviously have that. And that's, you know, part
4 of why a bill like this is very important, which is to
5 preclude discussion of the October 1 shootings and reference
6 there. I think that, obviously, you know, as we know, the
7 Court has precluded discovering into the value of plaintiffs'
8 services. It has also precluded discovery to the clinical
9 records of the underlying claims. So that we have a worry
10 here that what's going to happen is that plaintiffs can now be
11 allowed to turn around and introduced evidence of specific
12 clinical services.

13 THE COURT: You can be -- you can shortcut your
14 argument --

15 MR. PORTNOI: Okay.

16 THE COURT: If you will agree.

17 MR. PORTNOI: And let's go ahead and say I don't think
18 it's going to -- I don't think this is an issue that's going
19 to be relevant. And I don't think that there is evidence that
20 any of the at-issue claims involve the October 1 shootings,
21 and we think it would unduly influence the jury.

22 THE COURT: Thank you.

23 And the opposition?

24 MR. ZAVITSANOS: Yes, Your Honor. So Dr. Scherr has
25 testified -- and I believe will testify that a number of the

1 shooting victims were covered by United insurance.

2 Now, as a reference point, Your Honor, I know Your
3 Honor knows this -- there are five covenants for in the
4 emergency world, emergency medicine world -- unlike on the
5 other medical areas where, you know, if you have toenail
6 fungus, there's a specific code for that; right? So --

7 THE COURT: Right. I said that I used another bad
8 example of grandma get the hangnail, it's still the ER.

9 MR. ZAVITSANOS: Correct. Correct. Okay. So let's
10 go -- let's go to Code 5, which is the most severe one; right?
11 So there are claims -- there are claims in the case that
12 involve the shooting.

13 The billed charge for that was, I think, \$1,295; the
14 reimbursed amount was \$278.

15 Now, as I represented a while ago -- and I don't think
16 my esteemed counsel over here will disagree, this is the first
17 case against a major carrier to go to trial in the country.
18 And so this jury is essentially going to be -- not to make
19 this more melodramatic than it is -- but they are essentially
20 acting as a sort of legislative body to set the value of what
21 these reimbursement rates are.

22 And so I think being able to talk about the fact that
23 doctors have to deal with shootings, like the shooting that we
24 had here.

25 THE COURT: I just don't think it is appropriate, and

1 this is why.

2 You know, our town grieved over that event. Our town
3 was very broken about that. Our hockey team got a big boost
4 because they were involved in trying to help this community
5 through a very painful time and through healing. And I just
6 think it's unfair to the defendant for you guys to say, Hey,
7 we were here on October 1, because everybody in this community
8 was affected.

9 MR. ZAVITSANOS: I understand, Your Honor. So let me
10 just -- let me just make sure that I understand, because I --
11 we don't want to -- we obviously want to be very respectful of
12 what the Court rules on here. So if we -- so the example that
13 I just used, which involves the shooting -- and we don't need
14 to necessarily mention --

15 THE COURT: Well, this is Las Vegas. It's probably
16 kind of like, San Fernando Valley or --

17 MR. ZAVITSANOS: Right.

18 THE COURT: Yeah.

19 MR. ZAVITSANOS: I mean, I -- because the jury is
20 going to be asking to evaluate, Look, we are charging \$1,295.
21 We think that is fair. They think somebody who is shot is
22 worth 298 -- \$278. Okay. I think that's -- I think that's
23 fair.

24 THE COURT: You can say that with regard to a claim
25 that's not an October 1 claim. You can't say that any of your

1 claims relate to October 1.

2 MR. ZAVITSANOS: I got it. Okay.

3 THE COURT: It gives you an unfair advantage.

4 MR. ZAVITSANOS: I understand.

5 THE COURT: You guys, I did the first search warrant
6 on that, so --

7 MR. ZAVITSANOS: I'm sorry you. Did what?

8 THE COURT: I did the first search warrant that night.

9 MR. ZAVITSANOS: Oh, goodness. Okay.

10 THE COURT: So --

11 MR. ZAVITSANOS: Okay.

12 THE COURT: Yeah. And so I saw the look on those
13 officers' faces when they were at my house at 1:00 in the
14 morning, so --

15 MR. ZAVITSANOS: Okay. I understand. Thank you.
16 Thank you for your answer.

17 THE COURT: All right. So 25 will be granted.

18 Let's go to 26.

19 MR. BLALACK: Thank you, Your Honor.

20 Your Honor, hopefully this one can be rather
21 straightforward.

22 So the *Motion in Limine* No. 26 relates to our request
23 to exclude evidence and argument regarding the -- what's
24 called the Ingenix database and any settlement that a United
25 entity entered in connection with the use of that database.

1 And just for factual record, I know you've heard the
2 give this reference before. You know, Your Honor, from the
3 complaints, there is a substantial set of validations in the
4 first amended complaint about the Ingenix database and then
5 subsequent settlement that the defendant United -- while the
6 former defendant UnitedHealth Group entered with the New York
7 Attorney General, and then also a class action settlement tied
8 with that investigation. And then that allegation remains in
9 the newly amended second amended complaint.

10 So the background here, Your Honor, is that Ingenix
11 was a subsidiary of UnitedHealth Group, that offered -- one of
12 many services was a pricing service for out-of-network claims
13 using data from other United subsidiaries. And it was a -- in
14 a database was widely used by UnitedHealth plans but also
15 other competitor health plans of United. It was basically a
16 very frequently used data source.

17 Over time, it became the subject of attack by various
18 medical professionals, medical societies. And a lawsuit was
19 filed by the American Medical Association against UnitedHealth
20 related to that piece of that database, which largely turned
21 on the argument that there was a conflict of interest between
22 United having the health plan that utilized that -- that
23 provided the data for the database and having a subsidiary
24 that analyzed the data and used it for pricing
25 recommendations.

1 That allegation of conflict of interest then resulted
2 in, further, an open inquiry by the New York Attorney General,
3 at that time Governor -- or now Governor -- former Governor
4 Andrew Cuomo. And there was an investigation related to that,
5 and it ended up in a settlement in 2009, in which United did
6 not admit any wrongdoing or impropriety, but agreed to cease
7 using the Ingenix database, and agreed to help fund -- not
8 exclusively fund -- but help fund a nonprofit organization
9 called FAIR Health that would offer a new database service --
10 essentially a similar function. But it would be data that
11 would not just come from a United subsidiary health plan, but
12 it would be data drawn from all the health plans and
13 government data as well.

14 So basically the objective of the settlement was to
15 have a data source that was broader than one related health
16 plan company for the entity that was actually doing the
17 analysis of the data. That was the purpose of the settlement.

18 The settlement agreement was issued, and United did,
19 in fact, assist in the development of the FAIR Health
20 organization. The FAIR Health organization actually came into
21 being at about the time of the settlement agreement and has
22 operated in the subsequent 13 years -- 12 or 13 years. And it
23 is the case that what FAIR Health does, as a nonprofit, it
24 offers a number of different services, one of which is a
25 charge database, where it gets charge information from all

1 sources of health plans -- government and commercial, and then
2 it does a Cisco analysis of those -- of that data to provide
3 benchmarks that could be used for a variety of research- and
4 payment-related reasons, including reimbursement of
5 out-of-network claims.

6 And also offers a database of paid allowed amounts --
7 not charged amounts -- that can also be licensed to clients
8 like United and others who have use them for a variety of
9 sources -- variety of purposes. So that's what FAIR Health
10 has done over the last 12 years.

11 So in this case, it has become clear from the
12 plaintiffs' allegations in the case and the deposition
13 discovery they have taken that they intend to offer evidence,
14 not just that there was such a thing called Ingenix and that
15 it was a database used to process out-of-network claims over a
16 decade ago, but that it was the subject of allegations by the
17 New York Attorney General and private claims. And that as a
18 result of those allegations, defendants entered a settlement
19 agreement to stop using Ingenix and to fund FAIR Health.

20 And we submit, Your Honor, that the only plausible
21 reason to offer such evidence is to prejudice our clients
22 right to a fair trial -- and because that evidence can have
23 only one purpose, which is the evidence of propensity,
24 evidence to show that defendants would have -- did this in the
25 past, this alleged bad conduct in the past, and that's why the

1 jury can conclude they did something similar in this case.

2 And the premise of this argument, we think, is they
3 are going to argue to the jury that the defendants'
4 contractual relationship with MultiPlan, a third-party
5 publicly-traded company that does business with virtually
6 every large health insurance in the United States and all of
7 our competitors, has somehow provided the same ability for
8 United to do the exact same scheme that was found to be
9 improper back over a decade ago in connection with being
10 Ingenix database.

11 Now, first of all, the comparison is not correct.
12 There's nothing about the Ingenix database and the Data iSight
13 database that are the same. They are not. It is not a
14 database that it is created by United. It is not a database
15 run by a subsidiary of United. It is not a database that
16 relies solely on United data.

17 It is a database offered by public companies; a
18 database that receives data from all of United's competitors
19 and the government -- from all of United competitors,
20 commercial competitors for claims data.

21 So we just don't think there is an apples-to-apples
22 fair comparison there. But those details, we think, will be
23 allotted over in argument and the suggestion will be that, you
24 know, United did this once before, got caught, got slapped,
25 and now it came up with a new scheme to do it. And we have

1 heard them ask questions in deposition after deposition where
2 this is the tenor of the examination.

3 It's for that reason that we moved in limine to
4 exclude any reference to this database and the settlement and
5 our involvement -- my clients' involvement in it to just be as
6 it is not probative of the dispute about what the rate of
7 payment is 15 years later; and it's not probative even in the
8 allegations of punitive damages related to conduct that
9 occurred that started in 2017, and allegedly, you know, covers
10 through 2020.

11 So for all of those reasons, it should be found
12 irrelevant, unduly prejudicial, and improper [indiscernible].

13 In the TeamHealth plaintiff's response, they basically
14 said they won't make propensity arguments. On page 3, they
15 say, We will not argue that United's use of Data iSight or any
16 out-of-network reimbursement programs were designed to simply
17 replace the Ingenix database, so that's good. And if they
18 abide by that, that will certainly settle one problem.

19 And they say they -- nor did plaintiff Health Care
20 Providers intend to argue because United used Ingenix in the
21 past, it must have committed some more misconduct here.
22 Again, if they abide by those representations, that will solve
23 a lot of [indiscernible].

24 But they then go on to argue that they should be able
25 to offer this evidence for a different reason, and there is

1 really two they identify.

2 One is that we have somehow opened the door to this
3 evidence, because we are going to call as an expert witness
4 Alexander Mizenko, who is a product manager at FAIR Health, to
5 explain what FAIR Health is and how that charge database
6 works. And we are going to do that, Your Honor.

7 We just contest the notion of anything about
8 Mr. Mizenko testifying opens the door to a 15-year-old
9 settlement related to things unrelated to this case.

10 The only reason, by the way, we are calling
11 Mr. Mizenko and FAIR Health as an expert is because one of
12 plaintiff's experts affirmatively relies on FAIR Health as a
13 basis to validate the assertion that the charges being
14 disputed in this case are reasonable.

15 If they had not but that issue, had not relied on FAIR
16 Health as the basis for that expert opinion, we would not have
17 called FAIR Health and Mr. Mizenko as an expert witness in
18 rebuttal. You know, we would have -- it would have been a
19 nonissue, and it wouldn't even come up.

20 But because they disclosed an expert who, in part,
21 bases the opinion on FAIR Health and its database and
22 operation, we asked FAIR Health to act as a rebuttal expert to
23 respond to those opinions. In doing so, that opinion will be
24 limited to responding to their expert's characterization of
25 what FAIR Health does, what it is, and what it isn't, and the

1 data analysis that the expert performed related to data during
2 the period at issue 2017, 2018, and 2019.

3 Now, it is absolutely true that the origins of FAIR
4 Health are a foundation of who FAIR Health is. And we would
5 not have any objection to both sides being permitted to elicit
6 testimony from FAIR Health, or disclose to the jury that FAIR
7 Health was created as a nonprofit, as a result of a settlement
8 agreement involving the Attorney General and health insurers
9 regarding the creation of a database. That's fine.

10 But we would object to discussion of the settlement
11 agreement in this case, involving our client, which is the
12 defendant in the case, which would then take it out of a
13 foundational type of evidence, so that somebody would know who
14 FAIR Health is and can understand their context in the
15 industry, to something closer to prejudicial evidence about
16 our client.

17 And that is really -- so if we can -- if they will
18 agree to that sort of limitation, where Mr. Mizenko could
19 explain, yes, FAIR Health was created as a nonprofit, as a
20 result of a settlement agreement involving the New York AG,
21 and to create a database, that's fine. No objection here.

22 It's when we cross into describing what was the
23 settlement? What were the allegations? You know, what did
24 United admit to? Did United pay money? What did it pay money
25 for? When you get into litigating the settlement, that's

1 where it crosses the line for us.

2 So that's the first reason why, in our view, Your
3 Honor, it shouldn't be permitted.

4 And then secondly, they argue that somehow that we
5 introduced the Ingenix settlement -- put it at issue because
6 we are going to contest the notion that billed charges are a
7 reasonable basis for reimbursing out-of-network services.

8 There is nothing about -- that is our position. And
9 we think it is borne out in their own data and their own
10 records, because they never get paid billed charges by almost
11 anyone, not in total.

12 They collect about 6 percent of the time, their billed
13 charges from all payors, commercial payors. So I don't think
14 that's going to be a hard thing to establish. But.

15 It is certainly not the case that because defendants
16 contend billed charges are not appropriate in a way to measure
17 reasonable value, that a settlement agreement from 15 years
18 ago that used a charge database somehow impeaches that,
19 because it doesn't. And so we think that's a straw man to
20 kind of justify an argument that we have opened the door that
21 just doesn't hold water.

22 So unless the Court has questions, I will defer to
23 plaintiffs' counsel and respond in the reply.

24 THE COURT: Thank you.

25 MS. LUNDVALL: I'm going to address the last point

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1 that Mr. Blalack made the first. He seems to scoff the idea
2 that somehow that we have an expectation that we should get
3 paid our billed charges. However, when you look at the
4 documents, multiple of which what we received from United,
5 they acknowledged internally their obligation to pay billed
6 charges.

7 Their own documents say we have an obligation to pay
8 billed charges. Now, let's see how we can concoct a plan to
9 avoid having to pay billed charges. But that's a little bit
10 beside the point, as it relates to this particular motion.
11 Because what Mr. Blalack did not tell you about the Ingenix
12 settlement was the timing.

13 So let me set the stage. Let me give the Court kind
14 of the rest of the story, the Paul Harvey version of this, so
15 that the Court can have an understanding of why portions of
16 this settlement agreement are admissible under Nevada Rules of
17 Evidence.

18 First and foremost, I think context is important. It
19 was back in the 2000 time frame that the American Medical
20 Association in the state of New York brought a lawsuit against
21 United and many of its subsidiaries. And the allegation was
22 made that they were using a database that was false and
23 misleading and that was underpaying healthcare providers,
24 particularly, in out-of-network situations.

25 THE COURT: Is this referenced in your complaint?

1 MS. LUNDVALL: It is referenced in our complaint.

2 That lawsuit was followed by a criminal investigation
3 then by the state of New York, and there was resolution of
4 both of those complaints.

5 There were three principal points of that resolution.
6 Number one, there was a dollar figure that was paid; number
7 two, and very importantly, there was an obligation then to
8 create what is called FAIR Health. And FAIR Health then was
9 up supposed to be an independent organization by which it was
10 supposed to collect data from multiple different sources,
11 whereby to inform members of the public and also members of
12 the healthcare industry as to what was an appropriate billed
13 charge by which to charge for a particular service being
14 provided.

15 And it has been a wild success. And it is used by
16 certain states. The state of Connecticut uses it. The state
17 of Massachusetts uses it as its benchmark then for determining
18 again what is an appropriate charge for certain medical
19 services.

20 The third thing that that settlement did is it
21 obligated United to use FAIR Health for a certain period of
22 time. They were obligated to do so. And once that timing
23 obligation -- they were released from that timing obligation,
24 that's when they began developing their multiple different
25 programs then, to say we are not going to use FAIR Health

1 anymore. We are going to do something different, and that
2 something different is going to drive down the reimbursement
3 rate that we're paying to out-of-network providers.

4 So it is the timing aspect of this that is the most
5 critical piece. When you look at NRS 48.045, Subsection 2
6 indicates that a party cannot use a prior bad act to prove
7 propensity.

8 We are not arguing propensity. What we are arguing is
9 the terms of the resolution to demonstrate a plan, an intent,
10 a motive, preparation, and opportunity then, for them, once
11 they were outside of the confines then of this settlement,
12 once they know longer had to use the FAIR Health database when
13 it came to setting payments then for out-of-network providers,
14 that they moved to something else. And that move to something
15 else is what drove down then the reimbursement rate. And
16 that's where this litigation then began.

17 So from that perspective, Your Honor, it's that timing
18 piece of it. It is that resolution piece of it. It is their
19 own internal documents that identify that they are no longer
20 within that timing confine. And so, therefore, now they want
21 to do something to it.

22 So therefore, Your Honor, we would ask the Court to
23 deny *Motion in Limine* 26.

24 THE COURT: Thank you. And I understand the motion.
25 I understand your argument.

1 But is there a way to do the chronology that when they
2 stopped using FAIR Health, that they drove down the prices?
3 That they were obligated to use FAIR Health for so much time
4 and then -- because I don't want to get into what they had to
5 settle for in the past. That to me seems unfair.

6 MS. LUNDVALL: Well -- and the Court -- we don't have
7 any quarrel with that.

8 When it comes to what bad acts they were doing that
9 led to Ingenix, all right --

10 THE COURT: I don't want that in.

11 MS. LUNDVALL: All right. Understood. But the idea
12 that there was a resolution and what the terms of that
13 resolution were, and once that they were outside of those
14 terms, that that's what their opportunity was.

15 THE COURT: Well, there was a lawsuit in New York.
16 They were obligated to use FAIR Health for a certain time.
17 And after that obligation ended they moved on.

18 I don't want there to be anything critical about the
19 fact that they had that prior litigation because it just
20 doesn't seem fair to me.

21 MS. LUNDVALL: Well, I guess what I am trying to get
22 into is this, is that when you say that you don't want
23 anything that's critical -- I guess the critical piece --

24 THE COURT: I don't want to talk about prior bad acts
25 as being proof of another bad act.

1 MS. LUNDVALL: Your Honor, we don't have any
2 indication for wanting to use it for propensity. What we want
3 to do is to use it for opportunity -- the opportunity, the
4 preparation, and the plan. And that being -- it's kind of
5 like saying that, you know, if I am wearing a pair of
6 handcuffs, then I can't move. But once those handcuffs come
7 off, then I can have an opportunity --

8 THE COURT: Right.

9 MS. LUNDVALL: -- to do a bad act.

10 THE COURT: There was a lawsuit in New York. No bad
11 finding was found, but there was a resolution that they would
12 use this certain system for a period of time. When that time
13 ended, we saw whatever happened here, whatever you think you
14 can prove.

15 MS. LUNDVALL: Agreed.

16 And then the additional piece to this, Your Honor, is
17 this, they are critical of FAIR Health. They created FAIR
18 Health. They are bringing in the -- as their expert
19 witness -- the gentleman who is the director of FAIR Health.
20 They are critical of our reliance upon the use of FAIR Health.

21 And so, therefore, we would have to be able to get
22 into -- and I think that the Court has already identified --
23 that we have to be able to get into use then of FAIR Health
24 and the legitimacy then of that as a database then for setting
25 for billed charges.

1 THE COURT: I see. Thanks.

2 Mr. Blalack.

3 MR. BLALACK: Thank you, Your Honor. Let me address
4 that last piece.

5 We are not going to argue that it's illegitimate to
6 use FAIR Health as a basis for setting billed charges.
7 That's --

8 THE COURT: If you do that, that does open the door.

9 MR. BLALACK: Absolutely. That's -- you know, our
10 position is not whether FAIR Health is a useful tool for
11 setting billed charges. It's a different argument.

12 The different argument we are making is billed
13 charges, as a metric for measuring reasonable value, is not an
14 appropriate. That is the dispute, Your Honor.

15 So -- and there are health plans which we will testify
16 and acknowledge and embrace -- there are health claim clients
17 that United to -- want -- and we offered them the opportunity
18 to set up an out-of-network program that uses FAIR Health, and
19 that's fine.

20 But there are many, many, many clients, including
21 many, many prominent Clark County employers, who don't want to
22 use that program. They want to use a different program that
23 doesn't rely on a charge-based methodology. They want to rely
24 on the Medicare methodology, or want to rely on the Data
25 iSight methodology.

1 So we're not going to stand up here and be critical of
2 FAIR Health. In fact, we are bringing a FAIR Health witness
3 to explain what FAIR Health does and doesn't do, and its own
4 analysis of its own data. So we won't be critical of FAIR
5 Health as a tool for setting charges. So I just want that to
6 be clear.

7 As to, you know, the suggestion that they need to get
8 in -- they don't need to get into the Ingenix settlement to be
9 able to talk to a FAIR Health witness about what FAIR Health
10 does, how it uses the charge database, why they think it's a
11 good tool for measuring reasonable value -- and I'm talking
12 about the plaintiffs -- why they -- whatever testimony they
13 want to elicit from him about his analysis of data and their
14 charges -- it's all fair game.

15 None of that requires an examination of what United
16 did or didn't do 15 years ago that resulted in a settlement 12
17 years ago. So I just want to point that out.

18 Finally, on this notion that somehow this evidence is
19 being offered with respect to the notion of opportunity -- to
20 prove opportunity of motive. First of all, Your Honor, the
21 settlement agreement did not require each and every one of
22 United's health plans to reimburse using FAIR Health.

23 So the suggestion here that somehow is that the
24 settlement agreement is that United could only use FAIR Health
25 to set out-of-network rates -- that is not true.

1 The settlement agreement said that for certain types
2 of plan language United have to use FAIR Health. And that
3 term, whenever it had a plan language of a certain type, it
4 would have to use FAIR Health. That term lasted for the
5 five-year period.

6 But that is not the case that every single health plan
7 that United administered from 2009, when the settlement was
8 entered, to 2014, relied on FAIR Health -- the settlement
9 document [indiscernible] that's not the case.

10 And the timing just doesn't line up because the
11 disputed period in this case and the alleged conspiracy, the
12 alleged wrongful use of Data iSight doesn't occur until 2017,
13 2018. FAIR Health terminated in 2014.

14 So the suggestion that somehow there was cabal in the
15 back room just is not an accurate representation of what
16 actually occurred.

17 And if it comes in for that purpose, we are going to
18 have a mini trial, because I am going to have to rebut every
19 one of these things that you just heard. We are going to have
20 to get in and explain all of that and explain all of the false
21 statements about what did or didn't happen between 2014 and
22 the period of dispute in this case, which is mid-2017.

23 And we suggest, Your Honor, that that is just going to
24 be a huge distraction to the jury, unfairly prejudicial to us,
25 and confusing.

1 THE COURT: And I think that Ms. Lundvall had
2 something more to add.

3 MR. BLALACK: Okay.

4 MS. LUNDVALL: I had one point of order, Your Honor.

5 Mr. Blalack suggested to the Court that, while we're
6 not going to trash FAIR Health; we are not going to, as far as
7 being critical of FAIR Health; we are not going to be
8 suggesting that FAIR Health wasn't an appropriate use.
9 Their -- that's all over their documents.

10 And so to the extent that you've got one thing that's
11 being represented to the Court, but the documents then are
12 revealing another. And so to the suggestion that they have
13 and they did and they began their timing as far as the
14 perspective plans then and these different programs that were
15 being used then to try to drive down the reimbursement rates,
16 they began after they were outside of the confines then of the
17 settlement agreement.

18 THE COURT: Your motion. You get the last word.

19 MR. BLALACK: I would just say nothing that
20 Ms. Lundvall just said contradicts anything I just said,
21 because it is undisputed that United thinks charge-based
22 reimbursement systems, like FAIR Health, do not measure
23 reasonable value, that they are not a good use for that.

24 What I believe we said earlier was that doesn't mean
25 it can't be a useful tool for setting charges. And it is used

1 by plaintiffs to set charges. And there are some health
2 plans -- clients of United that want a charge-based
3 methodology and United provides it to them using FAIR Health.

4 That doesn't mean United thinks FAIR Health is a
5 proper measure of reasonable value. That's not trashing FAIR
6 Health.

7 THE COURT: All right. So it will be granted in part,
8 Number 26, only with regard to the terms of the settlement --
9 not in a way that shows propensity.

10 I don't think you can even say that the nonprofit was
11 created by virtue of the settlement, and they had to pay for
12 it. I think you can say that they were obligated to use it
13 for a period of time. And from there we will see where it
14 goes.

15 MR. BLALACK: Thank you, Your Honor.

16 THE COURT: Let's go now to 27.

17 MR. PORTNOI: Thank you, Your Honor. There is a few
18 slides, but that doesn't mean it's going to be long.

19 THE COURT: Oh. All right.

20 MR. PORTNOI: So this is our *Motion in Limine*. This
21 relates to evidence of complaints from third parties regarding
22 defendants out-of-network rates or payments.

23 You know, just to back up, this is something that also
24 relates to the Court's prior ruling. What essentially this
25 comes down to is obviously both sides are going to have

1 experts -- more than one expert per side. It's going to talk
2 about out-of-network data, out-of-network payments -- in terms
3 of trying to figure out what a reasonable rate is.

4 The question here is whether anecdotes of third-party
5 complaints in either direction are probative of that at all;
6 whether they are probative at all, what is the actual
7 appropriate rate of payment?

8 And part of the point here is that we initially wanted
9 to find out if there were complaints regarding the excessive
10 charges that were coming from TeamHealth Plaintiffs on the
11 idea that perhaps it may be the case that third-party
12 complaints are probative of what a reasonable rate of payment
13 is.

14 And that was denied by Your Honor or rather -- our
15 Motion to Compel was denied by Your Honor, or Judge Wall and
16 then subsequently Your Honor, with respect to those complaints
17 regarding the charges that were coming from TeamHealth
18 Plaintiffs. And you know, so again with respect to both
19 the -- with respect to both Your Honor and Judge Wall.

20 So where we stand with respect to that is a situation
21 where we may have anecdotes or anecdotal complaints, or, you
22 know, e-mails where somebody says that somebody else says that
23 there were complaints -- not the full text of the complaints
24 and not discovery into those complaints -- where potentially
25 you have -- you have some folks saying, Well, United or

1 defendants or, you know, paying us this much and we complained
2 about that. And we want to, raise the complaints about that.
3 It's not parties to this case.

4 And similarly we saw discovery of, well, let's see,
5 given that the reasonableness of plaintiff's full billed
6 charges are issue, are there complaints about that?

7 So I understand that Your Honor has previously said
8 this is kind of goose and gander argument is not one that you
9 are inclined to -- inclined to credit.

10 But we do believe that even without -- you know, I do
11 believe that that does create unfair presentation to the jury
12 where the jury might believe, Oh, well, if we have anecdotal
13 complaints about what one side is doing, but not with respect
14 to the other, that creates the impression that the marketplace
15 or other insurers are fine with the level of billed charges on
16 one side, but that the market, or rather folks that are out
17 there in the world, have had problems with what defendants or
18 United are doing.

19 And that's only a function of the way the discovery is
20 perceived. It's not in actually a function of the fact that
21 there are no complaints about one side, and there are
22 complaints about the other side. And that just creates --
23 that creates a false impression and a false dichotomy to the
24 jury and risks the possibility that the jury can decide on
25 that basis, as opposed to, for instance, deciding on the basis

1 of fulsome market data, that said would be -- that could be
2 something that the jury could decide upon.

3 So on the basis, we don't believe that these -- that
4 this discussion of third-party complaints are probative of
5 anything. We would ask that they be excluded.

6 THE COURT: Thank you.

7 MS. PERACH: Thank you, Your Honor.

8 Unfortunately I'm up here again making the same
9 argument.

10 I feel like I am beating a dead horse here, but
11 United's arguing again that rate of payment issues are on the
12 other side of the coin for charge issues. And of course that
13 is not the case. That is false dichotomy.

14 Charges -- and this point has already been said
15 repeatedly that this is a rate of payment case and a relevant
16 inquiry is the rate of payment. So certainly complaints about
17 rates of reimbursement is not the same issue as complaints
18 about charges.

19 And Your Honor, Mr. Portnoi has already acknowledged
20 that rates and reimbursement of other out-of-network providers
21 is coming into this case; right? And so certainly complaints
22 about those rates of reimbursement from other providers are
23 just as relevant and, in fact, are highly relevant here,
24 because United is arguing that these reimbursement rates
25 represent market value -- market value.

1 So if a provider, that's not in this case, who has no
2 dog in the fight, is complaining about that reimbursement rate
3 being too low, how is that not highly relevant?

4 Your Honor, Mr. Portnoi referenced these anecdotes.
5 These are not just anecdotes. The e-mail that was attached to
6 United's Motion at Exhibit 1, very clearly sets forth the
7 types of complaints that are coming in -- and I will quote, on
8 DEF 284346, it says, we are getting more and more DOI,
9 Department of Insurance, complaints from providers unhappy
10 with Data iSight pricing.

11 Very clearly, these rates have reimbursement to
12 third-party providers are not reflective of the market, and
13 that is why these providers are complaining.

14 The second piece of relevance here, Your Honor -- and
15 we have cited to some documents in our opposition on this
16 issue -- is that part of United's strategy in setting these
17 very low reimbursement rates is to set them low enough so as
18 to -- but not too low, so as to avoid provider noise. And
19 provider noise is, of course, provider complaints.

20 So that is part of their strategy in setting these
21 rates of reimbursement paid. There's no doubt that given
22 those two pieces of information that these are highly relevant
23 documents.

24 Your Honor, I don't think I heard much about the
25 argument regarding United's contention that the probative

1 value is substantially outweighed by the danger of unfair
2 prejudice -- but I do want to touch on that really briefly.

3 There is -- this is not the type of circumstance
4 envisioned by NRS 48.035. This is not a gray photograph in a
5 murder trial. This is not something that is going to evoke an
6 emotional response. It may evoke a negative response,
7 certainly, because it is probative evidence of United's
8 intention to lower reimbursement rates below the market.

9 And so for that reason, Your Honor, we would
10 respectfully request that that motion be denied.

11 THE COURT: Thank you.

12 And the reply?

13 MR. PORTNOI: Thank you, Your Honor.

14 So part of what was just said was that, you know,
15 there is this difference between reasonable charges and
16 reasonable rates. But what you just heard from Ms. Lundvall
17 (sic) tell us that plaintiffs' view of what a reasonable rate
18 is is the charge -- that the charge is a reasonable rate of
19 payment. And, in fact, it is the only reasonable rate of
20 payment. And it is the rate of payment that the jury should
21 combat.

22 So if we do have -- if we do have folks out in the
23 market that are saying that that rate is outrageous, that they
24 are complaining about that, that would be prohibitive. But we
25 were denied that discovery. And that is what creates the

1 improper and unfair prejudice, is the fact that we haven't --
2 that creates a skewed presentation, that we are not able upon
3 hearing -- upon a jury hearing potential third-party
4 complaints, with respect to our -- with respect to our rates
5 we can't come back and say, Well, [indiscernible] also
6 complained about the rate of payment that they are proposing,
7 which is their full billed charges, and maybe therefore the
8 proper rate of payment is in the middle.

9 We are not allowed to say that because we didn't have
10 discovery on that. So that creates the unfair prejudice --
11 unfair prejudice is not just a poor photograph. Sometimes it
12 is the fact that it's a one-sided presentation that is
13 necessitated -- that is necessitated by the conduct of
14 discovery, which is what we have in a case like this.

15 And furthermore, to understand when we say anecdotes,
16 these are anecdotes. And in many cases, even things that, you
17 know, are not subject -- it's not that these complaints where
18 brought in and there's the opportunity to contextualize them
19 or conduct further discovery on them or even have the
20 opportunity to do any trials on them.

21 When you say -- when you say here there was a
22 reference in the deal by complaints, and I wanted to make sure
23 it is understood, those aren't Departments of Insurance
24 complaining. These are complaints going to the Departments of
25 Insurance.

1 THE COURT: I got it.

2 MR. PORTNOI: Not even -- we don't know very much
3 about them at all. And maybe that's that -- you know, it may
4 be that there was, in fact, never any -- never any sustaining
5 of those complaints, maybe that defendants never knew of
6 particularly who they were or what charges we're talking
7 about -- or sorry -- what rates we are talking about when we
8 are talking about that, but what reimbursements are of issue.

9 So it's a very skewed presentation and it's also a
10 very isolated one that creates a false impression in front of
11 the jury.

12 THE COURT: Thank you.

13 And being consistent with my goose and gander previous
14 rulings, I do find that the -- this information may be
15 relevant to the rate of the case.

16 So the motion will be denied.

17 And that, I think, takes us to 29.

18 MR. PORTNOI: That's correct.

19 So *Motion in Limine* 29, this relates to a project that
20 has a few different names -- sometimes it is called Project
21 Airstream (phonetic). Mostly, in this motion it is called
22 Naviguard.

23 Actually during the last break I had a discussion with
24 Mr. Leyendecker and Mr. McManis. And a substantial portion of
25 this motion does talk about something called the Muddy Waters

1 Report --

2 THE COURT: Right.

3 MR. PORTNOI: -- which is a report about Naviguard,
4 which has particularly inflammatory terms.

5 And actually Mr. Leyendecker was able to represent
6 that the plaintiffs don't intend to use Muddy Waters as a
7 subject.

8 And with that representation, part of this motion, I
9 do believe, is mooted, because I do believe that the Muddy
10 Waters Report -- it does have the kind of inflammatory issues
11 that 48.035 would reference.

12 That said, however, we would still -- we would still
13 represent that Naviguard, or Project Airstream, however it is
14 referred, is simply not relevant to the issues in this case.

15 All the -- you know, there are only a few exhibits on
16 this, and some of them have just been transmitted to us. And
17 all the Plaintiffs were very forthright in letting me know
18 earlier today that there might be a few new exhibits, so I
19 don't want to have any accusation of saying that I didn't know
20 anything like that -- but forthright on that issue.

21 But in looking through them, in looking through what
22 is in the exhibit list, what we have come to a conclusion
23 about is what Naviguard is is a potential company that -- or a
24 potential service that defendants were looking into to
25 prefer -- to provide some reimbursement rate evaluation

1 in-house, as opposed to the MultiPlan, as was used in
2 something like MultiPlan and Data iSight for that purpose.

3 But most fundamentally, in all of the documents we
4 see, which seem to take place in the mid-2019 and late 2019,
5 they are all talking about a possibility of something that
6 they might do at some point in the future.

7 There is no allegation that any [indiscernible] that
8 Naviguard ever came in -- sorry -- there is no evidence that
9 has been exchanged in this case -- I don't believe -- or that
10 it is on any exhibit list that Naviguard ever came into
11 fruition, that Naviguard that was ever used to price any
12 claims.

13 There's simply a suggestion -- and I believe it's been
14 a suggestion that has been said is that Naviguard is evidence
15 that United is at it again with respect to Ingenix; that what
16 is essentially happening is that with Ingenix, defendants had
17 an in-house service to price things, and now they are creating
18 Naviguard so that they can do it again.

19 It's sort of like propensity evidence in reverse,
20 where we are starting to see the beginnings of a scheme. We
21 might be starting to see the breadcrumbs of a future scheme.
22 But that is not enough to make it relevant to be able to be
23 presented to the jury with that context, where it is
24 irrelevant to the claims that are at issue here.

25 And it is also particularly ironic because it creates

1 a situation where what we have is the allegation of a
2 conspiracy, because what we did is, well, we went out -- we
3 went and we worked with some other company to look at
4 reimbursement rates, and that's wrong. And now, however,
5 defendants are considering starting to do more of their own
6 reimbursement rate evaluation within, and that's also wrong.

7 But there is an inability to put on a fulsome
8 presentation about, well, what would Naviguard really have
9 been, because there just isn't the kind of information that it
10 ever came into fruition or that it was relevant to any of the
11 at-issue claims here.

12 So that we would ask that Naviguard just be eliminated
13 as a topic for presentation in this trial.

14 THE COURT: Thank you.

15 MR. LEYENDECKER: Your Honor, Kevin Leyendecker.

16 Okay. There is no -- he is correct. Muddy Waters --
17 we are not going near Muddy Waters.

18 We are also not trying to sneak in an Ingenix-style
19 argument, as it relates to this Naviguard, Airstream,
20 et cetera, business.

21 Let me just give the Court a little bit of context.

22 During the period in question, there were a variety of
23 what's called shared savings programs. And the whole idea
24 behind the programs, for the administrative service clients,
25 was to figure out how can we get providers to take less than

1 their billed charge.

2 And the upshot of that, Your Honor, is that United
3 made a 35 percent fee on every dollar between the billed
4 charge and whatever they adjudicated that claim at. And in
5 some cases, they make more than the actual doctors made.

6 So Naviguard is simply just another, in that same vein
7 of shared savings programs, with one little sweetener. And
8 the sweetener, Your Honor, was that when they used iSight,
9 iSight got a seven and a half percent fee on that bill,
10 between the billed charge, which is what they are saying is
11 hey that -- somebody might say, that's an indication they
12 think that's what's owed. Okay?

13 But Naviguard was a whole way of saying, How can we
14 get that seven and a half percent too? And so [indiscernible]
15 large, it's not clear which of the shared savings programs,
16 except for iSight in some cases, which exactly of those
17 programs touched which of the claims.

18 But there is no mistake about it that the use of those
19 shared savings programs, and their effort to get this
20 Naviguard Airstream in play, is all speaking to the question
21 of, How do we convince providers to take less than what we
22 think we owe them? Which is that billed charge.

23 And so for that reason, it is right down the fairway
24 and [indiscernible].

25 THE COURT: Thank you.

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1 Reply, please.

2 MR. PORTNOI: Your Honor, again, this is kind of
3 really just speculation about what Naviguard might have been
4 if it had ever come in to fruition. There is no -- there's no
5 document that says that the scheme that Mr. Leyendecker
6 proposed -- there is no testimony that says the scheme that
7 Mr. Leyendecker proposed is actually what was anticipated,
8 what was -- or was implemented.

9 It's just really -- you know there are some
10 PowerPoint points that vaguely refer to the idea, and not something
11 that actually was ever implemented and especially not
12 something that was ever implemented in any of the at-issue
13 claims here. So it's really just a sideshow, and
14 unfortunately, something that is going to take a --
15 especially, if this is the kind of baseless accusations about
16 Naviguard we just heard -- which has caused -- you know, an
17 endless discussion of that throughout the trial, in terms of
18 what might've happened in 2021, what might happen in 2022,
19 when the dec relief claims are out, the future claims are
20 out -- they really just aren't relevant to any of the at-issue
21 claims that we are [indiscernible].

22 THE COURT: I am being asked to exclude anything about
23 Naviguard. And so the motion will be denied. But I am not
24 sure if I'm going to let you get very far into that.

25 MR. LEYENDECKER: Understood, Your Honor.

1 THE COURT: Thank you.

2 Okay. I think we are down to the last five.

3 MR. PORTNOI: Getting close.

4 THE COURT: 32.

5 MR. PORTNOI: 32. So 32 relates to materials, events,
6 or conduct that occurred on or after January 1, 2020.

7 Now, to be clear, some of this has changed since the
8 MIL was filed. When the MIL was filed, we actually had a body
9 of at-issue claims that were present in the materials in
10 January 1 -- in January 1, 2020, forward. And as it was after
11 we filed our motion for summary judgment, the amended --
12 second amended complaint, some amended claims matching -- a
13 lot of these claims came out, so a lot of this *Motion in*
14 *Limine* was mooted on that basis.

15 And just to, you know, get context on how we got
16 there, would that be on -- that really --

17 THE COURT: Sorry. Just a second.

18 MR. PORTNOI: Take your time.

19 THE COURT: Thank you. Go ahead.

20 MR. PORTNOI: Is that why -- is that why the soda rule
21 was there?

22 THE COURT: No. There is an administrative order that
23 we have to keep our mask over our mouth and nose.

24 MR. PORTNOI: No. I was joking because I thought you
25 might have just had a spill.

1 THE COURT: I just did have a spill.

2 MR. PORTNOI: Okay. Sorry. I don't mean to tease.

3 So essentially, as Your Honor probably knows from the
4 briefing, as of January 1, 2020, Nevada passed a new statutory
5 framework which we contend took the claims after January 21,
6 2020, out, and therefore took the dec relief claims out
7 because all future claims or all claims starting in 2020
8 forward, have to be routed through mandatory arbitration. It
9 can't be litigated in a court on a going-forward basis, and
10 so, therefore, those claims had to come out, and they did.

11 But we also contended for the -- you know, really for
12 the same reason -- and not necessarily just because of the
13 statute itself, but really because evidence that is forward of
14 the claims period -- that is in 2020 and 2021 -- just isn't
15 probative of how to price the 12,000 at-issue claims, when we
16 are dropping under 12,000 in the near future, on that basis.

17 And so that -- I think this relates actually somewhat
18 into the Naviguard issue I just presented, although Naviguard
19 was considered in 2019, there's no evidence that was ever
20 considered that it could have been implemented in that time.

21 So we potentially have a whole lot of information that
22 is just not going to be probative to how these at-issue claims
23 were processed, how it ought to have been processed, what is
24 the proper way to payment for those.

25 You know, plaintiffs have argued that this -- that the

1 MIL is overbroad -- that if you interpret it literally that
2 would prevent anyone from talking about anything or even
3 impeaching somebody on the basis of the statements made in
4 2020. I think there was even a statement in the opposition
5 that the depositions would have to come out because the
6 depositions were conducted after 2020. That's not what
7 we're -- that's not what we are talking about here.

8 We are talking about evidence about how, you know, the
9 claims were placed, but also about how conduct that occurred
10 after January 1, 2020, that it does not -- it simply is no
11 longer probative of negotiation conduct, any conduct that
12 takes place January 1, 2020, or after, isn't probative of how
13 the at-issue claims were priced or how they ought to have been
14 priced.

15 And so, you know, I do believe that -- sorry. Yep. I
16 think that is all of them. That's all have, Your Honor. We
17 can just move on.

18 THE COURT: Thank you.

19 MR. McMANIS: So, Your Honor, in the Defendants'
20 Motion for Summary Judgment they actually pointed out to that
21 there are 1,100 claims with dates of service January 2020.
22 That is on page 20 of Defendants' Motion for Summary Judgment.

23 And then what they actually move on are 422 out of
24 those 1100 claims.

25 So it is absolutely 100 percent not the case that

1 there are no claims to be decided by the jury that occurred in
2 January 1st, 2020.

3 So we can't exclude all of evidence past January 1st,
4 2020, because there are still claims in the case that occurred
5 during that month. Now, as to the documents -- whatever other
6 evidence is subject to this motion, I hear counsel saying he's
7 not trying to exclude depositions. There are documents that
8 are created after January 1st, 2020; statements that are made
9 under those documents that are inconsistent with the positions
10 they are taking in this lawsuit about whether or not billed
11 charges are owed; what they know about when billed charges are
12 owed.

13 Those are absolutely fair game for proving what the
14 defendants know and for contradicting what they are going to
15 tell the jury in this trial.

16 So I think certainly you could come up with examples
17 of evidence outside the claims period that might not be
18 relevant. But I don't think just a global ruling that
19 anything and everything that occurred after January 1st, 2020,
20 is something that can be addressed without hearing the
21 context, seeing the evidence with the witness on the stand,
22 and, you know, with a showing of how this applies to the
23 claims in the case.

24 Because if the defendants had on their website on, you
25 know, January 2nd, 2020, that they owed billed charges, or

1 they will pay a certain percentile of FAIR Health, that's
2 absolutely something that we ought to be able to show the jury
3 to prove that what they are saying here on the stand is not
4 consistent with the positions they have taken [indiscernible].

5 And for that reason, this should be denied.

6 THE COURT: Thank you.

7 MR. PORTNOI: Just briefly, Your Honor.

8 So first off, Mr. McManis is correct. There are still
9 some January 2020 claims that are issue in the case. There
10 are specific reasons for those, which are two [indiscernible]
11 to bring up at this moment, but those reasons will come up
12 later.

13 But what I did hear Mr. McManis say is that, you know,
14 with respect to claim -- to evidence even coming in after
15 January 31, 2020, which is the end of the discovery period in
16 this case regardless -- that there may be uses of evidence
17 that are where defendants have contradicted themselves or
18 witnesses contradicted themselves, and they said something in
19 2021 that contradicts what the position may have afforded.

20 But our motion doesn't talk -- doesn't -- that's a
21 strong end that our motion doesn't really attack. We don't
22 say that that evidence can't be used for impeachment value.
23 The proper predicate of impeachment obviously has to always be
24 weighed that the statement is actually contradictory, before
25 you get into something that is so nonprobative because it is

1 so outside of the period in which the claims were adjudicated
2 and the services rendered.

3 THE COURT: Okay. And 32 will be denied for the
4 argument based on what Mr. McManis.

5 And does that take us to 35?

6 MR. BLALACK: It does, Your Honor. I think we have
7 some good news on this one.

8 Your Honor, 35 was a *Motion in Limine* to preclude the
9 TeamHealth Plaintiffs from referring to the defendants just as
10 the United -- or United defendants.

11 And in reviewing their opposition, we think it was
12 well taken. And so we have talked to them about a compromise
13 solution to this that addresses the concerns of the motivated
14 emotion, but gets us out of that and resolved.

15 Here's the issue, Your Honor. We have three
16 independent plaintiffs, independent corporate actors as
17 plaintiffs. We have five independent defendants that are
18 independent corporate actors as defendants.

19 The defendants do different things -- some are
20 insurers, some are administrators, some do both. They all
21 have different business relationships with those three
22 plaintiffs. They have received different payment levels over
23 time, have different courses of dealing, and the like.

24 There is conduct alleged by TeamHealth Plaintiffs'
25 regarding their plaintiffs' claim that implicates the actions

1 of certain defendants, but not other defendants.

2 And so our concern in the motion was that we don't
3 want the jury confused that there is just, like, one single
4 actor on each side, and that that is how they can render an
5 analysis and deliberate about liability and defenses in the
6 case.

7 So we have talked with each other. And Mr. McManis
8 and I talked and he can address -- respond to my comments, but
9 I think we can resolve this by stipulation, where we basically
10 will agree that the defendants -- the parties can refer to
11 each other collectively, as contemplated. But without -- with
12 both parties reserving their right to object at the time an
13 evidence and argument is made, to the extent evidence and
14 argument that is unique to an individual plaintiff or
15 defendant is being presented, as if it applies to all of the
16 defendants or all of the plaintiffs.

17 And I think that understanding we should -- and we
18 shared some [indiscernible] stipulation language and that
19 should hopefully resolve the need for the Court to rule on
20 this. And we would withdraw it on that basis.

21 THE COURT: Thank you.

22 Mr. McManis, are those representations correct?

23 MR. McMANIS: With respect to the agreement, Your
24 Honor, yes.

25 I don't know that I agree with everything in the lead

1 in, but we have reached an agreement and I think he accurately
2 surmised that.

3 THE COURT: Well, I'm going to ask that you guys be
4 careful about the way you direct the case to the plaintiffs
5 and the defendants, because on the verdict form there is going
6 to have to be some of apportionment --

7 MR. BLALACK: Absolutely.

8 THE COURT: -- if there is a plaintiffs' verdict.

9 MR. BLALACK: Absolutely.

10 THE COURT: Okay.

11 MR. BLALACK: We completely agree, Your Honor.

12 THE COURT: Good enough. All right. That takes us to
13 37.

14 MR. PORTNOI: We are in the home stretch, Your Honor.

15 37 -- this relates to the -- well, this does not
16 relate, but it is -- it raises a similar issue to the
17 October 1 motion.

18 And in fact, plaintiffs, as I recall, opposed jointly.
19 And it does raise the same issue -- that there is a little bit
20 of a nuance to it, in addition to that.

21 But essentially, you know, first off, we have the same
22 problem that when we raise the pandemic, and we start to raise
23 those sort of issues, it does create the possibility, similar
24 to talking about mass shootings or the like, and you're going
25 to have a verdict that is rendered on our sympathies to

1 healthcare providers working during the pandemic and working
2 to [indiscernible] during the height of the pandemic, when you
3 know the hospitals were substantially overwhelmed. And that
4 would be irrelevant and it would be prejudicial.

5 And part of the reasoning it would be prejudicial is
6 that timing wise, it just doesn't make much sense.

7 The claims period in this case as January 31, 2020.
8 The first U.S. -- substantial U.S. cases and the first U.S.
9 deaths wouldn't be for months after that.

10 So really we don't have COVID cases in this case,
11 because this is actually a largely pre-COVID case. But
12 nonetheless we saw testimony come in from Dr. Crane and
13 others. And you can see it on the screen if you care to --
14 but that talk about, you know, the work that TeamHealth has
15 had to do surrounding the pandemic and the work that the ER
16 doctors have to do surrounding the pandemic.

17 But that isn't a basis to price the at-issue claims in
18 any particular way. And so I think that is something that is
19 important that we keep clear, that so long as we have a case
20 that isn't focused on the period of the pandemic, that there
21 isn't really a reason to do that. And I think that actually,
22 even thinking about plaintiff's expert, Dr. Crane -- he
23 testifies when COVID showed up in March -- by which he means
24 March 2020 -- we thought we are going to have extreme volumes
25 of very, very sick patients. But March 2020 just is too --

1 you know, it's close, but is just after when our hospitals
2 started to experience COVID cases and when our hospitals
3 started to experience overwhelmed, as a result of COVID cases.

4 And when you add to that the sympathies that are
5 invoked by talking about overwhelmed hospitals and hospitals
6 trying to deal with novel circumstances as a result of the
7 pandemic, you get to a place of undue prejudice as a result
8 of -- as a result of talking -- just, I mean, it's, A, fully
9 irrelevant, but also just has the potential to cause the jury
10 to be thinking in terms of the heroics, that obviously not
11 just ER doctors, but the ER nurses and other hospital staff
12 engaged in during the pandemic, and in many cases and many
13 kind of still are to this day. But obviously, it just isn't
14 something that is relevant to the claims that we are dealing
15 with here.

16 And also it is important because, you know, really
17 part of what that has to do with is it raises the specter that
18 we are talking about is the increased cost of operating
19 emergency rooms during the pandemic, obviously because, as
20 other parts of the hospital become less busy during the
21 pandemic, the emergency rooms become more overwhelmed. And
22 that is something we obviously saw in the emergency rooms and
23 ICUs.

24 But cost is not it in issue in this case. Cost is not
25 something that we are talking about when we are talking about

1 how the emergency rooms are run.

2 So while the pandemic may increase the cost, that's
3 not something that Your Honor has ruled is relevant when it
4 comes to determining the payment. So it also is something
5 that is -- you know, would cause the jury to rule on
6 something -- to render a verdict on something that Your Honor
7 has said is something that the jury should not render the
8 verdict on, which is the cost of providing these services even
9 as the costs increased due to the pandemic.

10 And just to note, in terms of that opposition brief,
11 their opposition brief was very focused on October 1. There
12 really wasn't much in that brief to defend the need to have
13 COVID come up as a topic in this case. There's -- this is, I
14 believe, the one reference to the COVID-19 bill in their
15 opposition brief. So I don't think it is a significant part
16 of their presentation.

17 But we really do believe any reference to, you know,
18 the heroics of doctors in treating the pandemic, just lead the
19 jury to think we are talking about a period that we are not
20 talking about.

21 THE COURT: Thank you.

22 MR. ZAVITSANOS: John Zavitsanos, for the Health Care
23 Providers.

24 Okay, Your Honor, I will concede there are no COVID
25 claims in this case. Okay. Now, why is this relevant?

1 Beginning in 2014, there was a document that the Court
2 will see -- and forgive me, Your Honor, I don't know if it has
3 been filed, so I am not trying to beat a dead horse here. I'm
4 kind of new to the case, you are not. So I don't know what
5 you know.

6 So there is a document in 2014 where United lays out a
7 strategy of how they are going to drive down reimbursements,
8 and it is multifaceted. It involves going after people like,
9 you know, this Yale Report; shaping public media. And they
10 even came up with a term called egregious billers.

11 And there are a number of documents that I have good
12 faith reason to believe are going to come into evidence, where
13 they go through and they just start bashing doctors. And they
14 give anecdotal examples of, Look how much this doctor charge
15 for this procedure. Look how much -- look how much they
16 charged. And isn't it -- doesn't it kind of shock the
17 conscious?

18 Now, as I said earlier, this case is a little bit --
19 is a little bit unique, because there is not much disagreement
20 on what the facts are.

21 The jury is going to be making essentially a value
22 determination about what the value of these services are. And
23 on the one side, you have the experts that United is going to
24 proffer talking about the effect on premiums with this
25 healthcare crisis.

1 And look, Your Honor, we have done a couple of
2 these -- not against United and not against a major commercial
3 carrier -- and to a person, every juror has said that was in
4 there had. Okay? And obviously; right? I mean, you know, if
5 you raise reimbursements, people are going to be concerned
6 about premiums.

7 And so what they are going to do is they are going to
8 focus on these documents with these anecdotal examples of high
9 costs.

10 They are going to talk about how if you go in for a
11 splinter, the doctor is going to charge you \$1,000 or \$800 or
12 whatever it is -- whatever they are going to say -- to create
13 the impression there is egregious billing, to use their term
14 for 2014.

15 Now, the other side of that is because the jury is
16 going to be making a value determination -- I mean, we are not
17 going to -- this is not something we would be belaboring on.
18 But the emergency room doctors have gone through Sauers
19 (phonetic). They've gone through people that are bipolar and
20 dangerous who go into emergency rooms with guns. They were
21 there during the COVID crisis. They are there during other
22 situations, like when we had Hurricane Harvey, for example.

23 I know this is not a Nevada, obviously, but when we
24 had Hurricane Harvey in Houston and the hospitals are overrun.
25 Okay.

1 All of that is the counterpart to what they are going
2 to be saying about the splinter and the anecdotal examples of
3 the egregious billers, so that the jury can make an evaluation
4 on this policy decision they are going to decide in their head
5 between the concern about increased premiums versus what is
6 the value of saving someone's life in the emergency room? Or
7 what is the value of removing a splinter?

8 And I don't want to make a bigger deal of this than
9 what it is, because this is not a big part of the presentation
10 we are going to put. On, but if one of our doctors gets up
11 there. And we talk about, Well, tell me what an emergency
12 room doctor does, and they just start recounting the different
13 kind of experiences that an emergency room doctor goes
14 through, they should be able to do that so that the jury
15 can --

16 THE COURT: And I would think that examples of trauma
17 would be worse. I don't know. Because it is usually trauma;
18 right?

19 MR. ZAVITSANOS: Well, no. Actually, I mean, I don't
20 know this, but a sizable percentage of the people that go to
21 the emergency room ends up there is nothing wrong with them.
22 They thought there was something wrong with them, and they
23 were fearful for the life. They get evaluated. We run these
24 tests. And it turns out, you know, maybe their heart was
25 racing because they had too much coffee or something. I mean,

1 there's -- most people that go to the emergency room are not
2 gunshots, right, or strokes.

3 THE COURT: Right. But can we make your point about,
4 yes, they have to serve every day, without going into COVID?
5 Because we have all lived through it. We are still living
6 through it. We all going to be masked during the trial. And
7 this [indiscernible] is really right before they closed down
8 in China.

9 MR. ZAVITSANOS: Your Honor --

10 THE COURT: Starting Chinese New Year.

11 MR. ZAVITSANOS: Yes, Your Honor.

12 And look, obviously, Your Honor, I don't want to make
13 a bigger point of this than what it is. All I am saying is,
14 Look, I know they are going to make a big deal about claims --
15 comparing the complaint to the reimbursement. Okay.

16 The other side of that is the COVID, is the -- it is
17 dangerous person, is the overrun emergency room.

18 And so I mean, it's what they do it. And the jury is
19 going to be making an evaluation here about what is that
20 worth, as a general proposition.

21 So -- and I don't want to beat a dead horse. So I
22 think Your Honor understands where I am coming from. And we
23 are obviously going to respect whatever the Court decides.

24 THE COURT: Thank you.

25 MR. PORTNOI: Your Honor, just briefly.

1 You know, you have already expressed why that pandemic
2 is not really relevant to these claims. Also, though, our
3 defense isn't really that, Well, everybody that comes into the
4 emergency room just has a splinter. I haven't seen this 2014
5 e-mail myself, but I don't know that is an essential part of
6 our case.

7 I think that, in reality, what our defense is largely
8 based on the battle of experts. And really because -- and our
9 experts understand the reality that the -- that when
10 reimbursement rates are set, yes, some reimbursements are
11 going to be higher because you have to compensate for the
12 entirety of the ER staff, and you have to compensate for the
13 idea that some days there is more; some days that there is
14 less; some days there is a whole lot of traumas; and some days
15 there is not.

16 But I just don't necessarily believe that's the case.

17 Also I don't think that challenging Mr. Zavitsanos'
18 reference that he is new to the case, but what part of what is
19 unique about this case and a little more different from some
20 of the others he may have tried is that we are not going to be
21 challenging clinical record by clinical record the value of
22 how much to get a splinter out, because we don't have clinical
23 records. That's not part of this case.

24 So I don't think that that's actually really kind of
25 how the case is going to come in. So I would just

1 respectfully ask that the pandemic not be introduced as part
2 of this trial.

3 THE COURT: Yeah. I'm going to grant 37.

4 Although I -- let me caution you guys that in every
5 motor vehicle accident case we try, we never talk about
6 insurance. And that's the only thing that the jury talks
7 about in the jury room.

8 So okay, I think we are last, but least.

9 MR. PORTNOI: Yeah.

10 THE COURT: This is to do with the multiple Data
11 iSight services.

12 MR. PORTNOI: We will pull that up. And I do think
13 that this is potentially based on, not necessarily one
14 particular MIL, but the gravamen of the last few days, in
15 terms of Your Honor's state of evaluating the second amended
16 complaint and how that has changed and maybe some of it is
17 not something that we need to belabor. But we at least want
18 to make sure that we made a record here.

19 So essentially that -- and obviously, this is -- you
20 said last and least. It is obviously last and would be a very
21 significant *Motion in Limine*. It is last because we filed it
22 after our Motion for Summary Judgment, right after the second
23 amended complaint was filed, because that would be -- the
24 second amended complaint was the one that took a MultiPlan
25 out, which was -- you know, when that was proposed, it was a

1 surprise to us.

2 That complaint, which was filed on October 2nd, 2021,
3 removed 168 of the 273 paragraphs -- more of half of it
4 eliminated three of the eight causes of action; eliminated
5 every single use of the word MultiPlan, eliminated every
6 single use of the word Data iSight.

7 We removed every allegation of fraud, removed every
8 allegation of conspiracy. The word fraud doesn't even appear
9 in the second amended complaint, which is the operative
10 complaint going to trial on.

11 These substantial amendments, we can argue why they
12 were made, but they were clearly made after the summary
13 judgment motion, and after we argued that they weren't going
14 to be able to get treble damages through [indiscernible].

15 And yet what we had heard after that is that the
16 plaintiffs intend to present evidence on the very topics that
17 they deleted from their complaint, that they want to present
18 topic -- subjects regarding MultiPlan's manipulation of
19 out-of-network reimbursements. Data iSight's development, the
20 ideology calculating payment recommendations, defendants
21 alleged conspiracy with MultiPlan to lower reimbursement.

22 What's really happened here is we presented extremely
23 meritorious motion for summary judgment on racketeering.

24 And you know -- and that racketeering was a massive
25 part of the damages in this case -- it was the treble damages.

1 And the racketeering was the basis for bringing in a
2 third-party. It was the basis for bringing in the conspiracy.
3 It was the basis for bringing in a lot of outlandish claims,
4 but also [indiscernible].

5 Inflammatory claims which -- inflammatory claims that
6 may have turned out to be relevant; may have not turned out to
7 be relevant. And in order to prevent the Court from ruling
8 that the racketeering claims had to come out and, therefore,
9 MultiPlan and Data iSight had to come out, they simply tried
10 to end run that by amending the complaint to take the
11 racketeering claim out, to take every reference of MultiPlan
12 and Data iSight out of it.

13 So what we have instead now is we have a few kind of
14 honestly run-of-the-mill rate of payment claims. We have no
15 conspiracy claims; no fraud allegations. We have the
16 implied-in-fact contract and unjust enrichment, which really
17 only have to do with the parties' conduct. They really only
18 have to do with implied-in-fact contract. It is a course of
19 viewing between the plaintiffs on one side and defendants on
20 one side, result in the forming of an implied contract where
21 that implied contract on both sides should've known what the
22 price would have been.

23 We don't need to take MultiPlan or Data iSight.

24 Even the just enrichment claim, that has to do with
25 how much they are -- how much they were going to be -- you

1 know, that has to do with how much the reasonable value of the
2 claim is -- it has nothing to do with MultiPlan or Data
3 iSight.

4 We have this -- we have one set -- only one subsection
5 in the Unfair Settlement Practices Act that is relevant, which
6 is whether the -- whether defendants made fair, equitable, and
7 prompt efforts to negotiate the amount of -- where, after the
8 time that the liability became reasonably clear so that
9 defendants knew precisely how much was owed. And did they
10 make prompt, fair, and make equitable attempts to negotiate
11 after that time?

12 MultiPlan and Data iSight aren't [indiscernible] to
13 that.

14 And then finally we have a prompt payment claim which
15 only has to do with whether reasonable reimbursement was
16 provided within a particular amount of time -- 30 days
17 specifically. If not, then there is potentially interest
18 rates applying.

19 Those are the claims. MultiPlan and Data iSight
20 aren't relevant to any of it.

21 So allowing this to happen and to have this evidence
22 of conspiracy and fraud after the manipulation of the amended
23 complaint to remove allegations in order to avoid summary
24 judgment on claims in which MultiPlan and Data iSight were
25 there, this would result in undue prejudice and it would

1 result in jury confusion, because it is not clear that anyone
2 is ever going to be able to understand how MultiPlan or Data
3 iSight is relevant to any of the claims in the case.

4 THE COURT: Thank you.

5 MR. McMANIS: Your Honor, we made this clear
6 yesterday. I won't run through it in great detail.

7 We certainly did not amend our complaint to avoid the
8 motion for summary judgment. And what we explained, in much
9 more detail yesterday, is that although the complaint was
10 amended, there is no change in the allegations regarding the
11 underlying conduct supporting the legal theories that were
12 made in the case.

13 So the idea -- the idea that because the complaint was
14 amended, somehow MultiPlan or Data iSight is now irrelevant to
15 any of the claims in the case, I think is just simply untrue.

16 The easiest explanation for that -- and I wrote this
17 down a few days ago, when Mr. Portnoi was arguing the motion
18 for summary judgment. There are actually 792 claims in the
19 case still today that went through Data iSight. So certainly
20 we cannot exclude evidence that relate to MultiPlan or Data
21 iSight, because there are at-issue claims that will be decided
22 by the jury that went through those -- that specific process.

23 There are more claims than that, that ran through
24 programs where MultiPlan was involved in. And exhibit after
25 exhibit, document after document, MultiPlan and Data iSight

1 are referenced. They are discussed. There is evidence that
2 United is actually telling MultiPlan what to do and what
3 overrides to use, as part of the Data iSight program. All of
4 that relates to the claims that are in the case today.

5 And when I heard from opposing counsel, and what I saw
6 in the briefing, is argument that the establishment of an
7 implied in-fact contract doesn't relate to MultiPlan's conduct
8 for example. The fact is we also have to prove breach.

9 And the conduct that United paid MultiPlan millions
10 and millions of dollars for is the conduct that ultimately
11 became part of that breach -- some of the conduct that became
12 part of that breach.

13 And so it is absolutely relevant to the claims that
14 remain in the case, because MultiPlan carried out those steps.
15 They paid these plans through Data iSight that we contend were
16 unfairly and improperly reimbursed at too low of a rate.

17 United has MultiPlan witnesses on its witness list.
18 Those haven't been amended since the amendment of the
19 complaint. I mean, MultiPlan is still very much a part of
20 this case.

21 United is going to say that these 792 claims were
22 fairly reimbursed, using the Data iSight tool. Certainly, I
23 think we can defend against that by pointing to all the
24 MultiPlan and Data iSight documents that are on the parties'
25 exhibit lists.

1 So I think this motion should be denied.

2 THE COURT: Thank you.

3 And your reply.

4 MR. PORTNOI: Yes, just briefly.

5 Just to point out there was statement that there was
6 no change in allegations. I would just remind, it's not just
7 that the RICO claim was dropped or some other claim was
8 dropped. Again, in order to make sure that the belt and
9 suspenders approach to ensure that that portion of the motion
10 for summary judgment wouldn't get ruled on, 168 -- the
11 majority of the complaint is deleted.

12 And studiously, every reference to MultiPlan, every
13 reference to Data iSight, every reference to fraud, and every
14 reference to conspiracy, were taken out of the complaint.

15 There are also, you know, in terms of -- there was
16 only one of the four claims, was there any allegation that
17 MultiPlan or Data iSight is relevant. Implied-in-fact
18 contract and that is breach.

19 The think about breach -- you have the formation of a
20 contract. That would be clear under plain Nevada law, in
21 order to have a contract, you have to have terms -- a meeting
22 of the mind on the terms. And in order to have a meeting of
23 the minds on the terms, you have to decide on price.

24 So assuming that they are able to get to that point
25 where they convince the jury that a contract existed, and

1 there was a meeting of the minds as to the duration and the
2 price of the contract, then how do they prove breach?

3 Well, if the price -- if you buy -- if you have a
4 contract to buy a car for \$10,000, you take the car and you
5 pay \$8,000, you don't need a lot of extrinsic evidence to
6 figure out whether it was breached. You didn't pay \$2,000
7 that you were supposed to there.

8 So breach is really going to be established if the
9 contract is created -- is determined, and the price is
10 determined. Breach is going to be determined by the fact that
11 we didn't pay -- you pay it.

12 And then finally, just want to reference, of course,
13 yes, we have MultiPlan witnesses, we have MultiPlan exhibits
14 on our exhibit list and on our witness list. It's because we
15 are anticipating that -- we are preparing to go to trial in
16 the event that this *Motion in Limine* is denied.

17 Obviously MultiPlan was, until a few weeks ago, a
18 major part of this case, and more particularly, we see no
19 point in amending all of our witness lists, all of our exhibit
20 list, and, you know, waiting for this date just a few days
21 before we start picking the jury.

22 We didn't think that would necessarily be fair to
23 plaintiffs to say we're not going to tell you what we're going
24 to be doing in our MultiPlan presentation, because we are
25 waiting for this *Motion in Limine*. So I don't think that was

1 particularly well taken.

2 THE COURT: Mr. McManis?

3 MR. McMANIS: Yes, Your Honor.

4 I don't particularly have anything else to say on the
5 *Motion in Limine*. But I do think that there is a disagreement
6 as to the legal requirements for an implied-in-fact contract.
7 I just want to make that clear.

8 THE COURT: Did you have anything further?

9 MR. BLALACK: No.

10 THE COURT: All right. So the Defense 38 will be
11 denied for the reasons articulated by Mr. McManis.

12 Now, so what -- we start jury selection at 11:00. Why
13 don't you guys come in about 10:45. I will take a look at --
14 what I really need you to do is outline the issues of voir
15 dire that concern both sides. Okay?

16 MR. BLALACK: Correct.

17 THE COURT: And we will hit it straight on.

18 Anything more to add?

19 MR. ZAVITSANOS: Yeah. And that point, Your Honor, I
20 think -- and I did speak with counsel about this -- there may
21 be some very discrete areas where we want the Court to --
22 like, for example, the list of witnesses. I don't know what
23 the Court's appetite is for that. If you want us to do, that
24 would be fine. I just --

25 THE COURT: I do make you talk to each other about

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1 your openings ahead of time. If you are using PowerPoint, you
2 have to give the other side a chance to make an objection, so
3 we can resolve it before something may be published that isn't
4 going to be published.

5 At the end of the day, I always ask both sides to know
6 who your next -- who is the next witness, if you're going to
7 take people out of order. I explain that to the jury, things
8 like that.

9 You show -- both show a high level of professional
10 courtesy. I don't see that being an issue here. So --

11 MR. BLALACK: Your Honor, there are two housekeeping
12 things --

13 THE COURT: Sure.

14 MR. BLALACK: -- I was hoping to raise before we
15 broke.

16 One, we discussed the other day the need to dot the
17 "I" and crossed the "T" with the final pretrial conference.

18 And I think we had discussed, and we've submitted a
19 proposed stipulation to have everything in to Your Honor,
20 filed, by Wednesday of next week. And we were proposing to
21 schedule the final pretrial conference, maybe on Thursday
22 after we hopefully complete jury selection --

23 THE COURT: Hang on.

24 MR. BLALACK: -- if that works.

25 THE COURT: I'm looking at my order inbox to see --

1 because I haven't looked at it all day -- or I guess I did
2 look at it a little bit this morning. I see a stipulation and
3 order.

4 MR. BLALACK: And that just -- what that one does,
5 Your Honor, the parties have agreed to wrap up all of the
6 pretrial materials and get them on file by Wednesday.

7 And then the idea would be --

8 THE COURT: That's fine.

9 MR. BLALACK: -- we finish jury selection -- I think
10 we are both hoping on Thursday -- before Nevada Day. We would
11 have our final pretrial conference Thursday afternoon. We
12 think we have [indiscernible] and come back and start openings
13 on Monday.

14 THE COURT: I see that your local counsel showed you
15 how to stay in Nevada.

16 MR. BLALACK: Your Honor, that's a -- that's a very
17 important point, because I have spent an enormous amount of
18 time mastering that. And I have people that are probably
19 listening as we speak, like the Lord Almighty taking notes
20 [indiscernible]. So yes, I have learned.

21 THE COURT: I remember the first time I took my
22 husband to Louisville.

23 Do you guys have something more?

24 MR. BLALACK: Well, if that schedule is fine, Your
25 Honor, we will submit stipulation --

1 THE COURT: It's fine.

2 MR. BLALACK: -- to that being the date.

3 THE COURT: That's fine.

4 MR. BLALACK: And then the last issue I just wanted to
5 raise, that I haven't had a chance to talk with opposing
6 counsel about -- on the Leathers' expert report issue, you had
7 invited us to whether we had any remedy for the late
8 disclosure.

9 Here is what we would like to propose if it is
10 acceptable.

11 We don't want -- if -- we do think Mr. Deal, our
12 expert, will want to submit a response to that supplemental
13 report -- a very short response. And we would prepare a very
14 short report to that effect, which we would serve on opposing
15 counsel. We would like --

16 If they will agree -- and I think Mr. Zavitsanos said
17 this earlier -- will agree not to seek another deposition of
18 Mr. Deal on that, we will not seek another deposition on
19 Mr. Leathers. Then we could just go forward on that basis.

20 If that is acceptable to the other side, we are
21 willing to go forward on that basis.

22 THE COURT: Whoever the spokesperson is.

23 MR. LEYENDECKER: That's 100 percent fine.

24 THE COURT: All right.

25 MR. LEYENDECKER: Your Honor, I did have one comment

1 or question. You just made a remark about sharing openings.

2 And I don't know whether there is any wiggle room
3 there or not. But my experience is I typically don't want to
4 see the other side's demonstratives in advance.

5 And I think that if a lawyer gets far afield and does
6 something that's objectionable, they pay the price when the
7 other side objects and the judge admonishes. So my preference
8 really would be not to do that. But I don't know whether
9 there's wiggle room there or not.

10 THE COURT: Talk about it. And if you both agree,
11 it's fine with me.

12 MR. BLALACK: I think we have a preference for
13 following the Court's standard procedure here, and sharing and
14 previewing that. And so --

15 THE COURT: Well, let me know Monday morning if you
16 talk more. If you don't, well --

17 MR. BLALACK: If there -- if he is able to persuade
18 me, I will let you know, Your Honor. But right now --

19 THE COURT: Okay.

20 MR. BLALACK: -- I think we're inclined to follow --

21 THE COURT: Anything else to take up?

22 MR. ZAVITSANOS: Yes, Your Honor. Since we are on
23 housekeeping matters.

24 And this may be resolved, I may be -- we may have
25 taking care of this already. But we had talked about

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1 providing lunches for the jurors.

2 And we have worked out an arrangement, kind of a
3 functional arrangement of how we would do that. Does --

4 I think the - if I recall correctly, I think the Court
5 said that was okay.

6 THE COURT: It's okay for you to do that. And I will
7 just explain that lunch is being provided by the parties for
8 you. But I can't let them take their masks off in the
9 courtroom --

10 MR. BLALACK: I think these would be -- I'm saying
11 they would be boxed lunches.

12 THE COURT: All right.

13 MR. ZAVITSANOS: Yes. Yes.

14 THE COURT: You can distribute box lunches to them to
15 give them a shorter lunch.

16 MR. BLALACK: That's the idea.

17 THE COURT: No problem with that. They just can't eat
18 in the courtroom.

19 MR. ZAVITSANOS: Yeah. Yeah. Of course. Of course.
20 Yeah.

21 THE COURT: All right.

22 MR. BLALACK: Final question, Your Honor. 10:45,
23 courtroom 3D?

24 THE COURT: 3D.

25 MR. BLALACK: Okay. Think you.

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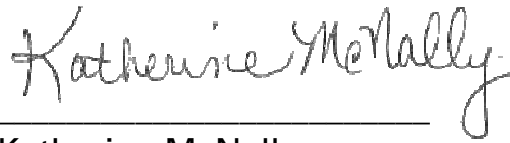
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1 THE COURT: Okay. And Brynn, let me know when we are
2 clear.
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case
3 to the best of my ability.

4 

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6 Katherine McNally
7 Independent Transcriber CERT**D-323
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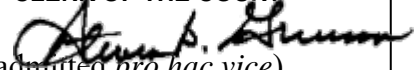
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**DISTRICT COURT
 CLARK COUNTY, NEVADA**

FREMONT EMERGENCY SERVICES
 (MANDAVIA), LTD., a Nevada professional
 corporation; TEAM PHYSICIANS OF
 NEVADA-MANDAVIA, P.C., a Nevada
 professional corporation; CRUM,
 STEFANKO AND JONES, LTD. dba RUBY
 CREST EMERGENCY MEDICINE, a
 Nevada professional corporation,

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE
 COMPANY, a Connecticut corporation;
 UNITED HEALTH CARE SERVICES INC.,
 dba UNITEDHEALTHCARE, a Minnesota
 corporation; UMR, INC., dba UNITED
 MEDICAL RESOURCES, a Delaware
 corporation; SIERRA HEALTH AND LIFE
 INSURANCE COMPANY, INC., a Nevada
 corporation; HEALTH PLAN OF NEVADA,
 INC., a Nevada corporation.

Defendants

Case No.: A-19-792978-B
 Dept. No.: XXVII

**NOTICE OF ENTRY OF ORDER
 DENYING DEFENDANTS' MOTION
 FOR PARTIAL SUMMARY JUDGMENT**

1 PLEASE TAKE NOTICE that an Order Denying Defendants' Motion for Partial
2 Summary Judgment was entered on October 25, 2021, a copy of which is attached hereto.

3 DATED this 25th day of October, 2021.

4 McDONALD CARANO LLP

5
6 By: /s/ Kristen T. Gallagher

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19 *and Jones, Ltd. dba Ruby Crest Emergency Medicine*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 25th day of October, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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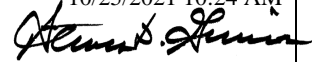
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An employee of McDonald Carano LLP


CLERK OF THE COURT

ODM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

CASE NO.: A-19-792978-B

DEPARTMENT 27

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
corporation; TEAM PHYSICIANS OF
NEVADA-MANDAVIA, P.C., a Nevada
professional corporation; CRUM,
STEFANKO AND JONES, LTD. dba RUBY
CREST EMERGENCY MEDICINE, a
Nevada professional corporation,

Plaintiff(s),

vs.

UNITED HEALTHCARE INSURANCE
COMPANY, a Connecticut corporation;
UNITED HEALTH CARE SERVICES
INC., dba UNITEDHEALTHCARE, a
Minnesota corporation; UMR, INC., dba
UNITED MEDICAL RESOURCES, a
Delaware corporation; SIERRA HEALTH
AND LIFE INSURANCE COMPANY,
INC., a Nevada corporation; HEALTH
PLAN

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR PARTIAL SUMMARY

JUDGMENT

On October 19, 2021, a hearing was held before the Court on Defendant's Motion for Partial Summary Judgment.

Arguments were presented by Mr. Portnoi and Ms. Robinson regarding the merits of and opposition to the motion. The matter was taken under advisement and set on October 22 Calendar for ruling by minute order. The Court, having reviewed the papers and pleadings on

1 file, and having considered the arguments of the parties, makes the following findings and
2 orders.

3
4 **ORDER**

5 **COURT FINDS** after review that a majority of the issues that Defendants sought
6 summary judgment for are rendered moot by the Second Amended Complaint Plaintiffs were
7 given leave to file. The two issues that remain are whether reimbursement for certain at-issue
8 claims falls outside the scope of the complaint (those being claims allegedly paid under a
9 Medicare or Medicaid program, claims that were partially denied, and claims submitted to non-
10 defendant entities) and whether punitive damages can be settled as a matter of law.

11
12 **COURT FURTHER FINDS** after review that there is competing evidence regarding the
13 at-issue claims allegedly under a government program and those allegedly submitted to non-
14 defendant entities. Defendants' expert relies on claims data and spreadsheets to determine that
15 certain claims fall outside the scope of the complaint. Plaintiffs rely on a spreadsheet derived
16 from information recorded in Plaintiffs' electronic billings systems and testimony from Eddie
17 Ocasio. Therefore, a genuine issue of material fact exists that precludes granting summary
18 judgments on such at-issue claims.

19
20 **COURT FURTHER FINDS** after review that, regarding the issue of partially denied
21 claims, although allegations may appear to implicate only "rate of payment" claims, allegations
22 can slip into "right of payment" and endanger the state law action when mentioning systemic
23 denial of claims and/or improper denials. *Connecticut State Dental Ass'n v. Anthem Health*
24 *Plans, Inc.*, 591 F.3d 1337, 1350–51 (11th Cir. 2009). However, Plaintiffs do not dispute the
25 partial denial of the claims, instead putting at issue the amount of payment that was received on
26 the portion of the claims that were not denied. Thus, right of payment is not implicated.
27
28

1 **COURT FURTHER FINDS** after review that Defendants contend that punitive
2 damages are a matter to be addressed at law and that Plaintiffs do not provide evidence to show
3 that Defendants' conduct reached the level needed to award punitive damages. Plaintiffs
4 reference NRS 42.005 which, in actions for breaches of an obligation not arising from contract,
5 provides that a plaintiff may recover punitive damages from defendants found guilty of
6 oppression, fraud or malice. Plaintiffs were obligated to provide emergency medicine services to
7 all patients presenting at the emergency departments they staff, and Defendants were obligated to
8 provide coverage for emergency medicine services to all of its members (obligations not arising
9 from contract). Through the development of its case at trial, Plaintiffs should be allowed an
10 attempt at convincing the jury whether Defendants have been guilty of oppression, fraud or
11 malice.
12

13
14 **THEREFORE, COURT ORDERS** for good cause appearing and after review having
15 considered the Defendants' Motion for Partial Summary Judgment, the Motion is hereby
16 **DENIED.**

17
18 October 22, 2021

19
20
21 Dated this 25th day of October, 2021

22 Nancy L Alf

23 TW

24 449 FE7 39C8 1E72
25 Nancy Alf
26 District Court Judge

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_____/s/_____
Deborah Bedgood-Ealy
Judicial Executive Assistant

006122

006122

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Fremont Emergency Services
7 (Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
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14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile
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6 via United States Postal Service, postage prepaid, to the parties listed below at their last
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1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 FREMONT EMERGENCY SERVICES
(MANDAVIS) LTD., ET AL.,

9 Plaintiffs,

10 vs.

11 UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

12 Defendants.
13

CASE#: A-19-792978-B

DEPT. XXVII

14 BEFORE THE HONORABLE NANCY ALLF
15 DISTRICT COURT JUDGE
MONDAY, OCTOBER 25, 2021

16 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 1**

17 APPEARANCES:

18 For the Plaintiffs:

PATRICIA K. LUNDVALL, ESQ.
JOHN ZAVITSANOS, ESQ.
JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.
KEVIN LEYENDECKER, ESQ.

21 For the Defendants:

D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
DANIEL F. POLSENBERG, ESQ.

24
25 RECORDED BY: BRYNN WHITE, COURT RECORDER

1 Las Vegas, Nevada, Monday, October 25, 2021

2
3 [Case called at 10:53 p.m.]

4 THE MARSHAL: All rise. The District Court is now in
5 session. The Honorable Judge Alf presiding.

6 THE COURT: Thanks everyone. Please be seated.

7 MR. BLALACK: Good morning, Your Honor.

8 THE COURT: Good morning. Calling the case of Freemont v.
9 United. Let's take appearances from the Plaintiffs first and then -- I'm
10 sorry, Plaintiffs and then Defendants. We're backwards here.

11 MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall
12 from McDonald Carano here on behalf of the healthcare provider.

13 THE COURT: Thank you.

14 MR. ZAVITSANOS: John Zavitsanos on behalf of the
15 healthcare providers.

16 THE COURT: Thank you.

17 MR. ADHMAD: Joe Ahmad, also on behalf of the healthcare
18 providers.

19 THE COURT: Thank you.

20 MR. AHMAD: And we have Dr. Scherr from Fremont with us.

21 THE COURT: Thank you. And welcome.

22 MR. LEYENDECKER: Good morning, Your Honor. Kevin
23 Leyendecker on behalf of the healthcare providers.

24 THE COURT: Thank you.

25 MR. MCMANIS: Good morning, Your Honor. Jason

1 McManis on behalf of the healthcare providers.

2 Thank you. Anyone in the back row making an appearance?

3 MR. ZAVITSANOS: Not that they're going to have speaking
4 roles, Your Honor. I don't know if the Court would like me to identify
5 who they are?

6 THE COURT: Please. Sure.

7 MR. ZAVITSANOS: Okay. So we have Colin Kennedy with
8 the healthcare providers, Mickael Killingsworth and Norm Revitz.

9 THE COURT: Welcome. And for the Defendants please?

10 MR. ZAVITSANOS: Oh, and I'm sorry. And Louis Liao, one
11 of our lawyers in the back there.

12 THE COURT: Thanks. I'm going to move this so I can see
13 everyone.

14 MR. BLALACK: Good morning, Your Honor. Lee Blalack on
15 behalf of the Defendants.

16 THE COURT: Thank you.

17 MR. ROBERTS: Good morning, Your Honor. Lee Roberts
18 also on behalf of Defendants.

19 THE COURT: Thank you.

20 MR. ROBERTS: And seated right behind me is Ryan Wong
21 senior associate, general counsel for United Healthcare Services.

22 THE COURT: Thank you and welcome.

23 MR. WONG: Thank you.

24 MR. GORDON: Good morning, Your Honor. Jeff Gordon on
25 behalf of the Defendants.

1 THE COURT: Thank you.

2 MR. POLSENBERG: Good morning, Your Honor. Dan
3 Polsenberg for the Defense.

4 THE COURT: Thank you all. Okay. Everybody's ready for
5 trial?

6 MR. BLALACK: We are, Your Honor.

7 MR. ZAVITSANOS: Yes, Your Honor.

8 THE COURT: Have any of you slept since Friday?

9 MR. BLALACK: I'll let him go first, Your Honor.

10 MR. ZAVITSANOS: What is that?

11 MR. BLALACK: Your Honor, we have one logistical issue I
12 wanted to raise before we proceed with voir dire if it's permissible.

13 THE COURT: Sure. Sure.

14 MR. BLALACK: So last night, Mr. Zavitsanos alerted me that
15 the Plaintiffs would or are requesting and actually demanding that five of
16 the subpoenaed witnesses that are the subject of our writ and the motion
17 to stay, need to be present in the courtroom on Thursday of this week. It
18 has been our understanding in discussion in open court, and I have
19 transcripts confirming that the expectation of both parties is if everything
20 goes very smoothly, we will complete jury selection on Thursday, and
21 have our final pretrial conference on Thursday afternoon and start
22 opening statements on Monday. I've explained on that basis, I don't
23 think it's reasonable to compel five people from all across the United
24 States to fly here and sit here over the weekend for that purpose.

25 So I object to having them present on Thursday, given the

1 state of what's been represented to the Court and to the parties about
2 the schedule. I've asked -- that's issue one.

3 THE COURT: Can we take up each issue separately?

4 MR. BLALACK: That would be fine, Your Honor.

5 THE COURT: Thank you.

6 MR. ZAVITSANOS: And Ms. Lundvall is going to address this
7 issue.

8 THE COURT: Thank you.

9 MS. LUNDVALL: Thank you, Your Honor. You've had
10 enough jury trials, and I think so have all of us, that sometimes things go
11 quicker. Sometimes they go slower. But as the Plaintiff, you're going to
12 have people here in the event that you need to have a witness to grace
13 the witness stand.

14 And therefore, the first witnesses that we intend to call are
15 the ones that have been subpoenaed. There is no stay of it -- is in place
16 at this point. Pursuant to the Court's order, our subpoenas are valid, and
17 we've requested that these folks be here. At the very minimum, I
18 acknowledge that maybe we probably won't get through all five in a
19 single day, but we do need to have at least one if not two of those
20 witnesses to be able to be here in the event that things go quicker than
21 what we expect.

22 THE COURT: Well, what about openings? How long are you
23 all going to need for openings?

24 MS. LUNDVALL: We predict about an hour and a half for
25 opening, Your Honor.

1 MR. BLALACK: And same. We actually exchanged
2 agreements that that would be our proposal, Your Honor. So our
3 position is even if we make great haste and get -- select a jury, it's really
4 inconceivable that we'll complete openings and get to proof this week.

5 THE COURT: Can we defer this issue until we see how jury
6 selection goes?

7 MS. LUNDVALL: That'd be great, Your Honor.

8 THE COURT: And defer it to the end of the day? My
9 inclination would be to maybe allow you to have one witness, but it
10 makes more sense to start on Monday.

11 MS. LUNDVALL: And I don't disagree. I just don't want to be
12 standing at the podium and the Court says call your first witness, all
13 right?

14 THE COURT: Got it.

15 MS. LUNDVALL: Thank you, Your Honor.

16 THE COURT: All right.

17 MR. BLALACK: And the second issue, Your Honor, is related.

18 MR. POLSENBERG: Well, Lee -- can I just say something
19 related to this issue?

20 MR. BLALACK: Sure.

21 MR. POLSENBERG: Based on your telling us that we do jury
22 selection this week and opening statements on Monday, I represented to
23 the Supreme Court that, in my request for emergency stay, that they
24 didn't have to resolve it until November 1st, and they know that. So if
25 you were to tell us we would be taking up witnesses on Thursday, I'll

1 have to make another emergency stay and say that even though the
2 District Court says November 1st, now it's going to be Thursday.

3 THE COURT: Got it. Let's defer this issue to the afternoon

4 MS. LUNDVALL: Thank you, Your Honor.

5 MR. POLSENBERG: Thank you, Your Honor.

6 MR. BLALACK: Issue two, Your Honor, relates to this, which
7 is, as the Court knows, none of these witnesses -- well, I think there are
8 12 subpoenas. Two of them relate to people who are in Nevada where
9 there's no contesting the authority of the subpoena and those people, if
10 they want them, they'll be available to be produced without regard to
11 any writ or stay.

12 Assuming that the stay and the writ are denied, and the
13 witnesses have to be present, these are people as we noted in our
14 papers, that are coming from all over the United States. So it's not like
15 we're asking someone to drive across town to be here in Court. I asked
16 my colleagues on the other side to tell me the order they want the
17 witnesses present and give me a day when they wanted the witnesses to
18 be present so that I could make the necessary logistical arrangements to
19 get them here and in an appropriate order, but also not have them just
20 sitting in the hall for days while we sort through the proof. And for that
21 matter, there are -- some of these people who have family commitments,
22 and, you know, need to have child care and other things that need --
23 elderly parents that have to be accounted for.

24 So Your Honor, I just was told by Mr. Polsenberg that the
25 Supreme Court has denied the writ and denied the stay. And so this

1 issue is now a live issue. And so, what I'm asking the Court is to have to
2 compel the Plaintiffs to tell us that well in advance of this week or next
3 week, who they want, in what order, and when. I mean, within reason.
4 I'm not going to hold them to --

5 THE COURT: I'd require both sides to do that.

6 MR. BLALACK: Pardon me?

7 THE COURT: I'd require both sides to do that.

8 MR. BLALACK: Okay. And that would be -- we would be
9 glad to do that as well, Your Honor. So because it's going to take quite a
10 bit for us to organize getting these people here and to make sure they
11 have the necessary family and other arrangements made. It's just not
12 going to be something we can do under 24 hours.

13 THE COURT: Got it.

14 MS. LUNDVALL: And we will work with counsel, Your
15 Honor.

16 THE COURT: Very good. Okay. I've got to boot up. You
17 know, this is a new arrangement for me, so I don't want to bring any
18 jurors in until I have a screen.

19 Mr. Zavitsanos?

20 MR. ZAVITSANOS: Yeah, Your Honor. One unrelated
21 issue -- kind of a logistical issue, and I've discussed this with counsel. So
22 I think we're going to be -- once the evidence starts, we're going to be in
23 Your Honor's courtroom, right?

24 THE COURT: We should be, yes.

25 MR. ZAVITSANOS: Okay. So there are -- I think there's

1 somewhere in the order of about 1,600 exhibits between both sides. And
2 obviously one way to get through -- I don't know if we're even going to
3 use all of those, but one way to get through the documents faster, of
4 course, is to present them electronically.

5 We would like to have a bigger screen in the courtroom.
6 We've talked logistically about what makes the most sense. And so, we
7 have two options. The parties can arrange to bring in a larger monitor,
8 like a TV basically, right, or -- and I'll tell you my preference is to use a
9 screen, like an old fashioned kind of movie screen with a projector.

10 In terms of logistics, the screen would be -- in terms of -- for
11 the jury to be able to see it, would -- the ideal spot for it would be right in
12 front of where the clerks sit. Now, if Your Honor, doesn't -- if that's at all
13 troubling, then we will go with the monitor, and we can put it near where
14 the witness stand is.

15 THE COURT: Yeah, I hate to cut off their view. They -- you
16 know, we all kind of watch the jury. We work as a team during trial.

17 MR. ZAVITSANOS: Yeah. Yeah.

18 THE COURT: In the old days if somebody fell asleep, we'd
19 take them a glass of water. We can't do that now.

20 MR. ZAVITSANOS: I understand.

21 THE COURT: But I really rely on them a lot, so.

22 MR. ZAVITSANOS: Okay. Got it. Okay. That's why I asked
23 Your Honor, so.

24 THE COURT: Good enough.

25 MR. ZAVITSANOS: So we'll -- then we'll make arrangements

1 for a monitor.

2 THE COURT: Good enough.

3 MR. ZAVITSANOS: Thank you, Your Honor.

4 THE COURT: And again, if you're going to do electronic
5 exhibits, again, we have to notify the tech people because they have to
6 make sure that there's no malware.

7 THE CLERK: Yeah. We're in the process of that.

8 THE COURT: You're in the process? Okay. Great.

9 MR. ZAVITSANOS: Okay. Thank you, Judge.

10 THE COURT: Now, give me a chance to get booted up.
11 Sorry, guys. This is a different set up.

12 (Counsel confer)

13 MR. ZAVITSANOS: Oh, Your Honor?

14 THE COURT: Yes.

15 MR. ZAVITSANOS: One other thing, and I spoke with
16 Mr. Roberts. We'll call him Las Vegas Lee since there are two Lees here.
17 So I had to quickly remind myself what the surname is.

18 In any event, one thing we discussed, and I think there's
19 agreement on this, on the -- during the jury selection was, obviously,
20 Your Honor is going to take up hardships. You're going to take up, you
21 know, COVID issues and things like that.

22 THE COURT: Right.

23 MR. ZAVITSANOS: There's a number of answers in the jury
24 forms on that. But one other thing I think the parties jointly would
25 prefer, it's not a big ask. If Your Honor doesn't want to do it, we can do

1 it, is for Your Honor to go through the list of witnesses and parties and
2 just ask if anyone knows them. All --

3 THE COURT: I usually have the lawyers do that.

4 MR. ZAVITSANOS: Okay.

5 THE COURT: Usually the lawyers want to because they want
6 to appeal to jurors even in jury selection.

7 MR. ZAVITSANOS: Okay. Fair enough. Thank you.

8 THE COURT: Let me just -- I've managed to switch users so
9 let me -- now. I guess you guys -- Judge Denton is from Boulder City. I
10 guess you figured that out. Anyway, and he was very gracious to let us
11 use this courtroom.

12 All right. Anything else?

13 MR. ZAVITSANOS: Not from the Plaintiff, Your Honor.

14 THE COURT: All right. So I have to read a description of the
15 case. This is what I wrote. And you guys, if you don't approve it, that's
16 fine. We'll get it so everyone does.

17 The Plaintiffs are three companies who provide staffing for
18 emergency rooms and hospitals in three Nevada cities. Is that fair?

19 MR. ZAVITSANOS: Your Honor, some of our people are
20 actually employees. And so, we are -- we're emergency room doctors,
21 nurses, and physician's assistant who are staff in Nevada hospitals.

22 THE COURT: Any objection?

23 MR. BLALACK: I think Your Honor's -- based on the
24 arguments we had, your first statement is a more accurate description,
25 Your Honor, but I defer obviously to your judgement.

1 THE COURT: Okay. And the Plaintiffs are suing the
2 Defendants who are health insurance providers, claiming that the
3 Defendants have reduced reimbursement rates on patients to the
4 insurer.

5 MR. BLALACK: That's almost perfectly right, Your Honor
6 with one tweak. The Defendants -- some of the defendants are not
7 insurance companies. They are administrators, third-party
8 administrators. So it would be the same sentence -- health insurers or
9 third party administrators for services rendered to members of health
10 plans, insured or administered by the Defendants.

11 THE COURT: Good enough. Mr. Zavitsanos, I'm going to
12 keep it really simple. You'll explain those relationships in your opening.

13 MR. ZAVITSANOS: Yes, Your Honor.

14 THE COURT: All right. Everybody have lists of the people in
15 your firm who have worked on the case to read to the jury, and your
16 witnesses?

17 MR. BLALACK: Yes, Your Honor.

18 MR. ZAVITSANOS: Yes, Your Honor.

19 THE COURT: Okay. I think we're ready to bring the jury in,
20 then. As soon as -- Andrew, the marshal, will give me a high sign.

21 And Judge -- just for a moment of levity, Judge Denton calls
22 this 3D. He said it really is 3D. He has a funny sense of humor.

23 Do you guys want to take a short break? Because I can't -- it
24 takes a few minutes for him to get the jurors.

25 MR. ZAVITSANOS: Sure. That'd be great, thank you.

1 MR. BLALACK: Thank you, Your Honor.

2 MR. ZAVITSANOS: May we step outside, Your Honor?

3 THE COURT: Of course.

4 [Recess taken from 11:06 a.m. to 11:17 a.m.]

5 MR. ZAVITSANOS: I want to make sure I've got it. So when
6 they bring the panel in, Your Honor is going to --

7 THE COURT: I was just going to -- I have a, you know, we
8 have a script, and it isn't because we don't know what we're doing . It's
9 just so that there's uniformity in trying civil cases.

10 MR. BLALACK: Sure.

11 THE COURT: And I was just getting ready to look at the
12 questions I was going to ask them to tell you all. So let's see --

13 MR. ZAVITSANOS: Because you know, there's a number of
14 folks that identified about COVID concerns.

15 THE COURT: Right.

16 MR. ZAVITSANOS: So I'm assuming Your Honor is going to
17 take those up first. And to the extent someone gets excused, they'll -- I
18 guess they'll get excused before we start; is that right?

19 THE COURT: Yeah. Well, no, I have to work my way through
20 the script before we even get to availability or COVID concerns.

21 MR. ZAVITSANOS: I see. I see. Okay.

22 THE COURT: I have to orient them.

23 MR. ZAVITSANOS: Got it.

24 THE COURT: They get oriented in jury services. They also
25 have a wellness check in jury services.

1 MR. ZAVITSANOS: I see. Okay. Okay. Thank you, Your
2 Honor.

3 THE COURT: So the questions I ask them: How long have
4 you lived in Las Vegas? What do you do for a living? If you're retired,
5 what did you do before? If you're married or having a significant other,
6 where are they employed or retired from? And I ask if they've ever been
7 a juror before because we don't want someone who will hang a jury.
8 And then I -- do you guys want me to talk about insurance at all or
9 healthcare at all, or is that what you both --

10 MR. BLALACK: I think both sides have identified topics, Your
11 Honor, that respectively we'll cover those issues.

12 THE COURT: Okay. So I'll just do the basics with them. And
13 I think we have 24 chairs here to start

14 THE CLERK: Judge, I just got an email from Deborah that
15 says she spoke with Mariah. She can give us 45 jurors today, 55 jurors
16 tomorrow.

17 THE COURT: 45 today, 55 tomorrow. That's great. Thank
18 you.

19 There were some orders in the inbox. I think I cleared them
20 out this morning. Let me check that so I can give you that definitively.
21 Yeah. I -- all of your orders have been entered.

22 MR. BLALACK: Thank you, Your Honor. And the parties are
23 working on proposed orders for the last week. We'll get them to you.

24 THE COURT: Great. And the last question I ask the jurors, if
25 any of them have sued or been sued, and would that -- having been

1 sued, or having sued someone else, if that would affect their ability to be
2 fair to both sides.

3 MR. BLALACK: No objection here, Your Honor.

4 MR. ZAVITSANOS: Yeah, no objection.

5 THE COURT: Half the cases we do are motor vehicle
6 accidents.

7 MR. BLALACK: Right.

8 MR. ZAVITSANOS: Understood, Your Honor.

9 MR. ZAVITSANOS: I think that's probably true of everyone.

10 THE COURT: Oh, and the last thing to let you guys know is
11 that for next Wednesday and the Wednesday after, the chief judge will
12 take my motions calendars to give you longer days. This week,
13 Thursday, you have all day as well. Next Thursday, we're dark.

14 MR. BLALACK: Right.

15 THE COURT: Right. Thursday and Friday, the 4th and 5th.
16 And I have letters prepared for the members of the venire. They can
17 write their -- it's -- for their employers. So that we can either fax or PDF it
18 to someone for them.

19 MR. BLALACK: Thank you, Your Honor.

20 THE COURT: And we do a schedule every week.

21 MR. BLALACK: Yes, Your Honor. Thank you.

22 MR. ZAVITSANOS: And, Judge, the following week is a full
23 week, right? Subject to your motions calendar and all that.

24 MR. BLALACK: There's a holiday.

25 THE COURT: I think there's a holiday. Isn't Veteran's Day?

1 MR. ZAVITSANOS: Oh, right. Right. Okay. That's right.

2 THE COURT: I think it's the 11th.

3 MR. BLALACK: Correct.

4 MR. ZAVITSANOS: Yes. I've lost all sense of time. I don't
5 know what day I'm in. Mr. Leyendecker and I were preparing for a trial
6 that got settled at the very last minute in Mississippi, and we jumped
7 right out of that one to this one, so I don't know what month this is, so.

8 THE COURT: Any chance, do you know Denise Owens, either
9 of you in Jackson, Mississippi? She's one of my buddy judges. She's a
10 Chancery Judge.

11 MR. BLALACK: I do not, Your Honor.

12 THE COURT: No?

13 MR. ZAVITSANOS: We were in front of Judge Kidd.

14 THE COURT: Ah, okay. Well, the -- this week is the American
15 College of Business Court Judges' annual meeting in Jackson,
16 Mississippi, that I skipped for your trial.

17 [Recess from 11:27 a.m. to 11:49 a.m.]

18 THE MARSHAL: All rise. This court, 27, is now in session.
19 The Honorable Judge Allf presiding.

20 THE COURT: Thanks, everyone. Please be seated. Okay.
21 Are we ready to bring in the venire?

22 MR. ZAVITSANOS: Yes, Your Honor.

23 MR. ROBERTS: Defendants are ready, Your Honor.

24 [Pause]

25 THE COURT: And did everyone get those questionnaires?

1 Did you all get those?

2 MR. ZAVITSANOS: We did, Your Honor. Thank you.

3 [Pause]

4 THE COURT: Let me know when you've had a chance to look
5 through your list.

6 [Pause]

7 THE MARSHAL: All rise for the jury, please.

8 [Prospective jurors in at 11:51 a.m.]

9 THE COURT: Thank you, everyone. Please be seated. Wait.
10 Okay. Wait, wait. Yeah. We have to keep everybody in order. Sir, you'll
11 sit back there.

12 THE MARSHAL: Sir. Sir, forward.

13 THE COURT: Please move. Yes. Thank you. Please be
14 seated.

15 [Court and Marshall confer]

16 THE COURT: Okay. Well, go ahead and please rise for the
17 jury. It's awkward these first few minutes, because we need to get
18 everyone in here before we start.

19 [Pause]

20 THE MARSHAL: All present and accounted for, ma'am.

21 THE COURT: Thank you, everyone. Please be seated.

22 Good morning, everyone, and welcome to jury service. I'm
23 calling the case of Fremont Emergency Services Mandavia Ltd, a Nevada
24 Professional Corporation, Team Physicians of Nevada Mandavia PC, a
25 Nevada Professional Corporation, Crum Stefanko and Jones, Ltd., dba

1 Ruby Crest Emergency Services, a Nevada Professional Corporation v.
2 United Healthcare Insurance Company, a Connecticut Corporation,
3 United Healthcare Services Inc. dba UnitedHealthCare, a Minnesota
4 Corporation, UMR Inc., United Medicine -- Medical Resources, a
5 Delaware Corporation, and Sierra Health and Life Insurance Company
6 Inc., a Nevada Corporation, and Health Plan of Nevada Inc., a Nevada
7 Corporation. This is case A792978.

8 So the record will reflect all the presence of counsel. And are
9 both parties ready to proceed? Plaintiff.

10 MR. ZAVITSANOS: Yes, Your Honor, we are.

11 THE COURT: Defendant.

12 MR. ROBERTS: Yes, Your Honor. We are ready to proceed.

13 THE COURT: Thank you.

14 All right. So good morning, everyone. It's still morning.
15 You've been summoned here to Department 27 of the Eighth Judicial
16 District Court to serve a prospective jurors in a civil case. Before we
17 begin, my name is Nancy Allf, and I'm the judge who will try the case.
18 To my left we have a court recorder, Brynn, and our court clerk, Nicole.
19 It's really important for them to be here. We also have my law student
20 extern named Evo [phonetic].

21 And it's really important that you have your phones off,
22 because even if they're on vibrate, we're using a court recorder not a
23 reporter, and it can interfere with the system. So I'll ask everyone to
24 have your phones off.

25 Our marshal for the trial is Marshal Allen. And he is the one

1 that you will have the most involvement with during the jury selection
2 process and, if you're selected as a juror, when you serve as a juror. He
3 can't discuss the case with you at any time, but he's your point of
4 contact. And if we see you in the hallway or the elevator, we're not
5 allowed to talk to you, because if you are selected for the jury, we want
6 you to make your decision not based upon what we talk about in the
7 elevator but what you hear and see from the witnesses and the evidence
8 in the case.

9 So Brynn keeps all of the recordings and Nicole does all of
10 the -- she maintains the evidence and does the clerking.

11 Now I'm going to ask the attorneys to stand and introduce
12 themselves, introduce their clients, identify the lawyers in their
13 respective law firms, and then I'll briefly tell you about the nature of the
14 case. Thank you.

15 MR. ZAVITSANOS: Thank you, Your Honor.

16 Good morning. My name is John Zavitsanos, and I represent
17 the three Plaintiffs, the entities that have brought the case. And let me
18 just read off the full names here. It's Fremont Emergency Services.
19 That's one of the Plaintiffs. They're here in Las Vegas. Team Physicians
20 of Nevada - Mandavia. And the third one is Crum, Stefanko, and Jones,
21 also known as Ruby Crest Emergency Medicine. And that -- those are
22 our clients.

23 With me today, my friend Pat Lundvall, from Las Vegas.
24 We're at different firms, but we're working together on this case. This is
25 Dr. Scott Scherr. He's going to be one of our representatives during the

1 trial. My law partner of 35 years, Joe Ahmad. Next to him is Kevin
2 Leyendecker. If you end up on the jury, you're going to like him the best
3 from our team. So -- they usually do.

4 Over here is Jason McManis. He's also with our firm. My
5 friend Collin Kennedy in the back, Norm Revis [phonetic] And probably
6 the most important person on our team, Michelle Rivers [phonetic]. She
7 keeps us straight. And that's our team, Your Honor.

8 THE COURT: Thank you. Is anyone on the jury familiar with
9 any of the names you just heard? All right. Okay. Brenda, thank you.
10 As a point of disclosure to all of you, the juror who just raised her hand
11 is retired from the court system.

12 All right. Defendant, will you please introduce yourself and
13 your team.

14 MR. ROBERTS: Thank you very much, Your Honor.

15 Good morning, potential jurors. My name is Lee Roberts.
16 And I am with the Las Vegas Office of Weinberg, Wheeler, Hudgins,
17 Gunn & Dial. It's our honor to represent the Defendants in this action,
18 who are the people being sued. And Your Honor read those names.
19 And what I'd like to do is introduce you here at the beginning to Mr.
20 Ryan Wong. Mr. Wong is representing three of the Defendants, United
21 Healthcare Insurance Company, United Healthcare Services, and UMR
22 Inc.

23 You'll also see in the courtroom Mr. Glen Stevens from Las
24 Vegas, who will be representing the two Nevada Defendants, Health Plan
25 of Nevada, sometimes called HPN, and Sierra Health and Life Company.

1 The other members of my team here at the table, Mr. Lee Blalack and
2 Mr. Jeff Gordon. They are from the Law Firm of O'Melveny & Myers. In
3 addition, over here we've got Audra and Dex, paralegals for our firms.
4 And they'll be taking care of the exhibits, finding things electronically,
5 popping it up on screens, and helping with the presentation, making
6 things run smoothly.

7 Your Honor, did you want me to read witnesses at this time?

8 THE COURT: I'll take that up next.

9 MR. ROBERTS: Okay, very good.

10 THE COURT: Thank you.

11 MR. ROBERTS: Thank you, Your Honor.

12 THE COURT: So this is a brief statement about what the case
13 is about. And I -- because, as lawyers, we have a lot of legal jargon, I just
14 point to the Plaintiffs and the Defendants as I reference to them. And I
15 hope you don't take it as me talking down to you.

16 The Plaintiffs are three companies who provide staffing for
17 emergency rooms and hospitals in three Nevada cities. They are suing
18 the Defendants, health insurance providers and third-party
19 administrators, claiming that the Defendants have reduced
20 reimbursement rates on patients that they insure.

21 Now can we do witnesses now?

22 MR. ZAVITSANOS: Yes, Your Honor.

23 Okay. So the witnesses in this case may include some of the
24 following people.

25 And, Your Honor, would you like me to do both sides or --

1 THE COURT: For you. And then Mr. Lee -- then Mr. Roberts
2 can do for his side.

3 MR. ZAVITSANOS: Thank you, Your Honor. Thank you.

4 Okay. So these are the witnesses who may testify. Kent
5 Bristow, Rena Harris, Leif Murphy, Jennifer Shrader, Dr. Scherr, who I
6 introduced just a moment ago, Dr. Scott Scherr, Daniel Jones, Mark
7 Kline, Paul Bevilacqua, Paula Dearolf, Joe Carman, Jason Heuberger,
8 Miles Snowden, Dr. Robert Frantz, Jennifer Behm, Eddie Ocasio, Rhone
9 D'Errico, Brent Davis, Dan Collard, Lisa Zima, Brad Belvins [sic], Wade
10 Sears, David Greenberg. Thank you.

11 THE COURT: Is anyone in the room familiar with any of
12 those names?

13 Yes. May I have your name and badge number, please?

14 PROSPECTIVE JUROR 210: Jacob Harrison, 210.

15 THE COURT: Give me just a moment to find you. Yes, Mr.
16 Harrison. Who are you acquainted?

17 PROSPECTIVE JUROR 210: Mark Kline is a name that I know
18 personally. I don't know if it's the same one. It's a common name.

19 THE COURT: Is it someone who lives in Las Vegas?

20 PROSPECTIVE JUROR 210: Yes, ma'am.

21 THE COURT: Do you know where Mark Kline resides?

22 MR. ZAVITSANOS: I'm sorry, Your Honor?

23 THE COURT: Mark Kline.

24 MR. ZAVITSANOS: Not in Las Vegas, Your Honor.

25 THE COURT: Okay. Thank you.

1 Anyone else in the room? I have a name and badge number
2 back there, please?

3 PROSPECTIVE JUROR 663: Mark Hamilton.

4 THE COURT: And who -- what name were you familiar with?

5 PROSPECTIVE JUROR 663: Brad Belding [phonetic].

6 THE COURT: Is that a person who lives in Las Vegas?

7 PROSPECTIVE JUROR 663: Yes.

8 THE COURT: And Mr. Zavitsanos, do we know if --

9 MR. ZAVITSANOS: There's one more, Your Honor --

10 THE COURT: One more.

11 MR. ZAVITSANOS: -- I'm sorry.

12 THE COURT: Did the name that he was familiar with is --

13 MR. ZAVITSANOS: Pardon me?

14 THE COURT: -- is that person a Las Vegas resident?

15 PROSPECTIVE JUROR 663: Brad Belding [phonetic].

16 MR. ZAVITSANOS: Not in Las Vegas, Your Honor.

17 THE COURT: Very good. Thank you. Any other people know
18 names? Thank you all for being so forthright with us. Okay.

19 For the Defendant, the same please.

20 MR. ZAVITSANOS: Your Honor, my apologies --

21 THE COURT: You have one more --

22 MR. ZAVITSANOS: -- I left off one name. My apologies. Dr.
23 Jody Crane.

24 THE COURT: Anyone familiar with Dr. Jody Crane? I see no
25 hands. Thank you. Now, Defense.

1 MR. ROBERTS: Thank you very much, Your Honor. In
2 addition, you may hear from the following witnesses during the trial.
3 Tom Ralston, Michael Schill, Jacy Jefferson, Liz Lord, Scott Ziemer,
4 Bruce Singleton, Leslie Hare, Shaun Schoener, Bruce Deal, Chuck Lanier,
5 Susan Mohler, Susan Dominey, Sean Crandell, Mike Bandomer,
6 Jacqueline Kienzle, Karen King, John Haben, Dan Rosenthal, Greg
7 Dosedel, Alexander Mizenko, Angie Nierman, Rebecca Paradise, Dan
8 Schumacher, Emma Johnson, Charles Sims, Jason Schoonover, Jolene
9 Bradley, Lisa Dealy, Melissa Dotson, Vince Zuccarello, Mark Edwards,
10 Kevin Ericson, Marty Millerliele, David Yerich, Jean Stenzel, and Joseph
11 Esparraguera.

12 THE COURT: Okay.

13 MR. ROBERTS: Thank you, Your Honor.

14 THE COURT: Anyone familiar with any of the names of those
15 potential witnesses? I see no hands in the jury box. How about in the
16 rest of the room? Anyone familiar? No. Okay. Thank you. All right.

17 Will you please swear the venire?

18 [The prospective jurors were sworn]

19 THE COURT: Thanks everyone. All right. So let me go over
20 a few ground rules. We expect that jury selection through Thursday and
21 if some of you are panicked because of your work, I'll get there. But we
22 have to kind of go through the motions at first.

23 So the rules are one, phones have to be off in the courtroom.
24 If you need letters for your employers, the marshal has one for all of you.
25 If you want us to email it or fax it, write your name and the place it needs

1 to go so that we can get that to your employer, and he'll get them to you
2 at the first break.

3 Is everyone here comfortable with our COVID protocols?
4 And is there anyone who feels unwell, but came today anyway because
5 you wanted to serve your community? Okay.

6 Now, we have administrative orders in place so that we must
7 we wear our masks to cover our nose and our mouth at all times in the
8 courtroom. So I can't let you drink water during jury selection. So we
9 take frequent breaks and the rule on breaks is if you need one for any
10 reason, even if we just had one, ask and I'll be happy to give everyone a
11 break because I don't want jury service to keep you from staying
12 hydrated or make you uncomfortable. So -- but I will say one thing
13 though. When you need a break, we all take a break. So if you need it,
14 I'm more than happy. I'll never make you feel bad, but please try to keep
15 in mind that I'll take a break every one to one-and-a-half hours unless
16 you need more.

17 Now, a couple of things. The way that it works, I'll do this
18 introduction. I'll ask you guys a few questions and then the lawyers will
19 have the right to ask questions.

20 Next thing. To qualify to serve as a juror, you must be a
21 citizen of the United States. Is there anyone here who is not a citizen?
22 And we do it from the back row -- from your left to right and then the
23 second, the third. We take that in order and then in the back of the room.
24 In the first row back there, is there anyone who is not a citizen? I see no
25 hands. Second row, is there anyone who is not a citizen? Third row?

1 The two front rows. Everyone here a citizen of the U.S.? Thank you.
2 How about in the back in that first row. Is there anyone who is not a
3 citizen? Thank you. And the last row? All right. I see no hands.

4 And the next thing is that you're under an oath to answer
5 these but it's not our intent to ever embarrass you so if you have an
6 answer to a question that you would like to do privately, let us know and
7 we will accommodate that. The second qualification is that if you are a
8 convicted felony -- been convicted of a felony, you must have your civil
9 rights restored in order to serve on a jury. Is there anyone on the jury
10 box who might fall in that category? How about in the rest of the room?
11 I see no hands.

12 Finally, even though I feel like I'm screaming at you,
13 sometimes I'm hard to hear. If you can't hear me, let me know so I can
14 speak up. And then the last question for now is, is there anyone who
15 speaks English as a second language and is having a hard time following
16 what we're saying today? Anyone in the jury box speak English as a
17 second language? Anyone having trouble hearing or -- yes. May I have
18 your name and badge number?

19 PROSPECTIVE JUROR 202: Gene Villegas.

20 THE COURT: I'm sorry. May I have that again?

21 PROSPECTIVE JUROR 202: Gene Villegas.

22 THE COURT: And what's your number, please?

23 PROSPECTIVE JUROR 202: 202 badge number.

24 THE COURT: Okay. And what is your native language?

25 PROSPECTIVE JUROR 202: Philippines.

1 THE COURT: Are you having a hard time following this
2 morning?

3 PROSPECTIVE JUROR 202: I got a lot of [indiscernible] and
4 I'm hard to understand the English words.

5 THE COURT: Are you currently employed?

6 PROSPECTIVE JUROR 202: Yes.

7 THE COURT: What kind of work do you do?

8 PROSPECTIVE JUROR 202: I work on [indiscernible].

9 THE COURT: And do you need to speak English for your job?

10 PROSPECTIVE JUROR 202: I speak English, ma'am, but
11 being inside the courtroom is probably [indiscernible].

12 THE COURT: Thank you for your candor. Anyone else in the
13 jury box having a hard time following, speak English as a second
14 language?

15 Yes. Your name and badge number, please?

16 PROSPECTIVE JUROR 414: My name is Moon Kim-Fredkin.

17 THE COURT: And what's your badge number, please?

18 PROSPECTIVE JUROR 414: 414.

19 THE COURT: And where are you from, Ms. Fredkin?

20 PROSPECTIVE JUROR 414: South Korea.

21 THE COURT: And are you currently employed? Do you
22 work?

23 PROSPECTIVE JUROR 414: No.

24 THE COURT: No. So do you speak English well enough to
25 like, take a driving test in English?

1 PROSPECTIVE JUROR 414: Yeah.

2 THE COURT: Yes.

3 PROSPECTIVE JUROR 414: Not really a [indiscernible].

4 THE COURT: But are familiar with any English medical terms
5 or legal terms?

6 PROSPECTIVE JUROR 414: No.

7 THE COURT: Okay. It's -- the purpose is not to embarrass
8 you. Thank you very much for being honest.

9 Anyone else? How about -- we have someone in the back at
10 -- would you please stand, give me your name and badge number?

11 PROSPECTIVE JUROR 548: 548. My name Phuong Do.

12 THE COURT: And where are you from, Ms. Do?

13 PROSPECTIVE JUROR 548: Vietnam.

14 THE COURT: Are you currently employed?

15 PROSPECTIVE JUROR 548: I don't speak a lot English. I
16 don't -- yeah.

17 THE COURT: The purpose is not to embarrass you. Thank
18 you for being honest with us. Do you work though? Do you have a job?

19 PROSPECTIVE JUROR 548: No.

20 THE COURT: No. Okay. Thank you. Anyone else in that row
21 or in the back row?

22 Counsel, please approach. Counsel, please approach. Wait,
23 wait. There's one more. Sorry, Andrew. Is there one more person?

24 THE MARSHAL: Yes.

25 THE COURT: But I need -- sorry, gentlemen. Let's wait just a

1 sec. May I have -- I need to be able to see her.

2 PROSPECTIVE JUROR 585: Hi.

3 THE COURT: Sorry to put you on the spot. What is your
4 name and badge number?

5 PROSPECTIVE JUROR 585: Ana Thompson, 585.

6 THE COURT: Thank you. Are you currently employed?

7 PROSPECTIVE JUROR 585: Yes.

8 THE COURT: And what do you do for a living?

9 PROSPECTIVE JUROR 585: I'm in construction.

10 THE COURT: And do you speak English for that?

11 PROSPECTIVE JUROR 585: A little bit. Not like perfect.

12 THE COURT: And what's your native language?

13 PROSPECTIVE JUROR 585: Hispanic.

14 THE COURT: Do you have a driver's license? I don't need to
15 see it. But were you able to take the test in English?

16 PROSPECTIVE JUROR 585: Yes.

17 THE COURT: And do you understand medical terms in
18 English?

19 PROSPECTIVE JUROR 585: No.

20 THE COURT: Or legal terms?

21 PROSPECTIVE JUROR 585: No.

22 THE COURT: Thank you for being honest. We didn't want to
23 embarrass --

24 PROSPECTIVE JUROR 585: I'm sorry --

25 THE COURT: -- anyone. Now, Counsel, please approach.

1 MR. ZAVITSANOS: Yes, Your Honor.

2 [Sidebar at 12:15 p.m., ending at 12:16 p.m., not transcribed]

3 THE COURT: So just to let you guys know, when we talk up
4 here, there's white noise in the back. You're not supposed to be able to
5 hear us. If any of you can hear us talking, let us know. We'll go out in
6 the hall.

7 So will the following people please stand? First juror 202,
8 Gene Villegas. Will you please stand? Second, we have Moon Kim, juror
9 414. Yes. Next juror 28, 548, Ms. Do. And then we have juror 35, 585,
10 Thompson. So we are going to thank you and excuse you from serving
11 on this jury. But before I let you go; I just have to say thank you for
12 being here and being willing to serve your community. This is the
13 greatest system of justice the world has ever seen and it's because of
14 people like you who came today being willing to serve your community
15 because we know when you come here, you'd rather be somewhere
16 else. So the four of you are excused. The marshal has letters for your
17 employers if you need them. And thank you again. You may leave.
18 You're excused.

19 Now, for the lawyers, I usually reorder everybody. Any
20 objection to that? It takes a little longer.

21 MR. ZAVITSANOS: No, Your Honor. No objection.

22 THE COURT: thank you.

23 MR. ROBERTS: No objection, Your Honor.

24 THE COURT: Thank you. Okay. Marshal Allen, take it away.

25 [Pause]

1 THE COURT: All right. Thank you, everyone who just joined
2 us up here. So, the purpose of the trial -- the purpose of jury selection is
3 to make sure that we get jurors who are fair and impartial and who will
4 be equally fair to the plaintiff and the defendant. We will ultimately
5 choose a jury of 12 people which will be eight jurors and four alternates.
6 The alternates, we don't tell you who they are until the end of the trial
7 because we want everyone to pay the same attention. The attorneys, the
8 parties, and I are all very concerned by having this matter tried to a jury,
9 you are completely open-minded, objective, and unbiased in your
10 thinking.

11 So to do that, I will ask you some questions and then the
12 lawyers get the chance to also ask you the questions. And the questions
13 are not designed to embarrass you so if you need privacy for any of your
14 answers, let us know. It's important that they equally have the chance to
15 learn a little bit about you.

16 Now, we all have personal beliefs and biases based on family
17 experience, education, background, political beliefs, religious beliefs,
18 financial situations. And the fact that you may have a certain bias or
19 prejudice may mean that you're not going to be the right type of juror for
20 this case. But that doesn't mean you can't be a juror. We hope if you're
21 not selected here, you'll get a chance to serve your community in
22 another day.

23 So if you're not selected for the jury, please do not be
24 offended. You are not being rejected. They are just simply selecting the
25 people that they think will be most fair to everyone. And so if there's

1 anything that you need to say in your responses, let -- if you need
2 privacy again, let us know. Some of the questions I'm going to ask will
3 go to you individually in order. Now, at the end of all of the questioning
4 of the jury, the lawyers have the right to make what we call challenges
5 for cause or challenges for peremptories. And don't be concerned with
6 that. Again, and don't be offended if you are not selected.

7 [Court and Court Recorder]

8 THE COURT: The court recorder is having trouble recording.
9 Does somebody have a phone on? Lawyers, your phones have to be off,
10 too. Brynn, everything okay now?

11 THE COURT RECORDER: Yes.

12 THE COURT: Okay. All right. So thank you again for your
13 courtesy there.

14 Now, we're going to get into first your availability. I usually
15 make a bad joke when we do jury selection, say, well, be lucky you're
16 getting selected for a six month trial. But this is going to be a fairly long
17 case, which is why we have so many of you here today. We expect this
18 case -- the jury selection to take four days. Through Thursday of this
19 week. And we expect the case to end on Tuesday of Thanksgiving week,
20 which will be November 23. So if you're unavailable to serve your
21 community for that time, I'll need to know about that now.

22 In the back row -- in the first row? We go in order, please.
23 First person that had -- and from your left. Your name and badge
24 number.

25 PROSPECTIVE JUROR 004: Samantha Robinson.

1 THE COURT: Thank you. And why would you not be able to
2 be here for -- until the week of Thanksgiving.

3 PROSPECTIVE JUROR 004: I teach school.

4 THE COURT: Could you get us a --

5 PROSPECTIVE JUROR 004: I can, but I don't think it's very
6 effective with CCSD.

7 THE COURT: And then do you have any exams scheduled
8 during that period?

9 PROSPECTIVE JUROR 004: No, I don't have any exams. But
10 it's a creative art school, so I put a lot into being there and being a part of
11 the community that we have there, so.

12 THE COURT: Thank you for your candor. The next person,
13 please?

14 PROSPECTIVE JUROR 014: Susan Cartwright, 014. Two
15 things. I have two vacations already booked. And I'm a marriage and
16 family therapist. I don't -- I couldn't abandon my clients for that long.

17 THE COURT: Okay. And when are your trips scheduled?

18 PROSPECTIVE JUROR 014: One this Friday through Tuesday
19 and then Thanksgiving week. I leave on the 21st.

20 THE COURT: Thank you. Anyone else in that row? Oh,
21 good. I like to see microphone being passed.

22 UNIDENTIFIED PROSPECTIVE JUROR: I'm scheduled to
23 be out of town --

24 THE COURT: Whoa. Can we go -- I'm sorry. May we please
25 go in order, because I have to be very precise?

1 THE COURT RECORDER: And please put the microphone as
2 close to your mouth as possible.

3 PROSPECTIVE JUROR 141: Cindy Springberg, 141. I am an
4 office manager. I supervise a staff of five. And I support an executive.
5 And there's really no one to fill in for me what I'm not there.

6 THE COURT: Thank you. And I did make the disclosure to
7 the lawyers that she's retired from the system. Thank you.

8 PROSPECTIVE JUROR 210: Jacob Harrison, 210.

9 THE COURT: Whoa, whoa, whoa. Hang on a sec. Oh, never
10 mind. Okay.

11 PROSPECTIVE JUROR 210: I'm required to work 50 hours a
12 week. I'm a manager at Discount Tire. I have a -- I'm in charge of a staff
13 of 15 people. I'm one of the managers who is in charge to staff 15
14 people. So they'd be down a guy until the first week of November.

15 THE COURT: Thank you. Anyone else in that row?

16 PROSPECTIVE JUROR 263: My name is Chelsey Saunchez.
17 My number is 263. I'm a stay-home mom and my husband's a
18 truckdriver. I don't have family here to take over my kids, so I don't --
19 honestly, I don't have a babysitter.

20 THE COURT: Thank you. Next person, please?

21 PROSPECTIVE JUROR 408: Justin Brundy, 408.

22 THE COURT: Hang on just a second. I don't have the same
23 order here. Did you guys have that order?

24 THE MARSHAL: He's 408, ma'am.

25 THE COURT: 408?

1 THE MARSHAL: Yeah. 13.

2 THE COURT: Okay. Somehow you got out of -- out of order,
3 Mr. Brundy. So --

4 PROSPECTIVE JUROR 408: They had me move up --

5 MR. ROBERTS: Yeah. He was moved from 13 I think.

6 PROSPECTIVE JUROR 408: I was 13.

7 THE COURT: You were 13?

8 PROSPECTIVE JUROR 408: Yeah. They --

9 MR. ROBERTS: Your Honor, I had badge number 283 next in
10 line.

11 THE COURT: I did too. So we're going to have to put you
12 guys in the correct order. So will you step down, and we'll -- Juror No.
13 283, Katelyn Landau, sit in that seat.

14 PROSPECTIVE JUROR 283: Yeah.

15 PROSPECTIVE JUROR 408: Do you want me to take her seat?

16 THE COURT: No, because -- no. The next person in order
17 should be Jamie Zepeda, 347. Okay. Will you please scoot over? The
18 next person should be Brenda Santoyo. The next person, Stephen Keith.
19 And then, Mr. Brundy. Okay. So you'll get your chance.

20 But in the back row, is everyone able to serve the community
21 if you -- unless you've already told me? Anyone who -- now, let's go to
22 the third row, please.

23 PROSPECTIVE JUROR 347: My name is Jamie Zepeda,
24 number 347. I am a full-time student, and I work part-time as well. So it
25 would be a little bit hard to make up all of the core classes.

1 THE COURT: And what are you -- where are you studying?

2 PROSPECTIVE JUROR 347: Nevada State College.

3 THE COURT: Thank you. Next person? Only if you're
4 unavailable.

5 PROSPECTIVE JUROR 401: Brenda Santoyo, 401. I am a
6 third grade teacher, and it is very difficult to find subs.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR 401: So I'm struggling with that.

9 THE COURT: Thank you. Next person?

10 PROSPECTIVE JUROR 408: I'm Justin Brundy, 408. I'll be in
11 a Oakland, California November 1st through the 5th.

12 THE COURT: Thank you. And let's come back to this -- not
13 the front row, but the one right in front of the box. Proceed Juror 435.

14 PROSPECTIVE JUROR 435: Alexis Ivey, 435. I'm a teacher's
15 aide for special needs kids, and I'm a college student.

16 THE COURT: Thank you. Next? Anyone else not available?

17 PROSPECTIVE JUROR 441: Miguel Recto, 441. So I have a
18 trip to Seattle coming up about midway through November. And also I
19 do want to be a part of a major event at work and the planning process
20 along with it.

21 THE COURT: Thank you. Anyone else in this row who
22 wouldn't be available?

23 PROSPECTIVE JUROR 456: Peggy Reyes, 456. My father's
24 terminally ill and began hospice care two days ago. I'm scheduled to fly
25 back to Guam on Wednesday.

1 THE COURT: We all wish you the very best. Anyone else in
2 this row? Yes, sir?

3 PROSPECTIVE JUROR 459: Michael Porter -- excuse me --
4 459. I'm a stay-at-home dad. I have to pick up my daughter at 3:00 every
5 day.

6 THE COURT: Thank you. Anyone else in this row who would
7 not be available?

8 PROSPECTIVE JUROR 468: Berlin Gresham, 468. I'm
9 traveling to Miami Wednesday morning. I have work there.

10 THE COURT: Thank you. Anyone else?

11 PROSPECTIVE JUROR 488: Samuel Villezcas. I'm an
12 administrative assistant and housing specialist on a reservation for low
13 income housing.

14 THE COURT: And is -- and is there other people -- are there
15 other people who can do that to pick up the slack if you serve?

16 PROSPECTIVE JUROR 488: We just have the director and the
17 bookkeeper and me inside, and then we have maintenance guys. I
18 usually do all the stuff -- getting the houses ready and prepping stuff,
19 prepping the families to move in.

20 THE COURT: Thank you.

21 MR. BLALACK: Your Honor, could we get the juror number,
22 please?

23 THE COURT: Oh. Yeah.

24 PROSPECTIVE JUROR 488: 488.

25 THE COURT: 488. And here, please, in the front row?

1 PROSPECTIVE JUROR 494: My name is Steve Zabinski,
2 badge number 494. I'd be able to serve you will up until the week of
3 Thanksgiving. My son lives in Toronto. I have international travel to see
4 him for two weeks, so.

5 THE COURT: When are you planning to leave?

6 PROSPECTIVE JUROR 494: My flight is November 24th. So
7 as long --

8 THE COURT: We --

9 PROSPECTIVE JUROR 494: -- it doesn't go past that --

10 THE COURT: We think we're good to go to the 23rd. Thank
11 you though.

12 PROSPECTIVE JUROR 505: My name's Edgar Beisner.
13 Badge number 505. I have a child I have to pick up from school. And I
14 also have a girlfriend's that's -- has a lot of doctors' appointments for
15 high-risk pregnancy.

16 THE COURT: It's -- we didn't want to embarrass you. Do you
17 want privacy?

18 PROSPECTIVE JUROR 505: No. I'm just nervous talking to
19 you.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR 520: My name is Alex Ionescu. And
22 my badge number is 520. I'm a full time college student and my salary
23 mainly is what's upholding my household. I have an apartment with my
24 girlfriend. As well as I'm a military member of the National Guard. So I
25 would have trouble I think from the 4th to the 6th. As well as a lead

1 position at a part-time job.

2 THE COURT: Thank you. Anyone else in the front row here?

3 PROSPECTIVE JUROR 532: Randy Meyer. Badge number's
4 532. The only conflict I would have was November 5th. I have a surgery
5 scheduled.

6 THE COURT: If we are dark on the 4th and 5th, would you be
7 able to come back on Monday?

8 PROSPECTIVE JUROR 532: Yes.

9 THE COURT: Okay. Thank you. All right. Counsel, please
10 approach.

11 [Sidebar at 12:32 p.m., ending at 12:50 p.m., not transcribed]

12 THE COURT: We have someone -- one of the jurors has a --
13 your hand up. Your name and badge number?

14 PROSPECTIVE JUROR 263: Yeah. Sorry. It's 263. I just
15 forgot to mention that my son's asthmatic too. So when he's on the
16 road, sometimes my son gets hospitalized, and my husband can't get
17 here.

18 THE COURT: And you're Ms. Saunchez?

19 PROSPECTIVE JUROR 263: Yes.

20 THE COURT: Thank you. All right. So we are going to
21 excuse some of you, not all of you. We have some more inquiry of some
22 of you.

23 So if the following people may please stand. Let's see --
24 hang on. Let me get there. 263, Chelsey Saunchez, please stand; 347,
25 Jamie Zepeda, please stand; 414. I think we already let her go.

1 UNIDENTIFIED SPEAKER: We did.

2 THE COURT: 435, Ivey; 456, Reyes; 459, Porter; 505, Beisner;
3 520, Ionescu. You all will be excused from serving on this jury. Thank
4 you for being here and being willing to serve your community. We all
5 wish you well. We hope you get a chance to serve if you'd like to.

6 UNIDENTIFIED PROSPECTIVE JUROR: Thank you.

7 THE COURT: So you may leave. All right. And even
8 though -- to everyone who's left, even though --

9 [Court and Clerk confer]

10 THE COURT: All right. So even though you guys have only
11 been in this room less than an hour, we've been here all morning, so we
12 need to take a lunch break. It's right around -- oh, it's actually -- it's
13 almost 1:00. So I'm going to take a lunch break from 1:00 to 1:45.
14 Everybody can be back by 1:45. And we will reorder you when you
15 come back. Thank you. The court will be in recess. And make sure you
16 line up in order at 1:45.

17 THE MARSHAL: All rise for the jury, please. We'll come back
18 at 1:45.

19 THE COURT: And if anyone needs a letter for their employer,
20 ask the marshal and we can either email or fax it, if you'd like.

21 [Prospective jurors out at 12:53 p.m.]

22 [Outside the presence of the prospective jurors]

23 THE COURT: Okay. The room is clear. Plaintiff, do you have
24 anything for the record?

25 MR. ZAVITSANOS: No, Your Honor.

1 THE COURT: Defendant, anything for the record?

2 MR. ROBERTS: No, Your Honor. But I did want to inquire. I
3 think that we may end up excusing some of these people with travel
4 plans after I inquire. And I would request that perhaps it would be most
5 efficient to bring them in at the beginning, when we get back from lunch,
6 let me inquire --

7 THE COURT: That's a --

8 MR. ROBERTS: -- about their travel plans, and then when we
9 reorder, that might be one less time we have to reorder.

10 THE COURT: Well, in that case, I'll do it. Any objection to
11 that approach?

12 MR. ZAVITSANOS: No, Your Honor. We'd prefer the Court
13 do it.

14 THE COURT: Okay. So 1:45. See you guys. Have a good
15 lunch.

16 MR. BLALACK: Thank you, Your Honor.

17 MR. ROBERTS: Thank you, Your Honor.

18 MR. ZAVITSANOS: Thank you, Your Honor.

19 [Recess taken from 12:54 p.m. to 1:47 p.m.]

20 THE MARSHAL: -- 27 is back in session.

21 THE COURT: Please remain seated. So the Marshal will
22 bring Cartwright, Brundy, Recto and Gresham, before we bring in the
23 whole venire.

24 MR. ZAVITSANOS: Yes, Your Honor.

25 MR. ROBERTS: Just to make sure I heard those, was

1 Zabinski, 494, included in that, Your Honor?

2 THE COURT: Oh, how did I miss that?

3 MR. ROBERTS: Oh, actually, I'm sorry, Your Honor. He has a
4 flight, but it doesn't leave until November 24th.

5 THE COURT: Yeah.

6 MR. ROBERTS: So we do not need to inquire.

7 THE COURT: I think we're good. Thank you.

8 THE MARSHAL: Your Honor, are you ready for all four?

9 THE COURT: Four, yes.

10 THE MARSHAL: Yes, ma'am.

11 [Pause]

12 THE COURT: Just so that you guys know, by the end of the
13 trial the jurors love him, more than anyone.

14 MR. BLALACK: We will too, Your Honor, I'm sure.

15 THE MARSHAL: All rise.

16 THE COURT: Thanks everyone. And can you please stand in
17 the order, Ms. Cartwright, then Mr. Brundy and then Mr. Recto, and then
18 Gresham. Thank you. All right. Gresham was the last person.

19 Okay. We didn't want to embarrass you in front of
20 everybody, getting into your plans for travel, but we had a few follow-up
21 questions.

22 Ms. Cartwright, can you tell us more about the travel you're
23 taken? I mean, is it refundable, is it something important?

24 PROSPECTIVE JUROR 014: It's for this weekend, Friday until
25 Monday night in Santa Fe.

1 THE COURT: I'm sorry.

2 PROSPECTIVE JUROR 014: To Santa Fe.

3 THE COURT: Right. And we don't want to embarrass you,
4 but is it something you need to do, is it something you could cancel
5 easily?

6 PROSPECTIVE JUROR 014: Well, I can't, I'll lose all my
7 money, and my friends, I mean, there's four of us going, and it's all
8 prepaid --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR 014: -- and we're flying.

11 THE COURT: Okay. And then you had another vacation, as
12 well?

13 JUROR 014: Yes. Bozeman, Montana.

14 THE COURT: And that's paid for as well?

15 JUROR 014: Yeah.

16 THE COURT: All right. Thank you.

17 Let me get to Mr. Brundy. Mr. Brundy, you had to go to
18 Oakland?

19 PROSPECTIVE JUROR 408: Yeah.

20 THE COURT: Work or pleasure?

21 PROSPECTIVE JUROR 408: I'm in a band, we're recording up
22 there that week.

23 THE COURT: And is everything prepaid?

24 PROSPECTIVE JUROR 408: Yeah. The flights are.

25 THE COURT: Okay. Thank you.

1 Okay. Mr. Recto? Do you had to go to Seattle for work?

2 PROSPECTIVE JUROR 441: No, not for work, to see family.

3 THE COURT: And is it something you could easily
4 reschedule, or is it an event or --

5 PROSPECTIVE JUROR 441: No particular event, and it could
6 possibly be rescheduled.

7 THE COURT: Have you put money down that you might
8 lose?

9 PROSPECTIVE JUROR 441: No, I have not.

10 THE COURT: Okay. Thank you.

11 And then our last person is Mr. Gresham.

12 PROSPECTIVE JUROR 468: Berlin Gresham, yes.

13 THE COURT: Yeah. Let me just find you. Yeah. I'm ready.

14 PROSPECTIVE JUROR 468: Okay. I own my own business,
15 and this is a contract that I have with Carnival Cruise Lines, that I haven't
16 had any work the last year and got a project in Miami. The ship's going
17 to be there for three days, and we -- I've got people and equipment and
18 everything. I'd be -- besides the money I would lose from not going, I'd
19 be financially responsible for repositioning everything.

20 THE COURT: Thank you, all.

21 Why don't you all go back and get in order, please? And
22 thank you. And, Andrew, make sure you get the high sign from me,
23 before we bring everybody in.

24 THE MARSHAL: Yes, Your Honor.

25 THE COURT: Thank you.

1 [Prospective jurors exit at 1:51 p.m.]

2 THE COURT: Okay. The room is clear. I always ask the
3 Plaintiff first, because they have the burden of proof, it doesn't mean that
4 you are last in any way, it's just the way I keep it straight.

5 So, Mr. Zavitsanos, Cartwright?

6 MR. ZAVITSANOS: Your Honor, I don't have any objection to
7 excusing any of them. The gentleman with the checkered shirt, the
8 second gentleman from my right --

9 THE COURT: That would be Mr. Recto.

10 MR. ZAVITSANOS: Yeah. He's the gentleman that said he's
11 not going to be out any money, and it could be rescheduled, that one I
12 don't -- I don't think rises to the same level as the other three.

13 THE COURT: Okay. And from the Defendant, please?

14 MR. ROBERTS: We are in agreement, Your Honor. We
15 would ask the Court to excuse Cartwright, badge 14. Brundy, badge 408,
16 and Gresham, badge 468, and to not excuse Mr. Recto, badge 441.

17 THE COURT: Good enough. All right. Thanks everyone.

18 And he'll give me the high sign. When I bring them in we'll
19 re-order the jurors. There was one complaint over lunch that there's
20 someone back there who couldn't hear me, so I'm not screaming at you,
21 okay.

22 MR. ROBERTS: And, Your Honor, when we fill in the seats
23 could we go through and call out the badge numbers, just to make sure
24 we've got our charts right, since it's starting?

25 THE COURT: I don't want to -- I want to get it right, which is

1 what we did this morning.

2 MR. ROBERTS: Yes.

3 THE COURT: But, also, we need to use our time wisely.

4 MR. ROBERTS: I understand, Your Honor. I'll catch up. It's
5 totally up to the Court.

6 THE COURT: I think the marshal will put them in order, make
7 sure they're in order. Although he didn't catch that one this morning.

8 MR. BLALACK: And, Your Honor, just so I'm clear, because I
9 don't believe we qualified any members from the gallery on travel or on
10 hardship, correct?

11 THE COURT: That's correct.

12 MR. BLALACK: Okay.

13 THE COURT: I direct everything to the first group.

14 [Pause]

15 THE MARSHAL: All rise for the jury.

16 [Prospective jurors in at 1:55 p.m.]

17 THE COURT: Thank you. Please be seated.

18 Okay. Will the following jurors please stand. Number 14,
19 Ms. Cartwright, number 13 -- badge number 408, Mr. Brundy, and
20 number 468, Mr. Gresham. We want to thank you for being willing to
21 serve your community. We've heard your explanations about why your
22 travel, it would be a hardship for you to serve on this jury, so you'll be
23 excused, and thanks for being here today. Thank you. And Mr. Recto,
24 we're going to keep you on for now, at least.

25 PROSPECTIVE JUROR 441: All right.

1 THE COURT: All right. And after they're excused, can we
2 please reorder the jury.

3 THE MARSHAL: Yes, ma'am.

4 [Pause]

5 THE COURT: And, Andrew, did you make a note that
6 everybody was in order, or should we need to do that?

7 THE MARSHAL: They were in order, ma'am.

8 THE COURT: Very good. Thank you.

9 [Pause]

10 THE COURT: Okay. For those of you who have just joined us
11 in the jury box, we need to ask you about hardship and availability, to
12 serve your community through Tuesday, November 23rd. We have two
13 holidays, and we have two days we're going dark, that's why it's a longer
14 trial. Any of the people who joined us, in order, have a hardship?

15 Okay. I think my first number is here. May I have your name
16 and badge number?

17 PROSPECTIVE JUROR 544: Gerardo Ordaz, 544.

18 THE COURT: Let me find you, please. Okay, Mr. Ordaz?

19 PROSPECTIVE JUROR 544: I just started a job, and I'm going
20 to be going on the road, I'm a truck driver -- I'm a truck driver.

21 THE COURT: Okay. So you're just starting a new job, and
22 when do you have to go on the road?

23 PROSPECTIVE JUROR 544: I start supposedly Thursday.

24 THE COURT: Your first day of work is Thursday?

25 PROSPECTIVE JUROR 544: It's Thursday.

1 THE COURT: Okay. Will the employer pay you if you're not
2 driving?

3 PROSPECTIVE JUROR 544: To be honest with you, I'm not
4 sure.

5 THE COURT: Okay. Because your job, by law, can't be
6 affected by serving on a jury.

7 PROSPECTIVE JUROR 544: Right.

8 THE COURT: And I would be willing to notify them, if you --
9 if you would want me to do that.

10 PROSPECTIVE JUROR 544: I'm really going into training, so
11 I'm a new driver, so I'm not sure how they work that out, to be honest.

12 THE COURT: Okay. Thank you. Anyone else in this row?
13 The next person.

14 PROSPECTIVE JUROR 590: Melissa Neyman, 590.

15 THE COURT: Whoa, whoa. You have to go in order, please.

16 PROSPECTIVE JUROR 590: Oh, I'm sorry.

17 THE COURT: We're in the back row, please. Next to Mr.
18 Ordaz?

19 PROSPECTIVE JUROR 555: Albert Smith, 555. My wife's
20 mother just passed, so she's not doing well.

21 THE COURT: I'm very sorry to hear that. I'm sorry for your
22 family. Do you work, or are you retired?

23 PROSPECTIVE JUROR 555: We are both working to get by,
24 you know, to pay rent and stuff.

25 THE COURT: Okay. And what are your regular work hours?

1 PROSPECTIVE JUROR 555: I work 7:30 to 3:00.

2 THE COURT: So it wouldn't be so much different here,
3 would it, if we worked 9:30 to 4:45 every day?

4 PROSPECTIVE JUROR 555: Well, just being here, leaving her
5 alone.

6 THE COURT: Have you been going to work?

7 PROSPECTIVE JUROR 555: Yes.

8 THE COURT: And how many days a week do you work?

9 PROSPECTIVE JUROR 555: Five.

10 THE COURT: Do you work from home, or do you go --

11 PROSPECTIVE JUROR 555: I go to work.

12 THE COURT: Go to work. Okay. Thank you, Mr. Smith.

13 Next person.

14 PROSPECTIVE JUROR 561: Deborah Rumbaugh, badge
15 number 561.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR 561: My husband and I, we make
18 about the same per hour, and it would be like a loss of income on our
19 part if I was out of work that long.

20 THE COURT: And you work as a truck driver; is that correct?

21 PROSPECTIVE JUROR 561: No, ma'am. I'm a security
22 officer.

23 THE COURT: Okay. I think you get 40, \$45 a day for jury
24 service.

25 PROSPECTIVE JUROR 561: Uh-huh.

1 THE COURT: Would your employer pay you? Some
2 employers pay you for jury service.

3 PROSPECTIVE JUROR 561: I looked in our employee
4 handbook and it says, as per State law, or something like that. So I don't
5 know if they pay or not.

6 THE COURT: Okay. And you make more in your current job
7 than you would serving as a juror?

8 PROSPECTIVE JUROR 561: A little bit better than that. Yes,
9 ma'am.

10 THE COURT: Okay. Thank you. And anyone else in that
11 row?

12 PROSPECTIVE JUROR 569: Joshua Seid, 569. My job, I do
13 work at the airport in passenger services. A lot of times in my individual
14 shift, they are short-handed from the 8:00 to 4:30 shift. And another thing
15 is, I'm also going out of town for a day, on the 30th, back the 31st. I
16 don't know if that will affect anything, but in my job, like it's just missing
17 the body being there.

18 THE COURT: Okay. Thank you. Now this front row, in order,
19 please. Can we get the microphone, please?

20 PROSPECTIVE JUROR 571: Junwyn Agustin, 571. So I work
21 in home health and hospice, and I see patients recovering from COVID,
22 so I'm highly likely to -- the potential to bring the virus with me, just in
23 case.

24 THE COURT: It says here that you work -- you're a healthcare
25 practitioner?

1 PROSPECTIVE JUROR 571: Yes, ma'am.

2 THE COURT: First Access Health Care.

3 PROSPECTIVE JUROR 571: Yes.

4 THE COURT: Your employer is not allowed to affect your
5 employment, just because of jury duty.

6 PROSPECTIVE JUROR 571: I'm sorry.

7 THE COURT: How big is the facility where you work, or --

8 PROSPECTIVE JUROR 571: I work with multiple agencies,
9 including hospice. So I -- recently I've been seeing recovering COVID
10 patients, positive. So it's one of my highly potential breathing the virus
11 in the Court. And of course I also work as per diem. So it's also a
12 hardship with me if I step out of my job five days a week. It would
13 potentially affect me financially, because I'm a single parent.

14 THE COURT: A single parent.

15 PROSPECTIVE JUROR 571: Yes.

16 THE COURT: How many children do you have?

17 PROSPECTIVE JUROR 571: I've got two.

18 THE COURT: How old?

19 PROSPECTIVE JUROR 571: I got a high school and a 21 year
20 old. My high school is a senior, 17.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR 571: Graduating this year.

23 THE COURT: You might love serving on jury duty. You
24 might love it.

25 PROSPECTIVE JUROR 571: I would love to, but my main

1 concern is seeing my patients with potential virus infections and bring it
2 to the Court.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR 571: So I don't want to be a risk
5 everybody.

6 THE COURT: Thank you for your honesty. Okay. Is there
7 anyone else down in the front row?

8 PROSPECTIVE JUROR 576: Me.

9 THE COURT: Are you available to serve your community
10 through November 23rd?

11 PROSPECTIVE JUROR 576: No.

12 THE COURT: All right, then. May I have your name and
13 badge number?

14 PROSPECTIVE JUROR 576: Jeffrey Manalo, 576.

15 THE COURT: Yes, sir?

16 PROSPECTIVE JUROR 576: I'm a stay at home dad, and I
17 need to pick up my daughter at 2:11, and I'm -- I'm a slow learner.

18 THE COURT: You might love serving on a jury, though.

19 PROSPECTIVE JUROR 576: I don't know. I just get anxiety.

20 THE COURT: All right. I don't want to put you on the spot or
21 embarrass you.

22 PROSPECTIVE JUROR 576: Yeah. My heart is really
23 pumping right now, like --

24 THE COURT: Okay. Thank you. Let's take the pressure off,
25 and hand over that microphone.

1 PROSPECTIVE JUROR 590: Melissa Neyman, 590, and I have
2 six sections of 7th grade, and, you know, after coming off of COVID
3 we've got kids who missed a whole year of school, basically. So my 7th
4 graders are almost on average, 370, that's below average. So we're
5 looking at kids who missed almost an entire year of school. So I feel like
6 they're greatly, greatly, you know, at a deficit this year.

7 THE COURT: Thank you. Is there anyone else here who
8 would not be able serve their community? Yes, sir.

9 PROSPECTIVE JUROR 593: My name is Thomas Nesci, 593 is
10 my badge number. I'll be out of the State November 8th through the
11 11th. I'm available before that and after that.

12 THE COURT: And tell us the nature of your being out of the
13 State?

14 PROSPECTIVE JUROR 593: I will be in Palm Springs.

15 THE COURT: Hopefully for pleasure.

16 PROSPECTIVE JUROR 593: Absolutely.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR 593: Much needed. But I am available
19 before and after that.

20 THE COURT: Okay. Have you paid for the trip or is it an
21 event?

22 PROSPECTIVE JUROR 593: Everything is paid for, correct.

23 THE COURT: Would you be able to reschedule easily?

24 PROSPECTIVE JUROR 593: No. I can try.

25 THE COURT: Okay. Thank you.

1 PROSPECTIVE JUROR 593: You're welcome.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR 606: Hi, I'm Allison Ford, number 606,
4 and I am unable to do it, because I'm not getting paid to be here, and I
5 make significantly more than \$40 a day, I'm on a sole income. I'm single,
6 and I live alone.

7 THE COURT: Do you have a family? Do you support anyone
8 else?

9 PROSPECTIVE JUROR 606: No. It's just me. But I don't get
10 paid to be here, so --

11 THE COURT: Okay. Thank you. All right. So, counsel, why
12 don't you guys go out in the hall, and I'll be out in a few minutes.

13 [Sidebar at 2:07 p.m., ending at 2:20 p.m., not transcribed]

14 THE COURT: Okay. Court is back in session.

15 So Mr. Nesci, about your trip to Palm Springs, would it be
16 easy to schedule? It's something you do regularly, and you could easily
17 reschedule it?

18 PROSPECTIVE JUROR 593: I've got to talk to the boss when I
19 get home and ask my wife.

20 THE COURT: All right. So you will do that and let us know
21 tomorrow?

22 PROSPECTIVE JUROR 593: Sure.

23 THE COURT: Okay. Thank you. All right. So at this time, we
24 want to thank and excuse Juror 561, Rumbaugh. Please stand. 571,
25 Agustin, 567, Manolo and 606, Ford. We want to thank you for being

1 here. You'll be excused from serving on this jury. We hope if you want
2 to do it, you get a chance. So you may leave at this time.

3 Okay. And I didn't screen the people in the back for travel
4 and availability. In our back row here, is there anyone who would not be
5 available to serve their community in the next few weeks? And Andrew,
6 let's make sure I do this in order. The first person, name and badge.

7 PROSPECTIVE JUROR 627: My badge number is 267.

8 THE COURT: Yes.

9 PROSPECTIVE JUROR 627: Could I talk to you privately
10 about something?

11 THE COURT: You can't, but you can say something to the
12 Marshal or if you need privacy, I can't excuse the lawyers.

13 PROSPECTIVE JUROR 627: Okay. That's fine. I did explain
14 to you some of the reasons why I shouldn't be on the juror [sic], but
15 there is other.

16 THE COURT: Is it something you need privacy for?

17 PROSPECTIVE JUROR 627: On one of --

18 THE COURT: Or can it --

19 PROSPECTIVE JUROR 627: -- one of the things, yes.

20 THE COURT: All right. So at the next break, I'll give you that
21 chance --

22 PROSPECTIVE JUROR 627: Okay.

23 THE COURT: -- after the jury is excused and then we'll talk.

24 PROSPECTIVE JUROR 627: The other reason is that my
25 mother-in-law just passed away and she ran the Post Office out in Sandy

1 Valley, which I moved out there with my wife to help her run. It's a
2 private post office. It's not an actual post -- it's like a Post Office Express.
3 But I have moved addresses, but I haven't changed it with DMV, so I'd be
4 traveling 60 miles --

5 THE COURT: All right.

6 PROSPECTIVE JUROR 627: -- one way.

7 THE COURT: Good enough.

8 PROSPECTIVE JUROR 627: But I understand there is
9 mileage, but I don't show it on my driver's license or registration I've
10 moved.

11 THE COURT: Okay. Thank you, Mr. McIntosh. In order, is
12 there anyone else who would be unable to serve their community?

13 PROSPECTIVE JUROR 628: Kayla Hilliard.

14 THE COURT: Could you speak up, please?

15 PROSPECTIVE JUROR 628: Kayla Hilliard.

16 THE COURT: Thank you.

17 PROSPECTIVE JUROR 628: I will be traveling out of state the
18 29th through the 1st and then I'm moving out of state on the 21st of
19 November.

20 THE COURT: And are you moving for a job?

21 PROSPECTIVE JUROR 628: Yes.

22 THE COURT: Okay. Where are you moving?

23 PROSPECTIVE JUROR 628: Colorado.

24 THE COURT: Okay. Thank you. Anyone else here would be
25 unavailable.

1 PROSPECTIVE JUROR 646: Jeneva Magbual, 646. I currently
2 work graveyard, so being here today kind of messes with my schedule. I
3 kind of have the mental capacity. It's not -- I'm not really stable to sit in
4 this jury today. When it comes to basically simultaneously working here
5 and going back to work, it's a little hard for me. Just staying up late
6 and -- because my graveyard shift is 9:00 to 9:00. So when I came here,
7 I'm already to a point where I can't really be here --

8 THE COURT: When would you --

9 PROSPECTIVE JUROR 646: -- from the 21st --

10 THE COURT: -- normally sleep?

11 PROSPECTIVE JUROR 646: Sorry?

12 THE COURT: When would you normally sleep?

13 PROSPECTIVE JUROR 646: I would normally sleep around --

14 as soon as I get off at 9:00 a.m. And then on the 21st to the 27th of
15 November, I wouldn't be in town. I'd be with my family in Hawaii.

16 THE COURT: Thank you. Next person.

17 PROSPECTIVE JUROR 663: Mark Hamilton, 663. My brother-
18 in-law is 93 years-old and has Parkinson's under hospice care. My sister
19 is an Alzheimer's patient. I'm the primary caregiver for them and this
20 would not work for me.

21 THE COURT: Thank you. Anyone else?

22 PROSPECTIVE JUROR 705: Hi. I'm Milton Takara, 705.

23 THE COURT: Hang on a second. I can't see you. Could you
24 please stand?

25 PROSPECTIVE JUROR 705: Yep.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR 705: Milton Takara, 705.

3 THE COURT: Yes?

4 PROSPECTIVE JUROR 705: Several conventions. I'm in the
5 convention business. We've been shut down for over a year.

6 Conventions are just picking back up. I have a convention that starts on
7 this this Thursday, the 28th through Halloween. I have another one that
8 starts on the 1st through the 6th. One from the 7th through the 12th.

9 And then I have my last one is preparation for feeding the homeless
10 from the 15th through the 17th.

11 THE COURT: Okay. And your -- are you employed?

12 PROSPECTIVE JUROR 705: I do freelance gig.

13 THE COURT: Okay. Thank you. I think we have two more
14 people.

15 THE MARSHAL: Anybody else?

16 THE COURT: Would you --

17 THE MARSHAL: No, that's it.

18 THE COURT: Okay. Very good. Thank you. Counsel go on
19 you. I'll be there in a few minutes.

20 [Pause]

21 THE COURT: And any of you needed letters for employers,
22 we can fax or email them today. You would put your name, your badge
23 number and the location where it should be emailed or faxed. If any of
24 you have that, give it to the martial so that my assistant can assist you.

25 [Sidebar at 2:28 p.m., ending at 2:31 p.m., not transcribed]

1 THE COURT: Okay. So we'll come to order. We -- at this
2 time, we would like to thank and excuse the following people. When I
3 say your name or number -- badge number, please stand. 627, 628, 646,
4 663, 705. We would like you for being here today. We will excuse you.
5 We believe that it would be a hardship for you serve on this jury. We
6 hope you get that chance to serve, if you want to -- so -- and you may
7 leave.

8 And the people who are remaining in the gallery, would you
9 be willing to come up to the first row, so we can see and hear better? All
10 right. So Andrew, if we reorder, we can get them up here in the box.

11 THE MARSHAL: Sure. Sir, would you just move slightly over
12 here.

13 THE COURT: Whoa. Whoa. Aren't you going to start back
14 there? Oh, wait. I thought there were spaces back there. You were
15 right. Sorry.

16 THE MARSHAL: You scared me. I thought I was losing it.

17 THE COURT: So in our system, every judge has a courtroom
18 assigned to them and this is not our courtroom. Our courtroom is in 3A,
19 so I -- it's just set up a little different.

20 [Pause]

21 THE COURT: Thank you, all. Okay. Is there anyone who has
22 a hardship, just either a physical or medical hardship that would
23 preclude you from being able to do jury duty? In the first row, is the
24 anyone? The second row, four? How about the third row? How about
25 the fourth row? Yes.

1 PROSPECTIVE JUROR 569: Well ma'am, it's just that I --

2 THE COURT: Name and badge number?

3 PROSPECTIVE JUROR 569: I'm sorry. Joshua Seid, 569.

4 THE COURT: Give me just a second to find you, please.

5 PROSPECTIVE JUROR 569: Sure.

6 THE COURT: Yes, sir.

7 PROSPECTIVE JUROR 569: Okay. I mean, I do have anxiety,
8 and I get, you know, nervous, and I'm on medication for certain things,
9 too, like blood pressure and stuff like that, so I mean, it does kind of --
10 maybe I should have said it before. I don't know, but does kind of, you
11 know, take a little bit of toll on me, where I just get nervous with certain
12 things and you know, situations.

13 THE COURT: If you ever need privacy to answer a question,
14 you -- I don't want you to ever feel that you have to reveal anything.

15 PROSPECTIVE JUROR 569: No. I don't. I'm not ashamed of
16 it, but --

17 THE COURT: Good enough.

18 PROSPECTIVE JUROR 569: -- I'm just saying that it does
19 affect me at times with certain situations.

20 THE COURT: Thank you. Anyone else in that row? Yes?

21 PROSPECTIVE JUROR 555: Similar to what he had, the
22 anxiety thing.

23 THE COURT: May I have your name and badge number?

24 PROSPECTIVE JUROR 555: Oh, Albert Smith, 555.

25 THE COURT: Thank you. Anyone in the front row who has

1 any type of hardship or medical condition that might help [sic] them?
2 Now, is there anyone here who -- hang on. Was there another -- oh. I'm
3 sorry. Let's go back to the second row. I'd like to do this in order,
4 please.

5 PROSPECTIVE JUROR 488: Sam Villezcas, 488.

6 THE COURT: Let me get there. Yes? All right.

7 THE MARSHAL: She's doing them in order.

8 PROSPECTIVE JUROR 401: Brenda Santoyo, 401.

9 THE COURT: Hang on just a second.

10 PROSPECTIVE JUROR 401: Okay.

11 THE COURT: I have to make notes. Okay, ready.

12 PROSPECTIVE JUROR 401: I'm a one-year breast cancer
13 survivor. I had -- have a doctor's appointment on this Thursday. I forgot
14 to mention it earlier. I had an endoscopy a couple weeks, and they found
15 something in the stomach and the esophagus, and I had the
16 appointment. I had to postpone it until Thursday --

17 THE COURT: What time?

18 PROSPECTIVE JUROR 401: -- to get the result of the
19 biopsies.

20 THE COURT: What time is your appointment?

21 PROSPECTIVE JUROR 401: At 3:50.

22 THE COURT: It's possible that we would have the jury
23 selected in time for you to get to your appointment, so keep that in mind.

24 PROSPECTIVE JUROR 401: Okay.

25 THE COURT: Keep that in mind. Is there anyone else?

1 PROSPECTIVE JUROR 401: And I had mentioned before I
2 was -- I'm a teacher and like today, my students didn't have a substitute
3 and I don't know what they're doing or who -- I know they've been
4 pulling like the specialist, the librarian and the art teacher and things like
5 that to substitute, but there's no subs, so I'm really worried about my
6 kids. And then after I leave here, I would have to go back to the
7 classroom and get everything ready for whoever takes care of my
8 students, so it would -- I would be here from I don't know, 9:00 to
9 whatever and then have to go back to the classroom for maybe two,
10 three, four hours to make copies and get everything ready for whoever
11 subs.

12 THE COURT: Thank you. Next question to everyone. Does
13 anyone here have a religious belief that would preclude them from being
14 able to determine the outcome for these parties, where you would be the
15 finder of the facts? Anybody in the back row? How about the second
16 row? I see no hands. Third row? Anybody in the fourth row or anybody
17 up front? Okay. Good enough. Then we'll start back with -- yes, sir.
18 Your name and badge number?

19 PROSPECTIVE JUROR 404: Stephen Keith, 404. This
20 gentleman raised his hand for medical, and he got skipped over.

21 THE COURT: Oh. I'm sorry. Thank you.

22 PROSPECTIVE JUROR 488: Samuel Villezcas, badge number
23 488.

24 THE COURT: Hang on.

25 PROSPECTIVE JUROR 488: I'm a Type I diabetic and insulin-

1 dependent. Also for me to come here, it's over 50 miles from my house
2 to get here. I just forgot to say that earlier. Sorry.

3 THE COURT: And you live in Moapa?

4 PROSPECTIVE JUROR 488: I live in Moapa, yes, ma'am.

5 THE COURT: Okay. Thank you. I'm sorry that I didn't -- that
6 was just an oversight on my part. All right. Did anyone else raise their
7 hand that I missed? All right.

8 So I am going to start back in the back with Juror number 1.
9 I ask a series of questions, and everyone will get the same questions. So
10 I thank you for your kind attention. I appreciate that. And when it comes
11 to the trial, give that same attention to the lawyers.

12 So Juror number 1, Ms. Robinson, may I have your name
13 and badge number?

14 PROSPECTIVE JUROR 004: Samantha Robison.

15 THE COURT: How long have you lived in Las Vegas?

16 PROSPECTIVE JUROR 004: Born and raised. And badge
17 number was 004.

18 THE COURT: Thank you. And you work as a schoolteacher?

19 PROSPECTIVE JUROR 004: I do work as a schoolteacher.

20 THE COURT: And if you are married, does your spouse
21 work?

22 PROSPECTIVE JUROR 004: I am not married.

23 THE COURT: And have you ever served before on a jury?

24 PROSPECTIVE JUROR 004: Yes.

25 THE COURT: And here in Clark County?

1 PROSPECTIVE JUROR 004: No.

2 THE COURT: Where were you?

3 PROSPECTIVE JUROR 004: I was in New Orleans, Louisiana
4 and Portland, Oregon.

5 THE COURT: And in both of those trials, did the jury
6 deliberate?

7 PROSPECTIVE JUROR 004: In the Portland, Oregon one, yes.

8 THE COURT: What about the one in New Orleans?

9 PROSPECTIVE JUROR 004: That was in Portland, Oregon.

10 THE COURT: Oh, okay. So the jury did deliberate?

11 PROSPECTIVE JUROR 004: Yes, uh-huh.

12 THE COURT: Did you participate?

13 PROSPECTIVE JUROR 004: Yes.

14 THE COURT: Did the jury reach a verdict?

15 PROSPECTIVE JUROR 004: Yes.

16 THE COURT: And were you the foreperson?

17 PROSPECTIVE JUROR 004: Say it again?

18 THE COURT: Were you the foreperson of the jury?

19 PROSPECTIVE JUROR 004: Yes, I was. Uh-huh.

20 THE COURT: Okay. Good. Thank you. Have you ever sued
21 or been sued?

22 PROSPECTIVE JUROR 004: No.

23 THE COURT: And if you had been, would you -- would that
24 have been affected your ability to be fair -- equally fair to both sides?

25 PROSPECTIVE JUROR 004: Absolutely.

1 THE COURT: Thank you.

2 Our next person, please. Ms. Wood?

3 PROSPECTIVE JUROR 034: Christeta Wood, 034.

4 THE COURT: Thank you. How long have you lived in Las
5 Vegas?

6 PROSPECTIVE JUROR 034: Since 2003.

7 THE COURT: And if you are employed, what kind of work do
8 you do?

9 PROSPECTIVE JUROR 034: I'm semi-retired, but I also work
10 as a -- at a alcohol and drug rehabilitation treatment.

11 THE COURT: And if you are married, does your spouse
12 work?

13 PROSPECTIVE JUROR 034: I'm not married.

14 THE COURT: Okay. And have you ever served before on a
15 jury?

16 PROSPECTIVE JUROR 034: I have not.

17 THE COURT: And have you ever sued or been sued?

18 PROSPECTIVE JUROR 034: No.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR 074: Nerissa Gonzaga, 074.

21 THE COURT: Thank you. How long have you lived in Las
22 Vegas?

23 PROSPECTIVE JUROR 074: Since 2006.

24 THE COURT: What kind of work do you do?

25 PROSPECTIVE JUROR 074: I am a recruiter.

1 THE COURT: For who?

2 PROSPECTIVE JUROR 074: Las Vegas Valley Water District.

3 THE COURT: If you are married, does your spouse work?

4 PROSPECTIVE JUROR 074: Not married.

5 THE COURT: And have you ever sued or been sued?

6 PROSPECTIVE JUROR 074: No.

7 THE COURT: And have you ever served before on a jury?

8 PROSPECTIVE JUROR 074: No.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR 141: Cindy Springberg, 141.

11 THE COURT: Thanks. How long have you lived in Las
12 Vegas?

13 PROSPECTIVE JUROR 141: 36 years.

14 THE COURT: If you are employed, what do you do? You're
15 an office manager.

16 PROSPECTIVE JUROR 141: I'm the executive legal
17 administrator for the City of Henderson City Attorney's Office.

18 THE COURT: And if you are married, does your spouse
19 work?

20 PROSPECTIVE JUROR 141: I'm not married.

21 THE COURT: Have you ever sued or been sued?

22 PROSPECTIVE JUROR 141: No.

23 THE COURT: And have you ever sat before on a jury? I think
24 you said yes?

25 PROSPECTIVE JUROR 141: I have. I've been on a -- it was a

1 federal case here in town.

2 THE COURT: Did the jury deliberate?

3 PROSPECTIVE JUROR 141: It did.

4 THE COURT: Did you participate?

5 PROSPECTIVE JUROR 141: I did.

6 THE COURT: Did they reach a verdict?

7 PROSPECTIVE JUROR 141: They did.

8 THE COURT: And were you the foreperson?

9 PROSPECTIVE JUROR 141: I was not.

10 THE COURT: Thank you. Let's start back here.

11 PROSPECTIVE JUROR 210: Jacob Harrison, 210.

12 THE COURT: Thank you. How long have you lived in Las
13 Vegas?

14 PROSPECTIVE JUROR 210: 20 years, but I lived in Texas for
15 a summer.

16 THE COURT: And if you're -- so you manage Big O Tires?

17 PROSPECTIVE JUROR 210: Discount Tire.

18 THE COURT: Discount Tire. Okay. And if you're married,
19 does your spouse work?

20 PROSPECTIVE JUROR 210: I'm not married.

21 THE COURT: Have you ever sued or been sued?

22 PROSPECTIVE JUROR 210: My insurance company got sued.

23 THE COURT: Okay. Was it from a motor vehicle accident?

24 PROSPECTIVE JUROR 210: Yeah.

25 THE COURT: Is there anything about having gone through

1 that that would keep you from being equally fair to both sides?

2 PROSPECTIVE JUROR 210: Yes.

3 THE COURT: Why?

4 PROSPECTIVE JUROR 210: It just -- I just think it wasn't --
5 there wasn't a point to it. So in that case anyways, I'm not saying all
6 cases are like that, but.

7 THE COURT: So you got in -- you got sued relating to a
8 motor vehicle accident?

9 PROSPECTIVE JUROR 210: Yes.

10 THE COURT: Is it resolved now?

11 PROSPECTIVE JUROR 210: Yes.

12 THE COURT: And you can't put it behind you?

13 PROSPECTIVE JUROR 210: I did. I mean, I'm obviously here.

14 THE COURT: Would you listen to the evidence --

15 PROSPECTIVE JUROR 210: Yes.

16 THE COURT: -- and give it the appropriate weight and be
17 equally fair to both sides?

18 PROSPECTIVE JUROR 210: Yes.

19 THE COURT: All right. And have you ever served before on
20 a jury?

21 PROSPECTIVE JUROR 210: No, ma'am.

22 THE COURT: Thank you. Let's go to our next person,
23 please?

24 PROSPECTIVE JUROR 283: Katelyn Landau, 283.

25 THE COURT: How long have you lived in Las Vegas?

1 PROSPECTIVE JUROR 283: Since 2009.

2 THE COURT: If you're married -- I'm sorry. If you're
3 employed, what kind of work do you do?

4 PROSPECTIVE JUROR 283: I work at Whole Foods.

5 THE COURT: If you are married, does your spouse work?

6 PROSPECTIVE JUROR 283: I'm not married.

7 THE COURT: Have you ever sued anyone or been sued?

8 PROSPECTIVE JUROR 283: No.

9 THE COURT: And have you ever served before on jury duty?

10 PROSPECTIVE JUROR 283: No.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR 401: Brenda Santoyo, 401.

13 THE COURT: Okay. How long have you lived in Las Vegas?

14 PROSPECTIVE JUROR 401: Since 1996.

15 THE COURT: And we know that you're a teacher.

16 PROSPECTIVE JUROR 401: Yes.

17 THE COURT: If you're married, does your spouse work?

18 PROSPECTIVE JUROR 401: He does.

19 THE COURT: What kind of work?

20 PROSPECTIVE JUROR 401: Housekeeping at the MGM.

21 THE COURT: Have you ever served before on a jury?

22 PROSPECTIVE JUROR 401: No.

23 THE COURT: Have you ever sued anyone or been sued?

24 PROSPECTIVE JUROR 401: An automobile accident. I don't
25 know who my attorney sued, but they sued somebody.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR 401: Yes.

3 THE COURT: Okay. So is that case resolved now?

4 PROSPECTIVE JUROR 401: Yes.

5 THE COURT: And is there anything about having gone
6 through that that would keep you from being equally fair to both sides?

7 PROSPECTIVE JUROR 401: I don't think so.

8 THE COURT: Thank you.

9 PROSPECTIVE JUROR 404: Stephen Keith, 404.

10 THE COURT: Mr. Keith, how long have you lived in Las
11 Vegas?

12 PROSPECTIVE JUROR 404: Since '79. 41 or 2 years,
13 whatever that is, 42.

14 THE COURT: And you're -- it says that you're retired?

15 PROSPECTIVE JUROR 404: I am.

16 THE COURT: What did you retire from?

17 PROSPECTIVE JUROR 404: Accounting.

18 THE COURT: If you're married, does your spouse work?

19 PROSPECTIVE JUROR 404: Yes.

20 THE COURT: What kind of work?

21 PROSPECTIVE JUROR 404: IT manager.

22 THE COURT: Have you ever served before on a jury?

23 PROSPECTIVE JUROR 404: I've been this far --

24 THE COURT: Okay.

25 PROSPECTIVE JUROR 404: -- a couple of times.

1 THE COURT: Okay. So have you ever sued anyone or been
2 sued?

3 PROSPECTIVE JUROR 404: I am a part of a class action suit.
4 I don't know if that's the same thing.

5 THE COURT: That counts. And what is that over?

6 PROSPECTIVE JUROR 404: Blue Cross Blue Shield.

7 THE COURT: Okay. And does the fact that you are involved
8 in that litigation cause you to be less than equally fair to either side?

9 PROSPECTIVE JUROR 404: I don't think so, but you know. I
10 don't think so, no. I mean, I don't know how this all is going to go or
11 what's going to be. But I would try to be as impartial as possible.

12 THE COURT: That's all we ask. Thank you. All right. Our
13 next person please, if you'll pass the mic down?

14 PROSPECTIVE JUROR 441: Miguel Recto, badge number
15 441.

16 THE COURT: Thank you. How long have you lived in Las
17 Vegas?

18 PROSPECTIVE JUROR 441: Since 2007.

19 THE COURT: If you're employed, what do you do for a
20 living?

21 PROSPECTIVE JUROR 441: I'm a marketing analyst for a
22 game company.

23 THE COURT: If you're married, does your spouse work?

24 PROSPECTIVE JUROR 441: I'm not married.

25 THE COURT: And have you ever served before on a jury?

1 PROSPECTIVE JUROR 441: No, I have not.

2 THE COURT: And have you ever sued anyone or been sued?

3 PROSPECTIVE JUROR 441: Not personally, but I do have
4 someone in my family that is currently working on a claim.

5 THE COURT: And anything about watching that family
6 member go through that keep you from being equally fair to both sides?

7 PROSPECTIVE JUROR 441: I believe I can remain fair.

8 THE COURT: Thank you. Our next person, please?

9 PROSPECTIVE JUROR 450: Zerrick Walker, number 450.

10 THE COURT: Okay. How long have you lived in Las Vegas?

11 PROSPECTIVE JUROR 450: I was born and raised.

12 THE COURT: Nice. And what kind of work do you do?

13 PROSPECTIVE JUROR 450: I work for the DMV.

14 THE COURT: If you're married, does your spouse work?

15 PROSPECTIVE JUROR 450: I'm not married.

16 THE COURT: Have you ever served before on a jury?

17 PROSPECTIVE JUROR 450: I served on a grand jury before.

18 THE COURT: Anything about having done that keep you
19 from being less than fair to either side?

20 PROSPECTIVE JUROR 450: I would remain fair and open-
21 minded.

22 THE COURT: Thank you. And have you ever sued anyone or
23 been sued?

24 PROSPECTIVE JUROR 450: No.

25 THE COURT: Thank you. Let's go to our next person,

1 please?

2 PROSPECTIVE JUROR 488: Samuel Villezcas, badge number
3 488.

4 THE COURT: How long have you lived in Las Vegas?

5 PROSPECTIVE JUROR 488: I was born and raised. I have
6 lived in Moapa since 1993.

7 THE COURT: Oh, Moapa. Sorry about that. I knew that, too.
8 And we note that you work in housing?

9 PROSPECTIVE JUROR 488: Yes, ma'am. It's low-income
10 housing on the reservation out there.

11 THE COURT: And if you're married, does your spouse work?

12 PROSPECTIVE JUROR 488: Yes. She's an administrative
13 assistant for the Tribal Government.

14 THE COURT: Have you ever served before on a jury?

15 PROSPECTIVE JUROR 488: No.

16 THE COURT: Have you ever sued anyone or been sued?

17 PROSPECTIVE JUROR 488: Yes, ma'am.

18 THE COURT: And tell us about that.

19 PROSPECTIVE JUROR 488: I was in a car accident. And the
20 guy I was with drove off the road and crashed into a big pile of debris
21 that was on the side, and it injured my back. And we just went after the
22 insurance, and we settled with them.

23 THE COURT: Did you get better?

24 PROSPECTIVE JUROR 488: Yes, ma'am.

25 THE COURT: And is there -- is there anything about that

1 pending now?

2 PROSPECTIVE JUROR 488: No.

3 THE COURT: Anything about having gone through that
4 caused you to be less than equally fair to both sides?

5 PROSPECTIVE JUROR 488: No.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR 494: My name is Steve Zabinski, 494.

8 THE COURT: And how long have you -- how long have you
9 lived in Las Vegas?

10 PROSPECTIVE JUROR 494: Since '05.

11 THE COURT: If you're employed, what kind of work do you
12 do?

13 PROSPECTIVE JUROR 494: I have a small business. We sell
14 granite countertops and quartz.

15 THE COURT: If you're married, does your spouse work?

16 PROSPECTIVE JUROR 494: Divorced.

17 THE COURT: And have you ever served before on a jury?

18 PROSPECTIVE JUROR 494: I've been called but not selected.

19 THE COURT: Okay. And have you ever sued or been sued?

20 PROSPECTIVE JUROR 494: I've had a couple people try to
21 sue me; ex-wife, she got nothing. And a customer several years ago,
22 tried to sue me. They got nothing also.

23 THE COURT: So is there anything about -- it's -- they're both
24 resolved now?

25 PROSPECTIVE JUROR 494: Yeah.

1 THE COURT: Is there anything about having gone through
2 that cause you to be less than fair to both sides?

3 PROSPECTIVE JUROR 494: I will be nonbiased.

4 THE COURT: Thank you. Okay. Let's pass that mic over.

5 PROSPECTIVE JUROR 522: Linda Friedrich, 522.

6 THE COURT: Thank you. How long have you lived in Las
7 Vegas?

8 PROSPECTIVE JUROR 522: 44 years.

9 THE COURT: If you're employed, what kind of work do you
10 do?

11 PROSPECTIVE JUROR 522: I'm retired now.

12 THE COURT: And what did you retire from?

13 PROSPECTIVE JUROR 522: Registered nurse.

14 THE COURT: And if you're married, does your spouse work?

15 PROSPECTIVE JUROR 522: I'm married. He's retired also.

16 THE COURT: What did he do before retirement?

17 PROSPECTIVE JUROR 522: Mail order pharmaceuticals.

18 THE COURT: Have you ever served before on a jury?

19 PROSPECTIVE JUROR 522: Yes, twice.

20 THE COURT: Here in Clark County?

21 PROSPECTIVE JUROR 522: Yes.

22 THE COURT: Were they civil or criminal cases?

23 PROSPECTIVE JUROR 522: Both civil.

24 THE COURT: And did you deliberate with the jury?

25 PROSPECTIVE JUROR 522: Yes.

1 THE COURT: Did the jury reach a verdict?

2 PROSPECTIVE JUROR 522: Yes.

3 THE COURT: Were you the foreperson?

4 PROSPECTIVE JUROR 522: No.

5 THE COURT: Okay. Thank you. The next person, please?

6 PROSPECTIVE JUROR 532: Randy Meyer, 532.

7 THE COURT: Thank you. How long have you lived in Las
8 Vegas?

9 PROSPECTIVE JUROR 532: 21 years.

10 THE COURT: And what kind of work do you do?

11 PROSPECTIVE JUROR 532: I'm retired.

12 THE COURT: What did you retire from?

13 PROSPECTIVE JUROR 532: Brady Linen, operating engineer.

14 THE COURT: And if you're married, does your spouse work?

15 PROSPECTIVE JUROR 532: Yes, she does.

16 THE COURT: And what kind of work does she do?

17 PROSPECTIVE JUROR 532: She is a commercial loan
18 underwriter.

19 THE COURT: Have you ever served before on a jury?

20 PROSPECTIVE JUROR 532: Yes.

21 THE COURT: Here in Clark County?

22 PROSPECTIVE JUROR 532: Yes.

23 THE COURT: Was it a civil or criminal case?

24 PROSPECTIVE JUROR 532: Civil.

25 THE COURT: And did the jury deliberate?

1 PROSPECTIVE JUROR 532: Yes.

2 THE COURT: Did you participate?

3 PROSPECTIVE JUROR 532: Yes.

4 THE COURT: Did you reach a verdict?

5 PROSPECTIVE JUROR 532: Yes, we did.

6 THE COURT: Were you the foreperson?

7 PROSPECTIVE JUROR 532: I was not.

8 THE COURT: Okay. Thank you. Our next person, please?

9 PROSPECTIVE JUROR 544: Gerardo Ordaz, 544 badge

10 number.

11 THE COURT: Thank you. How long have you lived in Las

12 Vegas?

13 PROSPECTIVE JUROR 544: 26 years.

14 THE COURT: And what kind of work do you do?

15 PROSPECTIVE JUROR 544: I used to do auto glass. Business

16 went out of business. My business went out of business. So a month

17 and a half ago, I just started to get my CDL for truck driving.

18 THE COURT: And you are starting a training program

19 Thursday?

20 PROSPECTIVE JUROR 544: Correct.

21 THE COURT: Right. If you're married, does your spouse

22 work?

23 PROSPECTIVE JUROR 544: I'm not married.

24 THE COURT: Have you ever served before on a jury?

25 PROSPECTIVE JUROR 544: No.

1 THE COURT: And have you ever sued someone or been
2 sued?

3 PROSPECTIVE JUROR 544: No.

4 THE COURT: Thank you.

5 PROSPECTIVE JUROR 555: Albert Smith, 555.

6 THE COURT: Thank you, Mr. Smith. How long have you
7 lived in Las Vegas?

8 PROSPECTIVE JUROR 555: 16 years, approximately.

9 THE COURT: And it says here -- it doesn't have employment.
10 Are you retired?

11 PROSPECTIVE JUROR 555: No, I work at --

12 THE COURT: Oh, no. I'm sorry, you answered that already.
13 You do work?

14 PROSPECTIVE JUROR 555: I do work.

15 THE COURT: 7:30 to 3:30?

16 PROSPECTIVE JUROR 555: Yes. No, to 3. It's only seven-
17 and-a-half hours.

18 THE COURT: Okay. And does your wife -- what do you do?

19 PROSPECTIVE JUROR 555: She works the same too.

20 THE COURT: What kind of work do you do?

21 PROSPECTIVE JUROR 555: I work for gaming, Golden
22 Entertainment, actually, and Smith Robertson [phonetic], whatever.

23 THE COURT: And what kind of work does your wife do?

24 PROSPECTIVE JUROR 555: The same.

25 THE COURT: Okay. Have you ever served before on a jury?

1 PROSPECTIVE JUROR 555: No, but I was called. But I wasn't
2 picked.

3 THE COURT: Okay. And have you ever sued or been sued?

4 PROSPECTIVE JUROR 555: Yes, I have.

5 THE COURT: And what was that about?

6 PROSPECTIVE JUROR 555: It was a small claims count --
7 case, and I never got anything from it. It was awarded to me, but I never
8 saw a penny of it.

9 THE COURT: Having been through that, is there anything
10 about having been through that that would keep you from being less
11 than fair, equally, to both sides?

12 PROSPECTIVE JUROR 555: I don't know. It's hard to say.

13 THE COURT: I have the impression you don't really want to
14 be here.

15 PROSPECTIVE JUROR 555: No, I don't.

16 THE COURT: So I am trying to be polite. Could you listen to
17 the evidence and use your reasonableness and make a decision with a
18 group of people?

19 PROSPECTIVE JUROR 555: I could try, but my heart is
20 beating real hard right now.

21 THE COURT: I'm sorry that I put you on the spot. Could you
22 please pass the mic?

23 PROSPECTIVE JUROR 564: Ronald Rucker, 564.

24 THE COURT: How long have you lived in Las Vegas?

25 PROSPECTIVE JUROR 564: 20 years.

1 THE COURT: And what kind of work do you do?

2 PROSPECTIVE JUROR 564: Truck driver.

3 THE COURT: If you're married, does your spouse work?

4 PROSPECTIVE JUROR 564: Single.

5 THE COURT: And have you ever sued anyone or been sued?

6 PROSPECTIVE JUROR 564: Yes.

7 THE COURT: And what kind of case was it?

8 PROSPECTIVE JUROR 564: It was a traffic accident over 25
9 years ago.

10 THE COURT: And were you injured?

11 PROSPECTIVE JUROR 564: Yeah.

12 THE COURT: And did you recover?

13 PROSPECTIVE JUROR 564: Yes.

14 THE COURT: And that's resolved now?

15 PROSPECTIVE JUROR 564: Yes.

16 THE COURT: Is there anything about having gone through
17 that, being -- to keep you from being equally fair to both sides?

18 PROSPECTIVE JUROR 564: No.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR 569: Joshua Seid, 569.

21 THE COURT: Thank you. So I know you work at the airport
22 in passenger services?

23 PROSPECTIVE JUROR 569: Uh-huh.

24 THE COURT: If you're married, does your wife work?

25 PROSPECTIVE JUROR 569: We're basically married. We're

1 engaged. I mean, we've lived together and all that. But yes, she works
2 in the medical field.

3 THE COURT: What does she do?

4 PROSPECTIVE JUROR 569: Like, basically, she works in a
5 clinic and like, you know, swabs people. And sometimes she goes in the
6 city, different events, and you know, for people that go to concerts, and
7 stuff like that. You know, three to four days a week.

8 THE COURT: Who is her employer?

9 PROSPECTIVE JUROR 569: I don't remember the actual
10 name.

11 THE COURT: All right. Have you ever served before on a
12 jury?

13 PROSPECTIVE JUROR 569: No, I have not.

14 THE COURT: Have you ever sued or been sued?

15 PROSPECTIVE JUROR 569: No.

16 THE COURT: Okay. Thank you.

17 PROSPECTIVE JUROR 590: Melissa Neyman, 590.

18 THE COURT: All right. How long have you lived in Clark
19 County?

20 PROSPECTIVE JUROR 590: 25 years.

21 THE COURT: And we know that you teach seventh grade. If
22 you're married, does your spouse work?

23 PROSPECTIVE JUROR 590: Pardon me?

24 THE COURT: If you're married, does your spouse work?

25 PROSPECTIVE JUROR 590: No, I'm not married.

1 THE COURT: Okay. And have you ever sat before on a jury?

2 PROSPECTIVE JUROR 590: No.

3 THE COURT: Have you ever sued or been sued?

4 PROSPECTIVE JUROR 590: No.

5 THE COURT: Any -- okay. Good enough. I'll ask you to pass
6 the mic. Okay. Mr. Nesci.

7 PROSPECTIVE JUROR 593: Thomas Nesci, 593.

8 THE COURT: How long have you lived in Las Vegas?

9 PROSPECTIVE JUROR 593: 48 years.

10 THE COURT: We know that you're married because she --
11 you said she's the boss.

12 PROSPECTIVE JUROR 593: She is, yes. She's a retired
13 schoolteacher.

14 THE COURT: Have you ever served before on a jury?

15 PROSPECTIVE JUROR 593: No.

16 THE COURT: And have you ever sued or been sued?

17 PROSPECTIVE JUROR 593: No.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR 593: You're welcome.

20 PROSPECTIVE JUROR 719: Joan Martinez, 719.

21 THE COURT: Hang on. I just need to catch up here. Okay.
22 How long have you lived in Las Vegas?

23 PROSPECTIVE JUROR 719: 20 years.

24 THE COURT: What kind of work do you do?

25 PROSPECTIVE JUROR 719: I'm a liquor manager in a grocery

1 store.

2 THE COURT: If you're married, does your spouse work?

3 PROSPECTIVE JUROR 719: He's retired.

4 THE COURT: What did he retire from?

5 PROSPECTIVE JUROR 719: Flamingo Hotel.

6 THE COURT: And have you ever sued or been sued?

7 PROSPECTIVE JUROR 719: No.

8 THE COURT: Have you ever served before on a jury?

9 PROSPECTIVE JUROR 719: No.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR 729: Blanca Salvatierra, 729.

12 THE COURT: Thank you. How long have you lived in Clark
13 County?

14 PROSPECTIVE JUROR 729: 18 years.

15 THE COURT: What kind of work do you do?

16 PROSPECTIVE JUROR 729: Office staff.

17 THE COURT: Who is your employer?

18 PROSPECTIVE JUROR 729: A landscape company.

19 THE COURT: If you're married, does your spouse work?

20 PROSPECTIVE JUROR 729: I'm married. He does not work.

21 THE COURT: Okay. And have you ever served before on a
22 jury?

23 PROSPECTIVE JUROR 729: I have, yes.

24 THE COURT: Here in Clark County?

25 PROSPECTIVE JUROR 729: No. Los Angeles.

1 THE COURT: Was it a civil or criminal case?

2 PROSPECTIVE JUROR 729: Civil.

3 THE COURT: Did you deliberate with the jury?

4 PROSPECTIVE JUROR 729: I did.

5 THE COURT: Did the jury reach a verdict?

6 PROSPECTIVE JUROR 729: We did.

7 THE COURT: And were you the foreperson of the jury?

8 PROSPECTIVE JUROR 729: I was not.

9 THE COURT: Thank you all. This is going to be a time for
10 our afternoon recess. I don't have the exact time. Let me see if I can --
11 it's 2:56. So I'll ask you to line up at 3:15 sharp out there. And let me
12 read this admonition to you.

13 During the recess, do not talk with each or anyone else on
14 any subject connected with the trial. Don't speculate as to what it might
15 be about. Don't speculate about who the witnesses are or what their
16 testimony might be. Don't speculate anything about the lawyers. If this
17 is covered on TV, don't read, watch, or listen to any report of or
18 commentary on the trial. Don't discuss this case with anyone connected
19 to it by any means of information, including without limitation,
20 newspapers, television, radio, internet, cell phone, or texting.

21 Don't conduct any research on your own relating to the case.
22 You can't consult dictionaries, use the internet, or use any reference
23 materials. Don't text, tweet, Google, or conduct any other type of
24 research with regard to any issue, party, witness, or attorney involved in
25 the case.

1 Most importantly, if you are selected for the jury, do not form
2 or express any opinion on any subject connected with the trial until the
3 matter is submitted to you.

4 You've been really attentive today. Thanks, everyone. Be
5 ready at 3:15.

6 THE MARSHAL: All rise for the jury.

7 [Prospective jurors out at 2:57 p.m.]

8 [Outside the presence of the prospective jurors]

9 THE COURT: Okay. The room is now clear.

10 Plaintiff, do you have anything for the record?

11 MR. ZAVITSANOS: No, Your Honor.

12 THE COURT: Defendant?

13 MR. ROBERTS: No, Your Honor.

14 THE COURT: So when you all come back from the break, I'll
15 turn it over for your voir dire. Thank you.

16 MR. ROBERTS: Thank you.

17 MR. ZAVITSANOS: Thank you, Your Honor.

18 [Recess from 2:58 p.m. to 3:13 p.m.]

19 THE COURT: All right. Please, be seated. Please, remain
20 seated. Thank you. Okay. Ready to bring the jury --

21 MR. ZAVITSANOS: Yes, Your Honor.

22 THE COURT: Okay. Yes?

23 MR. BLALACK: We are, Your Honor.

24 MR. ZAVITSANOS: Your Honor, how long are we going
25 today?

1 THE COURT: 4:45.

2 MR. ZAVITSANOS: Thank you.

3 THE COURT: I gave the jurors the schedule, but I didn't give
4 you guys one.

5 MR. ZAVITSANOS: Oh, actually, I'm sorry, Your Honor. It's
6 sitting right in front of me.

7 THE COURT: You did -- you did get it?

8 MR. ZAVITSANOS: My apologies.

9 THE COURT: Okay.

10 The county won't let us incur overtime.

11 MR. ZAVITSANOS: Okay.

12 [Pause]

13 THE COURT: So the way that I do it, counsel, is that at the --
14 when you pass -- I'll say, do you pass a panel for cause or will you have
15 a motion to make. Okay?

16 MR. ZAVITSANOS: Yes, Your Honor.

17 THE COURT: That's the trigger.

18 MR. ZAVITSANOS: So we could save our cause challenges
19 until the end?

20 THE COURT: Well, you know, technically, you've got twenty-
21 four people here now, but I have a feeling you're not going to -- you may
22 -- there may be some that you both agree at the end of the day.

23 THE MARSHAL: All rise for the jury.

24 [Prospective juror in at 3:16 p.m.]

25 THE COURT: Thank you. Please, be seated.

1 Counsel for the Plaintiff, you may now voir dire the jury.

2 MR. ZAVITSANOS: Thank you, Your Honor. And may it
3 please the Court, counsel. Well, good afternoon.

4 IN UNISON: Good afternoon.

5 MR. ZAVITSANOS: Okay. We very much appreciate your
6 patience.

7 Let me start off by introducing myself again, and I'm going to
8 tell you who I represent. And if you end up on the jury, you will meet
9 some of the other lawyers during the course of the trial. My name is
10 John Zavitsanos, okay, and along with Pat Lundvall.

11 So you'll probably figure out right away I'm not from Las
12 Vegas. Some of the lawyers on the other side are not from Las Vegas.
13 Some of the lawyers from the other side are from Las Vegas. Ms.
14 Lundvall is from Las Vegas. So we've got kind of a mix of both.

15 So we represent the doctors, the nurses, the nurse
16 practitioners, and the physician assistants of three companies here in
17 Nevada. Okay? And it's Fremont Emergency Services. We're going to
18 call them Fremont. Team Physicians of Nevada-Mandavia. We're going
19 to call them Team Physicians. And the third one, it sounds like a law
20 firm, but it's Crum, Stefanko, and Jones, but we all call them Ruby Crest.
21 It does business as Ruby Crest.

22 And now one thing you have not heard is where these
23 doctors and nurses work, and that might impact on -- you know -- your
24 feelings on this case. So let me -- I'm going to edify what part of the
25 state we work in and what hospitals we work in. Okay. And this is a little

1 bit more of the boring part. I'll get to more probative questions in just a
2 little bit.

3 All right. So Fremont, that's the one that has -- this is a case
4 about claims that have been submitted to United and there's a dispute
5 about how much should be paid on those claims. All right.

6 The doctors, nurses, nurse practitioners, and physician
7 assistants of Fremont work at the following hospitals in Las Vegas and in
8 Clark County. Aliante, the Lakes, MountainView Hospital, Dignity Health
9 -- three campuses -- the Rose de Lima, the San Martin Campus, and the
10 Siena campus. We also have healthcare professionals at Southern Hills
11 Hospital and Sunrise Hospital. Okay. And I know you all have heard of
12 those. Team Physicians is up in Fallon, and they -- we have folks at their
13 -- at the Banner Churchill Community Hospital. And then finally Ruby
14 Crest, they're in Elko. And they work with Northeastern Nevada
15 Regional Hospital. Okay.

16 Now, I'm going to ask in a minute whether anybody has ever
17 been to the emergency room because our people all work in the
18 emergency room. And I'm going to tell you a little -- just a little bit more
19 about that.

20 The law does not permit me to get into what the case is
21 about in any great detail; we're just going to ask some questions. But
22 has anybody been to any of those emergency rooms? Either for a friend,
23 a family member, or yourself?

24 Okay. Okay. So let me just go real quick down the line. And
25 sorry, you know, there are just some people that can memorize people's

1 names. I'm not very good at it. So forgive me, if you would just identify
2 your number? Okay. So let me start in the back. All the way in the back.
3 What hands were raised that have been to any of those -- any of those
4 facilities, please? Okay. So let me start with the nice young lady here on
5 the corner and -- please.

6 PROSPECTIVE JUROR 004: 004.

7 MR. ZAVITSANOS: And what facility, ma'am?

8 PROSPECTIVE JUROR 004: MountainView --

9 MR. ZAVITSANOS: Okay.

10 PROSPECTIVE JUROR 004: -- Hospital.

11 MR. ZAVITSANOS: Okay. And I'm not going to go into any
12 detail, but -- family member? Friend? Or yourself?

13 PROSPECTIVE JUROR 004: Family member.

14 MR. ZAVITSANOS: Okay. More than once?

15 PROSPECTIVE JUROR 004: It was -- last year.

16 MR. ZAVITSANOS: Okay. All right. Next. Same questions?

17 PROSPECTIVE JUROR 034: 034. MountainView with my son
18 and myself.

19 MR. ZAVITSANOS: Okay. Any of the others? Okay. Thank
20 you.

21 Yes, ma'am?

22 PROSPECTIVE JUROR 141: 141. Sunrise for a family
23 member and MountainView for a friend.

24 MR. ZAVITSANOS: All right. Okay. Well, you can pass that
25 up, please. Thank you. All right.

1 MR. ZAVITSANOS: We can pass it all the way down. We're
2 just going to take them in order. Okay. Thank you.

3 PROSPECTIVE JUROR 210: 210. MountainView for myself.

4 MR. ZAVITSANOS: Okay. One time?

5 PROSPECTIVE JUROR 210: A couple of times.

6 MR. ZAVITSANOS: A couple of times. Okay.

7 PROSPECTIVE JUROR 283: 283, and MountainView for
8 myself.

9 MR. ZAVITSANOS: Okay.

10 PROSPECTIVE JUROR 401: 401. St. Rose de Lima for my
11 husband. Siena Campus for my daughter. And Sunrise for my husband.

12 MR. ZAVITSANOS: Okay. Thank you, ma'am.

13 PROSPECTIVE JUROR 404: 404, Sunrise Hospital emergency
14 room for myself.

15 MR. ZAVITSANOS: Okay. One time?

16 PROSPECTIVE JUROR 404: Yes.

17 MR. ZAVITSANOS: Okay. Thank you.

18 PROSPECTIVE JUROR 450: Number 450.

19 MR. ZAVITSANOS: 450. Yes, sir.

20 PROSPECTIVE JUROR 450: For Sunrise.

21 MR. ZAVITSANOS: Okay.

22 PROSPECTIVE JUROR 450: For a family member.

23 MR. ZAVITSANOS: Okay. Once?

24 PROSPECTIVE JUROR 450: Multiple times.

25 MR. ZAVITSANOS: I'm sorry?

1 PROSPECTIVE JUROR 450: Multiple times.
2 MR. ZAVITSANOS: Multiple times to the emergency room?
3 PROSPECTIVE JUROR 450: Yes.
4 MR. ZAVITSANOS: Okay.
5 PROSPECTIVE JUROR 488: Number 488. Sunrise Hospital,
6 MountainView, and Aliante also.
7 MR. ZAVITSANOS: Okay. For yourself or for a family
8 member?
9 PROSPECTIVE JUROR 488: MountainView and Sunrise for
10 multiple family members and Aliante for myself.
11 MR. ZAVITSANOS: Thank you, sir.
12 Anybody in the -- okay.
13 PROSPECTIVE JUROR 522: 522, Sunrise for my husband.
14 MountainView for myself, my husband, and my brother.
15 MR. ZAVITSANOS: And your --
16 PROSPECTIVE JUROR 522: Brother.
17 MR. ZAVITSANOS: Brother. Okay. Thank you, ma'am. For
18 each of those folks, multiple times or --
19 PROSPECTIVE JUROR 522: Once each.
20 MR. ZAVITSANOS: Once each. Okay. Thank you. Yes, sir?
21 PROSPECTIVE JUROR 532: 532.
22 MR. ZAVITSANOS: Yes, sir?
23 PROSPECTIVE JUROR 532: Aliante, family member, one
24 time.
25 MR. ZAVITSANOS: One time. Okay. Yes, sir. Thank you.

1 PROSPECTIVE JUROR 544: 544. Sunrise for a family
2 member. And MountainView for a friend.

3 MR. ZAVITSANOS: Okay.

4 PROSPECTIVE JUROR 555: I believe I've been to all three of
5 them. 555. Aliante was the last one.

6 MR. ZAVITSANOS: Okay. For yourself or for --

7 PROSPECTIVE JUROR 555: For myself.

8 MR. ZAVITSANOS: Okay. Any family members or close
9 friends?

10 PROSPECTIVE JUROR 555: That I recall, no.

11 MR. ZAVITSANOS: Okay. So you -- I'm sorry, and you said
12 you've been to all of the --

13 PROSPECTIVE JUROR 555: All three of them.

14 MR. ZAVITSANOS: -- Clark County --

15 Okay. Got it. Thank you, sir.

16 Okay?

17 PROSPECTIVE JUROR 569: Sunrise Hospital for a friend, St.
18 Rose for myself --

19 MR. ZAVITSANOS: Your number, sir?

20 THE COURT: Your badge number?

21 PROSPECTIVE JUROR 569: Oh, sorry. 569.

22 MR. ZAVITSANOS: That's okay. That's all right.

23 PROSPECTIVE JUROR 569: All right. St. Rose, Sunrise,
24 MountainView for a family member long -- thirteen years ago.

25 MR. ZAVITSANOS: Okay. Thank you. Anybody in the front

1 row? Okay.

2 PROSPECTIVE JUROR 593: 593. You said you're not from
3 here. Did you mean -- you said St. Martin Campus. Did you mean the
4 San Martin Campus?

5 MR. ZAVITSANOS: San Martin Campus.

6 PROSPECTIVE JUROR 593: San Martin.

7 MR. ZAVITSANOS: Thank you for correcting me.

8 PROSPECTIVE JUROR 593: You're welcome. It is -- let's see,
9 San Martin; family member. MountainView; family member twice.
10 Siena Campus; me, twice.

11 MR. ZAVITSANOS: Okay. Thank you.

12 PROSPECTIVE JUROR 593: You're welcome.

13 PROSPECTIVE JUROR 719: 719, Southern Hills Hospital
14 multiple times myself.

15 MR. ZAVITSANOS: Okay. Any family members or close
16 friends?

17 PROSPECTIVE JUROR 719: No.

18 MR. ZAVITSANOS: Okay. Thank you.

19 Okay. So you all may get sick of me by the time this is done,
20 but this is the only time in the trial -- the only time that either I or the
21 lawyers or the Defendants get to actually talk with you where you can
22 talk back to us, and we can talk to you. We are ethically prohibited from
23 communicating or talking to you once the trial starts. This is the only
24 time we can talk. Okay.

25 Now, I will tell you that this case is very important to us and

1 it's very important to them. Okay. Both sides have worked very hard to
2 get here. So we need your candor, and we need you to open up. And if
3 we -- and if we say something that you don't agree with or that you have
4 some feelings about, we need to hear that. Everybody with me?

5 So here's what I'm going to do. I'm going to start out by
6 asking everybody if I can get a commitment from you that if I say
7 something that you have a strong feeling about, you're going to raise
8 your hand, give me your number, and tell me what you're thinking. Will
9 everybody agree to do that?

10 Okay. Not everybody is raising their hands now. Come on.
11 Okay. All right. So -- and here's what we're doing, right? We are trying
12 -- it sounds simple, but it's actually a little more involved than what it
13 sounds. We are trying to find people that really don't have such strong
14 feelings that it's going to -- it's going to inhibit them or prevent them
15 from being able to think about the evidence because those feelings are
16 getting in the way. All right.

17 So right now, during this part and only during this part, you
18 can disagree with anything that anybody says in this courtroom,
19 including even Her Honor. But once you get sworn in, you have to
20 follow the Court's instructions and you have to follow the law.

21 And we recognize that there is a tension sometimes between
22 what we feel and what we're supposed to do, and that's what we're
23 doing right now. We're trying to figure it out, right? So, like, I'm a -- I'm
24 a Bears fan, okay? And if a case involved the Green Bay Packers, there's
25 no way I would -- I would side with them. Okay. Okay. No way.

1 Because we're kind of jealous of them because they've got more titles
2 than us, right? But I mean, that's the kind of thing where you just have
3 kind of strong feelings.

4 So let me start out by telling you a couple of -- a couple of
5 topics. And again, I can't get into the facts because it's not really time
6 yet. If you end up on the jury, you're going to hear a lot more about this
7 case. But one of the things you're going to hear is that we are asking for
8 over \$10 million. Okay.

9 Now, and the other thing you're going to hear, I think, during
10 the course of this case, is for some of the questions you're going to be
11 asked to answer -- have you all heard about the various burdens of
12 proof? Like, beyond a reasonable doubt. We're all familiar with that,
13 right? Well, there are different levels -- different burdens of proof that
14 apply to different types of cases.

15 So for criminal cases, because we're taking people's liberty,
16 we make it very, very tough for the State to convict, because we don't
17 want to be putting people in jail easily. We want to be certain that they
18 did the crime, and so we have the highest standard, which is beyond a
19 reasonable doubt. Okay?

20 Then below that you've got something called clear and
21 convincing, okay, which is somewhere between the one I'm about to talk
22 about and beyond a reasonable doubt.

23 And then the lower standard below that is something called
24 preponderance of the evidence. And the Judge is going to give you --
25 Her Honor is going to give you an instruction at the end of the trial about

1 what that means.

2 Lawyers sometimes say that just means, like, if you have the
3 scales justice, if you take a feather and you just tip is slightly on one
4 side, you have satisfied preponderance of the evidence. In other words,
5 you don't have to be certain beyond a reasonable doubt, you just have to
6 think, well, it's more likely so than not. So if we use numbers, it's like 51
7 percent certain. Everybody with me?

8 Now, here's the question. Without having heard any
9 evidence, the fact that I threw out that number -- over \$10 million -- is
10 anybody here going to think, woah, that is a lot of money. And before
11 you can ask for that kind of money, I'm going to have a really hard time
12 applying a preponderance standard. I'm going to need a much higher
13 standard, like, beyond a reasonable doubt or clear and convincing.
14 Before I can award that much money -- force one party to pay another
15 party that much money. Everybody understand the question?

16 Okay. Now, here's the thing. I'm not going to -- I'm not
17 picking on you. Okay? But I've got to talk with you all. We've got to get
18 a little dialogue going. So I'm going to start out with Juror number 210.
19 And that is --

20 Okay. Yes, sir. So what do you think about that? What I just
21 said.

22 PROSPECTIVE JUROR 210: What do you mean by that? Like,
23 the amount of --

24 MR. ZAVITSANOS: So the fact that -- let me give you -- let
25 me put a little bit more meat on the bone. Okay? And again, I can't get

1 too far into the evidence. So these are claims -- the claims at issue in
2 this case, are not claims that were not paid, they were paid at a certain
3 level that United, and the other entities here think ought to be paid, and
4 we think they should have been paid at a different level. Are you with
5 me?

6 PROSPECTIVE JUROR 210: Yeah.

7 MR. ZAVITSANOS: Okay. So the insurance companies said
8 this is the -- this is the correct rate, and we said, no, this is the correct
9 rate.

10 Now, before you -- if you ended up on the jury and we're
11 seeking over \$10 million, not having heard any evidence, is this the kind
12 of thing where you're going to think I can't do that because I just need a
13 lot more proof than just 51 percent.

14 PROSPECTIVE JUROR 210: Yeah.

15 MR. ZAVITSANOS: Okay, so -- and I heard your -- when Her
16 Honor was asking you some questions, I guess you had gone through a
17 suit, and it sounded like a -- kind of a bogus kind of case where --

18 PROSPECTIVE JUROR 210: Yeah.

19 MR. ZAVITSANOS: Right? Okay. So let me just make sure
20 we're clear here, right?

21 So if you ended up on the jury, sir, and evidence was
22 submitted that in your mind would satisfy 51 percent to justify, and it's
23 over \$10 million. Over \$10 million. Your position is you'd have a real
24 hard time following the instruction on preponderance because in your
25 mind, you're going to need a lot more proof than just 51 percent before

1 you could award that kind of money?

2 PROSPECTIVE JUROR 210: If the evidence is there, then yes.
3 If it's more than 51 percent, then I feel I would need a little bit more than
4 51 percent, but if evidence is there that would get me to that, then I
5 would --

6 MR. ZAVITSANOS: Okay. And I'm going to stick with you
7 here because I just -- we've got to be clear because this is one these
8 deals where we just need a little more clarity. Okay. So let me give you
9 the three standards again. Okay.

10 And by the way, these are -- this is not what the judge is
11 going to instruct. There's actually a more precise definition. This is a
12 shorthand way that lawyers use sometimes.

13 PROSPECTIVE JUROR 210: Okay.

14 MR. ZAVITSANOS: So preponderance; generally lawyers say
15 that's like 51 percent. Clear and convincing is, like, 70 to 75 percent.
16 Beyond a reasonable doubt is like 95 percent. You with me?

17 PROSPECTIVE JUROR 210: Yeah.

18 MR. ZAVITSANOS: Okay. So is this the kind of situation
19 where if we satisfied in your mind the preponderance standard of 51
20 percent, you would not -- you would have a real hard time -- you'd
21 struggle with awarding \$10 million because in your mind, it didn't get up
22 to the clear and convincing standard?

23 PROSPECTIVE JUROR 210: Yes, I would need it to be clear
24 and convincing.

25 MR. ZAVITSANOS: All right. At least clear and convincing?

1 PROSPECTIVE JUROR 210: At least clear and convincing.

2 MR. ZAVITSANOS: Okay. And maybe even higher?

3 PROSPECTIVE JUROR 210: Yes.

4 MR. ZAVITSANOS: Okay. All right. And a related question
5 to that, we're also asking for punitive damages. Okay.

6 Now -- and a lot of people have kind of strong feelings about
7 that, right? This is -- these are damages designed to punish, make an
8 example of, et cetera. Okay. And that standard is actually higher. That's
9 clear and convincing. Okay. So you've got two standards at play here
10 in this case. For the actual damages that were claimed is 51 percent.
11 The punitive damages it's clear and convincing, you know, the 70 to 75.

12 Is this the kind of thing where you're thinking, well, I'm going
13 to need as a floor at least clear and convincing for any type of damages?

14 PROSPECTIVE JUROR 210: Would punitive be someone, like,
15 losing a job or would it be more financial?

16 MR. ZAVITSANOS: So that's a good question. And I can't
17 answer what the effect of your answer is, but the question, if you ended
18 up on the jury, is going to involve a monetary amount.

19 PROSPECTIVE JUROR 210: Okay.

20 MR. ZAVITSANOS: Okay. So I'm going to get to punitive a
21 little bit later, but my question to you though is for the front damages,
22 the 10 million that we claim were -- at least 10 million that we claim we
23 are owed, are you going to require a higher standard?

24 PROSPECTIVE JUROR 210: I would -- the clear and
25 convincing.

1 MR. ZAVITSANOS: Clear and convincing. Okay. Thank you,
2 sir. Now, let me -- same question. Everybody following me so far?
3 Okay. All right. So same question. And let's go to -- who -- where is
4 494? Yes, sir. Okay. And if I understood you correctly, you own a
5 business? Okay. You might want to take the mic. Okay. And I think, sir
6 -- forgive me, again. I'm not very good at memorizing names.

7 Okay. So I don't mean to be impersonal by referring to your
8 number. Okay. All right. So I think you identified a couple of situations I
9 think involving your ex-wife and a customer who tried to sue you. And
10 you proudly said they both got nothing, right?

11 PROSPECTIVE JUROR 494: Okay. So good for you. So I
12 would imagine that that -- going through something like that probably --
13 was probably a little bit of an irritant?

14 PROSPECTIVE JUROR 494: Sure.

15 MR. ZAVITSANOS: Right?

16 PROSPECTIVE JUROR 494: Absolutely.

17 MR. ZAVITSANOS: Okay. And it probably cost you time and
18 money?

19 PROSPECTIVE JUROR 494: It cost everybody time and
20 money. It cost taxpayer money.

21 MR. ZAVITSANOS: Right. And it maybe kind of soured you
22 a little bit on people just being able to pay \$150, file a lawsuit, and tying
23 up folks for, you know, however long it takes?

24 PROSPECTIVE JUROR 494: If you're going to sue somebody,
25 you better be damn sure that you're in the right.

1 MR. ZAVITSANOS: Got it. Okay. So --

2 THE COURT: If I may interrupt. I know that you didn't intend
3 to, but I don't allow --

4 PROSPECTIVE JUROR 494: Darn certain.

5 THE COURT: -- people to curse.

6 PROSPECTIVE JUROR 494: Sorry.

7 THE COURT: Yeah.

8 MR. ZAVITSANOS: Sorry, Your Honor.

9 PROSPECTIVE JUROR 494: Just for emphasis.

10 MR. ZAVITSANOS: Okay. Okay. So now, I'm going to ask
11 you the same questions I asked this other nice gentleman over here.
12 Okay. So I've given you just literally like an eyedropper full of
13 information about this case, right? So same thing. Just having heard
14 the fact that we're seeking over 10 million dollars, right, and having gone
15 through what you've gone through, is this the kind of thing where before
16 you can award that kind of money, you're going to require a higher
17 standard of proof than just preponderance?

18 PROSPECTIVE JUROR 494: I understand the preponderance
19 concept. It's basically a coin flip what you're talking about, slightly
20 above 50/50. So --

21 MR. ZAVITSANOS: It's a coin flip with a feather.

22 PROSPECTIVE JUROR 494: Correct.

23 MR. ZAVITSANOS: Okay.

24 PROSPECTIVE JUROR 494: So that's --

25 MR. ZAVITSANOS: Okay. So given that, is this the kind of

1 thing where -- I mean, 10 million dollars is a lot of money, right?

2 PROSPECTIVE JUROR 494: Sure.

3 MR. ZAVITSANOS: Okay. So given that, is this the kind of
4 thing where you think, gosh, I -- you know, if I end up on the jury, man,
5 I'm going to need a lot more than just 51 percent before I can --

6 PROSPECTIVE JUROR 494: I would do my absolute best to
7 follow the standard of the law. And --

8 MR. ZAVITSANOS: No doubt about it?

9 PROSPECTIVE JUROR 494: I would want significant evidence
10 to award that kind of money.

11 MR. ZAVITSANOS: Okay. Listen. Here's the thing, right. So
12 you know, it's like that question, "Can you be fair?" I mean, who's going
13 to say, I can't be fair, right? It -- that's a very hard thing to think of
14 yourself as an unfair person, right? And unfortunately, that's the way the
15 law is kind of written because you could be -- you could be a really fair
16 juror in one type of case, and not be the right fit for another kind of case.

17 Okay. And so people that have gone through experiences
18 like what you've gone through, that's why I'm asking. Are you with me?
19 So -- and if -- it's okay to disagree. I mean, right now, like I said, you can
20 disagree. That's what this process is for right now. And Mr. Roberts,
21 when he gets up -- and he's a great lawyer, by the way. He's going to be
22 asking kind of the opposite side of these questions.

23 Okay. So if the evidence comes in and you know,
24 theoretically, the evidence meets preponderance, but it doesn't meet
25 clear and convincing, okay, is this the kind of thing where you're

1 thinking, oh man, I'm really struggling here, I just can't -- something in
2 my gut is telling me I can't do it? You with me?

3 PROSPECTIVE JUROR 494: Yeah.

4 MR. ZAVITSANOS: Okay.

5 PROSPECTIVE JUROR 494: I --

6 MR. ZAVITSANOS: So?

7 PROSPECTIVE JUROR 494: I could award over 10 million
8 for -- if it meets that preponderance criteria.

9 MR. ZAVITSANOS: The lower standard?

10 PROSPECTIVE JUROR 494: Correct.

11 MR. ZAVITSANOS: Okay. What about --

12 PROSPECTIVE JUROR 494: If that's what the law says,
13 that's --

14 MR. ZAVITSANOS: Okay. Okay. All right. So you'd be
15 okay -- I mean, are we starting on equal footing, or the fact that I just told
16 you we're seeking \$10 million, do they already have a -- you know, a ten-
17 length head start on us?

18 PROSPECTIVE JUROR 494: It's a significant amount of
19 money. So I think --

20 MR. ZAVITSANOS: Yeah.

21 PROSPECTIVE JUROR 494: -- the burden is on you to prove
22 that.

23 MR. ZAVITSANOS: That's right. That's right. But I'm just
24 saying in your mind from a -- just from a fairness standpoint, are we --

25 PROSPECTIVE JUROR 494: No.

1 MR. ZAVITSANOS: -- way behind --

2 PROSPECTIVE JUROR 494: No.

3 MR. ZAVITSANOS: -- where they are?

4 PROSPECTIVE JUROR 494: No.

5 MR. ZAVITSANOS: Okay. Thank you, sir. Okay. And I may
6 have some questions -- a few more questions later. But thank you for
7 your candor. Okay.

8 Okay. So there was one other person I wanted to visit with
9 before I just ask more general questions. And that's 532. Yes, sir. Okay.
10 Did -- and I may have misheard you. If I did, my apologies. Okay. Did I
11 understand you said your wife works as a commercial underwriter?

12 PROSPECTIVE JUROR 532: Yes, sir.

13 MR. ZAVITSANOS: Okay. Tell me a little bit about that.

14 PROSPECTIVE JUROR 532: It's for a small community bank
15 here in town.

16 MR. ZAVITSANOS: Okay.

17 PROSPECTIVE JUROR 532: And they do strictly commercial
18 loans.

19 MR. ZAVITSANOS: Okay. Okay. Okay.

20 PROSPECTIVE JUROR 532: Like construction loans for
21 businesses.

22 MR. ZAVITSANOS: Got it.

23 PROSPECTIVE JUROR 532: Right.

24 MR. ZAVITSANOS: Got it. All right. Same questions I asked
25 these two fine gentlemen. Same issue. If the evidence came in at 10

1 million plus --

2 PROSPECTIVE JUROR 532: Uh-huh.

3 MR. ZAVITSANOS: -- and we met the preponderance, but we
4 didn't get to that higher burden, that clear and convincing --

5 PROSPECTIVE JUROR 532: Uh-huh.

6 MR. ZAVITSANOS: -- for the actual damages, not having
7 heard anything else, not having heard any evidence, is this the kind of
8 thing where you're thinking, I just -- I can't award that kind of money
9 unless they really -- they've got to -- I mean, I've got to be almost certain
10 before I make -- I take money out of one person's account to give it to
11 another person as a result of the lawsuit?

12 PROSPECTIVE JUROR 532: I wouldn't have to have it to that
13 degree. I might need more than one feather.

14 MR. ZAVITSANOS: Okay. And --

15 PROSPECTIVE JUROR 532: Just tip it a little bit more than
16 the 51 percent.

17 MR. ZAVITSANOS: Okay. So -- and I'm not picking on you --

18 PROSPECTIVE JUROR 532: Right.

19 MR. ZAVITSANOS: -- I promise. All right. So given the
20 amount --

21 PROSPECTIVE JUROR 532: Uh-huh.

22 MR. ZAVITSANOS: -- is this the kind of thing where you're
23 going to struggle applying a preponderance standard if Her Honor says
24 that's the standard? You -- it's just going to kind of -- you're really going
25 to have to work twice as hard to get there than maybe somebody else?

1 PROSPECTIVE JUROR 532: No, I don't believe that.

2 MR. ZAVITSANOS: Okay. Do you think you could follow the
3 preponderance standard?

4 PROSPECTIVE JUROR 532: Yes.

5 MR. ZAVITSANOS: Okay. All right. Okay. So now, let me
6 do this. So I just asked three people. Now what I want to do is go row
7 by row. Everybody heard my questions, right? Nobody has a problem
8 hearing me? If you end up on the jury, you're not going to have a
9 problem hearing me. Okay.

10 All right. So let me start in the back row. And I'm going to
11 ask if anybody agrees with the gentleman that was Juror Number 210,
12 that you're going to require a much higher burden, okay, to award a
13 number like over 10 million dollars. That it'd be hard for you -- very
14 difficult to follow a preponderance standard. So let's start in the back
15 row. Let's get a show of hands of anybody that agrees with Juror 210.
16 Okay. Some blank stares here. Ma'am, you've got your hand half up.

17 PROSPECTIVE JUROR 004: I mean, I think I would agree with
18 that. I mean to award that, I would have to have a higher standard.

19 THE COURT: Badge number and microphone.

20 MR. ZAVITSANOS: Oh, I'm sorry.

21 PROSPECTIVE JUROR 004: I'm sorry.

22 MR. ZAVITSANOS: My apologies. I should have asked.

23 PROSPECTIVE JUROR 004: 004.

24 MR. ZAVITSANOS: Yes, ma'am. Okay. So go ahead.

25 PROSPECTIVE JUROR 004: So yes. I would have to agree

1 with the gentleman here saying that to reward that type of money, it
2 would have to take, like, a high level of, you know, evidence and proof --

3 MR. ZAVITSANOS: Okay.

4 PROSPECTIVE JUROR 004: -- to reward that. Absolutely, for
5 me.

6 MR. ZAVITSANOS: Okay. And if you don't mind, I'm going
7 to just ask a couple of follow-up questions, okay? So -- okay. So if the
8 judge says that it's a preponderance standard, 51 percent, okay, are you
9 telling me in your mind, if you end up on the jury, and the evidence
10 came in --

11 PROSPECTIVE JUROR 004: Uh-huh.

12 MR. ZAVITSANOS: -- and it was at 51 percent,
13 preponderance -- we met the preponderance threshold, unless we meet
14 clear and convincing, or even beyond a reasonable doubt, you'd have a
15 hard time following those instructions? You would need a higher level
16 of proof than just 51 percent?

17 PROSPECTIVE JUROR 004: Right.

18 MR. ZAVITSANOS: Is that right?

19 PROSPECTIVE JUROR 004: Uh-huh.

20 MR. ZAVITSANOS: Okay. I'm sorry, can you just say yes or
21 no because --

22 PROSPECTIVE JUROR 004: Oh, I'm sorry. Yes.

23 MR. ZAVITSANOS: Okay. Because we're going to disagree
24 later whether you meant yes or no. Okay. So if everybody could just
25 please -- and I know that's the way we talk. We just need a yes or no.

1 Okay. And I don't mean to pick on you.

2 PROSPECTIVE JUROR 004: Oh, no, you're fine.

3 MR. ZAVITSANOS: Okay. So -- okay. So you would require
4 higher than a preponderance standard?

5 PROSPECTIVE JUROR 004: Uh-huh.

6 MR. ZAVITSANOS: Is that a yes?

7 PROSPECTIVE JUROR 004: Yes.

8 MR. ZAVITSANOS: Okay. And if you ended up on the jury,
9 ma'am, you'd have a hard time following those instructions because you
10 just need more; is that right?

11 PROSPECTIVE JUROR 004: Yes.

12 MR. ZAVITSANOS: Okay. Thank you. Okay. And I guess,
13 just having heard that -- well, actually, let me move on because we've
14 got some more people to talk to.

15 Anybody else in the back row agree with this nice lady where
16 you're going to require higher than a preponderance standard just
17 hearing the amount that we're seeking in this case?

18 UNIDENTIFIED PROSPECTIVE JUROR: I guess I --

19 MR. ZAVITSANOS: Well, hold on. Hold on. I'm going to get
20 to you. I promise. All right. Second row. Anybody in the second row?

21 PROSPECTIVE JUROR 404: I have a question.

22 MR. ZAVITSANOS: Yes, sir?

23 PROSPECTIVE JUROR 404: I understand that a --

24 THE COURT: Badge number?

25 PROSPECTIVE JUROR 404: Sorry. I'm so sorry. 404, Steve

1 Keith. I understand the concept of the preponderance.

2 MR. ZAVITSANOS: Yes, sir.

3 PROSPECTIVE JUROR 404: But I don't know what that
4 means concretely. You know what I mean? Like, I'm going to sit here
5 and be quiet. And then at the end, when I'm getting instructions, I'm
6 going to go oh, damn --

7 MR. ZAVITSANOS: Yeah.

8 PROSPECTIVE JUROR 404: -- you know, I've misled the
9 attorney.

10 THE COURT: You're going to have to watch the language
11 please.

12 PROSPECTIVE JUROR 404: Oh, I'm sorry.

13 THE COURT: I know you don't intend to offend anyone.

14 PROSPECTIVE JUROR 404: No.

15 THE COURT: But I have to keep --

16 PROSPECTIVE JUROR 404: I agree. I'm sorry.

17 MR. ZAVITSANOS: So let me answer it this way. Okay. So
18 the only time you will get, like, precise legal definitions is from Her
19 Honor. Okay. Now, I can give you a little bit of a guess of what it's going
20 to say. But you know, ultimately, it's up to the Court. Okay. And I think
21 the definitions is something like -- something that -- you know, evidence
22 that proves that something is more likely so than not, which would be
23 like 51 percent. Okay. As opposed to clear and convincing, or beyond a
24 reasonable doubt. Do you follow me?

25 PROSPECTIVE JUROR 404: I do.

1 MR. ZAVITSANOS: Okay. So with that, sir, how do you feel?

2 I mean --

3 PROSPECTIVE JUROR 404: Well, I've changed my mind is
4 what has happened. I think that -- I pretty much, you know, live in a
5 world where it's fairly black or white, you know. And it's not so much
6 the dollar amount. You know, if it was just somebody who won or
7 somebody who lost based on, you know, a conclusion that I draw as a
8 juror --

9 MR. ZAVITSANOS: Yes, sir.

10 PROSPECTIVE JUROR 404: -- the money doesn't really make
11 any difference to me. But being, you know, happy with my level of
12 integrity, or you know, that I've returned a verdict or an opinion
13 consistent with who I perceive need to be.

14 MR. ZAVITSANOS: Okay.

15 PROSPECTIVE JUROR 404: You know, so I don't know that
16 just a feather on the scales would be enough for me.

17 MR. ZAVITSANOS: Okay. So let me probe a little bit more.

18 PROSPECTIVE JUROR 404: Please.

19 MR. ZAVITSANOS: Okay. Because we're in a little bit of a
20 gray zone here. Okay. And to use your words, we've got to make it a
21 little more black or white, okay --

22 PROSPECTIVE JUROR 404: Okay.

23 MR. ZAVITSANOS: -- so that -- so that we can give -- so that
24 both lawyers can give Her Honor the kind of information so that, you
25 know, she can make a good decision here. Okay. So -- all right. So you

1 have a certain set of values, right, regarding --

2 PROSPECTIVE JUROR 404: We all do.

3 MR. ZAVITSANOS: -- assessing any kind of blame or fault or
4 liability on someone else, right? And I gather what you're telling me is in
5 your mind, before you do that, before you say someone is liable, okay,
6 for whatever the claim is, in order for you to kind of live with yourself,
7 you're going to need something closer to certainty than just a
8 preponderance?

9 PROSPECTIVE JUROR 404: You know, I do think so.

10 MR. ZAVITSANOS: Okay. And so if we accuse them of
11 unfair insurance practices, or we accuse them of breach of implied
12 contract, or we accuse them of unjust enrichment, which are three of the
13 claims in this case -- I can't get into a lot of detail of what those are.
14 What you're saying is if the Court instructs you that preponderance is the
15 standard, your value system internally is telling you, you need more than
16 just preponderance before you can assess liability against them and
17 award \$10 million if the 10 million met the preponderance standard?

18 PROSPECTIVE JUROR 404: No. I'm -- if Her Honor says, you
19 met --

20 MR. ZAVITSANOS: Oh, no, no. She's not going to do that.

21 PROSPECTIVE JUROR 404: Right. And so I'm left with that.

22 And I'm --

23 MR. ZAVITSANOS: Yeah.

24 PROSPECTIVE JUROR 404: -- not going to -- I don't know
25 that I'm going to know, you know, if -- you know, there's not enough --

1 there's not enough information, I guess.

2 MR. ZAVITSANOS: Well, and you know, the problem --
3 unfortunately, this is a chicken and egg thing, right. I can't --

4 PROSPECTIVE JUROR 404: Yeah.

5 MR. ZAVITSANOS: -- I can't get into any of the facts. That's
6 why I'm probing about your attitudes, right. So here's the thing, right,
7 Her Honor has enormous power. But the one thing she does not have is
8 the ability to decide the facts. She is going to decide the law. She's
9 going to make rulings. She's going to enforce the Court rules. But in
10 terms of the facts, and what happened, and how much you award, if you
11 award, that's up to the jury.

12 PROSPECTIVE JUROR 404: But is -- I'm going to have facts
13 then.

14 MR. ZAVITSANOS: Oh yeah.

15 PROSPECTIVE JUROR 404: See, preponderance --

16 MR. ZAVITSANOS: Oh --

17 PROSPECTIVE JUROR 404: -- preponderance sort of sounds
18 like I have to conclude. Like --

19 MR. ZAVITSANOS: You do.

20 PROSPECTIVE JUROR 404: -- if I don't have enough
21 information, there's not enough facts, and therefore, I've got to draw a
22 conclusion.

23 MR. ZAVITSANOS: So the trial is going to be pretty lengthy.
24 And there's going to be witnesses, and there's going to be documents,
25 and there's going to be depositions. And you're going to hear what

1 those are. And there's -- and there may be instructions that come from
2 Her Honor. And all of that kind of goes into this cauldron in your mind.
3 And at the end of the trial when Her Honor gives the instructions, okay,
4 and we make a request for the 10 million, I think what's going to happen
5 is Her Honor's going to say to meet -- that we have to meet the
6 preponderance standard.

7 So my question to you, sir, is before having heard any of the
8 facts, okay -- and I can't -- I can't --

9 PROSPECTIVE JUROR 404: I know.

10 MR. ZAVITSANOS: -- I would love to. Believe me, I would
11 love to. And Mr. Roberts would love to. But we can't. Okay. So is this
12 the kind of thing where you're thinking, you know, I need something
13 higher than just the preponderance before I'm going to award that kind
14 of money, I just -- I can't do that?

15 PROSPECTIVE JUROR 404: And honestly --

16 MR. ZAVITSANOS: Yes, sir.

17 PROSPECTIVE JUROR 404: -- I don't know. You know, I
18 would -- I would do my best to serve, you know, justice or whatever.
19 But --

20 MR. ZAVITSANOS: Okay. I mean, are you struggling? Look,
21 so here's the thing. Okay. I want you to kind of for the moment, the
22 sense of kind of civic responsibility that we have about following
23 instructions. This is the one time where you can disagree. But once you
24 end up in the box, you've got to follow the instructions. So right now,
25 before you're in the box, and before you're a juror, I just need to know

1 the answer to that question. Are you going to require more than a
2 preponderance to award 10 million, if the evidence supported 10 million
3 from a preponderance standpoint, and only a preponderance
4 standpoint?

5 PROSPECTIVE JUROR 404: I don't know. I think I can. I do.

6 MR. ZAVITSANOS: All right. Let's move on. Okay. Thank
7 you. I'll get back to you with some other questions later.

8 All right. Next row. Yes, sir? So let's pass the microphone.

9 THE MARSHAL: No, that's somebody in this row.

10 MR. ZAVITSANOS: Oh, I'm sorry. Yes, ma'am?

11 PROSPECTIVE JUROR 401: 401.

12 MR. ZAVITSANOS: Yes, ma'am?

13 PROSPECTIVE JUROR 401: I'm not sure if this is the right
14 moment to bring this up. But if I already, I don't know, kind of have like a
15 side, without -- I'm having -- and because it's an insurance thing, my
16 insurance -- I'm a teacher. And our teacher's insurance is having
17 problems. And I understand. They're not paying my medical bills and
18 things. So I understand that doctors need to get paid, and everybody
19 needs to get paid. So I'm already leaning towards getting them paid. So
20 I don't know.

21 MR. ZAVITSANOS: I can promise you one thing.

22 PROSPECTIVE JUROR 401: Uh-huh.

23 MR. ZAVITSANOS: Mr. Roberts is going to have a lot of
24 questions for you. Okay. I'm going to move on. Okay.

25 PROSPECTIVE JUROR 401: All right.

1 MR. ZAVITSANOS: So thank you, ma'am. Thank you for
2 your candor. And I'm sorry, what was your number, ma'am?

3 PROSPECTIVE JUROR 401: 401.

4 MR. ZAVITSANOS: 401. Okay. Okay. Who else in the
5 second row -- I'm sorry, second row from the back. Excuse me. Okay.
6 Third row. Yes, sir? If we can pass the microphone over, please. Yes,
7 sir? And your juror number, please.

8 PROSPECTIVE JUROR 441: Badge number 441.

9 MR. ZAVITSANOS: Yes, sir?

10 PROSPECTIVE JUROR 441: So I do agree with the gentleman
11 behind me about the -- you know, the evidence has to be over 51 percent
12 for me to agree, especially with that sum of money. And also, I just do
13 want to confirm. Earlier, you had mentioned -- did you mention St. Rose
14 Dignity Health by chance?

15 MR. ZAVITSANOS: Yes.

16 PROSPECTIVE JUROR 441: If it's worth mentioning, I do
17 have a friend that's currently employed at St. Rose.

18 MR. ZAVITSANOS: So -- okay. So let me -- let me get one
19 thing out of the way.

20 PROSPECTIVE JUROR 441: Okay.

21 MR. ZAVITSANOS: Okay. Here -- you know, until I started
22 working with these folks, I didn't know this. So some of you may not
23 know it either. But emergency room doctors are not employees of the
24 hospital, right. So when you go to the emergency room, you will get a
25 bill from the hospital, okay, you will get a bill from the emergency room

1 doctor. And then if you see like an anesthesiologist, the people that gas
2 you, they don't work for the hospital either. Okay. And a radiologist, the
3 person that reads the x-rays, they don't work for the hospital either.

4 Now, here's what this case is not about. You are not going
5 to be asked to assess the reasonableness or the appropriateness of
6 hospital charges. Are you with me? This is just about emergency room
7 doctors and nurses. Not anesthesiologists. Not radiologists. Are you
8 with me? Okay.

9 Now, I want to go back to the first thing you said.

10 PROSPECTIVE JUROR 441: Yeah.

11 MR. ZAVITSANOS: Okay. So I'm going to ask a little bit
12 more of a precise question, just like I did with this gentleman over here.

13 PROSPECTIVE JUROR 441: Of course.

14 MR. ZAVITSANOS: All right. So the question is, if you end
15 up on the jury and we submit evidence 10-plus million dollars in
16 damages, and it meets the preponderance standard, but it doesn't meet
17 clear and convincing, so we're in that kind of in between area, but we
18 meet the preponderance, not having heard any evidence, is this the kind
19 of thing that based on the amount, you're telling yourself can't do it, it's
20 got to be hotter before I can award that much money?

21 PROSPECTIVE JUROR 441: I agree. So yeah. As far as that
22 goes, I'm -- as far as my job goes, I look at numbers pretty much a lot.
23 As far as that 51 to 49 percent, I mean, if I personally present those type
24 of numbers to someone else, they're going to turn me away.

25 MR. ZAVITSANOS: Yes, sir.

1 PROSPECTIVE JUROR 441: I mean, if I'm trying to convince
2 them to go forward with a particular campaign or whatsoever. So --

3 MR. ZAVITSANOS: And what do you do for a living, sir?

4 PROSPECTIVE JUROR 441: I'm a marketing analyst for a
5 gaming company.

6 MR. ZAVITSANOS: Okay. So you're looking at very precise
7 numbers, right?

8 PROSPECTIVE JUROR 441: Yes, sir.

9 MR. ZAVITSANOS: Quarter by quarter. You're looking at
10 algorithms. You're looking at cashflows. You're looking at all kinds of
11 stuff, right?

12 PROSPECTIVE JUROR 441: That is correct.

13 MR. ZAVITSANOS: Okay. And it involves a high degree of
14 certainty in what you do, right?

15 PROSPECTIVE JUROR 441: Yes, sir.

16 MR. ZAVITSANOS: Okay. And that's what you do every
17 day?

18 PROSPECTIVE JUROR 441: Every day.

19 MR. ZAVITSANOS: Okay. This is a little different, right,
20 because that degree of certainty before you reach a conclusion is
21 different here. This is not a criminal case. So are you saying that if you
22 end up on the jury, you are going to find it difficult, if not impossible, to
23 award 10 million if all we do is meet the preponderance standard?

24 PROSPECTIVE JUROR 441: Yes, sir. That is correct.

25 MR. ZAVITSANOS: Okay. Thank you, sir.

1 All right. Anybody else in the second row? Yes, sir? And
2 let's get your juror number, please.

3 PROSPECTIVE JUROR 488: 488.

4 MR. ZAVITSANOS: Yes, sir?

5 PROSPECTIVE JUROR 488: I agree with them, as well. To
6 me, you have to have at least clear and convincing before --

7 MR. ZAVITSANOS: Okay.

8 PROSPECTIVE JUROR 488: -- you could award anything.
9 Not just 10 million dollars, but anything in general.

10 MR. ZAVITSANOS: Okay. Let me -- let me ask you -- and I
11 don't mean to sound like I'm a broken record here, okay. I just need to --
12 I just need to ask a question in a precise form so that we don't -- so Mr.
13 Roberts and I don't have a difference of opinion about what you meant,
14 okay? All right.

15 So the question is this. If you end up on the jury, and we
16 submit evidence of 10-plus-million dollars in damages, okay, having
17 established liability, is this the kind of thing where you're not going to be
18 able to follow the judge's instructions if the standard is a preponderance
19 of the evidence and that's the only standard that we meet and we don't
20 get up to clear and convincing for the actual damages?

21 PROSPECTIVE JUROR 488: Yeah.

22 MR. ZAVITSANOS: Yes. Okay. So you would not -- it would
23 be all but impossible to follow those instructions, right?

24 PROSPECTIVE JUROR 488: Yes, sir.

25 MR. ZAVITSANOS: Okay. Thank you, sir. Thank you for

1 your honesty. Okay. Anybody else in the third row from the back? Next
2 row? That we've not already talked to. Anybody over here? Okay. I
3 guess, sir, let's the pass the mic over --

4 PROSPECTIVE JUROR 544: Yeah, 54 --

5 MR. ZAVITSANOS: -- and juror number, please?

6 PROSPECTIVE JUROR 544: -- 544.

7 MR. ZAVITSANOS: Yes, sir.

8 PROSPECTIVE JUROR 544: Yeah, I would also need the clear
9 and convincing.

10 MR. ZAVITSANOS: Okay. So -- as I did with the others. I'm
11 sorry.

12 PROSPECTIVE JUROR 544: It's okay.

13 MR. ZAVITSANOS: I know you know what I'm going to ask
14 so --

15 PROSPECTIVE JUROR 544: Yep.

16 MR. ZAVITSANOS: -- so let me just get it out, okay? Okay.
17 Sorry. And I know it's late in the afternoon too. Okay. All right. So
18 here's the question. If you end up on the jury, sir, and we submit a -- and
19 we've established liability by the preponderance, and we met the
20 preponderance standard for 10-plus-million dollars in damages, but we
21 don't meet clear and convincing, is this the kind of thing where you're
22 not going to be able to follow the Court's instructions if we don't get up
23 to that next level --

24 PROSPECTIVE JUROR 544: That is correct --

25 MR. ZAVITSANOS: -- is that right?

1 PROSPECTIVE JUROR 544: Yes, sir.

2 MR. ZAVITSANOS: Okay. And you feel pretty strongly about
3 that?

4 PROSPECTIVE JUROR 544: I do.

5 MR. ZAVITSANOS: Because it's a lot of money.

6 PROSPECTIVE JUROR 544: It is.

7 MR. ZAVITSANOS: Okay. Thank you, sir. All right.

8 Anybody in the front row here? Oh, yes, sir. We got one more.

9 PROSPECTIVE JUROR 555: You --

10 MR. ZAVITSANOS: What's your number?

11 PROSPECTIVE JUROR 555: Albert, 555. Three fives, anyway.

12 You make me feel like I went to the carnival. You're telling about
13 something, but nobody knows what it is. And that's possibly what
14 you're supposed to do. So it's hard to decide on what you're trying to
15 say and what you're trying to do. If the 10 million was for me, I would
16 accept it. Does that answer any question for you?

17 MR. ZAVITSANOS: So you're not going to believe this, but I
18 got some cotton candy right under that desk. I'm just kidding. Okay.
19 So yeah, look here's the thing, right. So what lawyers say is not
20 evidence. The evidence has to come out of that box and what Her Honor
21 says is evidence -- so the exhibits and documents and -- well, look if you
22 end up on the jury, this is a really interesting case. I think you'd all really
23 -- whoever ends up on the jury I think will really like it. Most people that
24 go through jury service really like it. It's really interesting.

25 Now, I can't -- believe me, I wish I could, okay. And I wish I

1 could tell you more because we feel very strongly about this case as do
2 they. Okay. And that's why we're here, right. Not all cases end up in
3 trial. But we're here because both sides feel very strongly about this. So
4 I just need to know before we start whether your life experiences or your
5 values or you know, certain standards you have in your mind would
6 affect your ability to apply the standard I'm talking about to these
7 damages. That's what I'm getting at here.

8 So if we met that preponderance standard when we're asking
9 for 10-plus-million dollars, not having heard anything else, is that the
10 kind of thing you're thinking, you know, if it was a smaller amount, if it
11 was \$10,000 or 20,000 maybe. But 10-plus-million --

12 PROSPECTIVE JUROR 544: If you really want to think what I
13 -- what I know --

14 MR. ZAVITSANOS: Yes, sir?

15 PROSPECTIVE JUROR 544: If it's to do with the insurance
16 company giving me my money, I would vote against the insurance
17 company.

18 MR. ZAVITSANOS: Well, it's not. Okay. It's not. So -- hey,
19 look, you know, some people don't like insurance companies. Some
20 people don't like doctors. Some people don't like hospitals. And I'm
21 going to get to that. But right now, I'm just asking about this. I'm going
22 to kind of do this a topic at a time. And so right now -- I just -- I'm just
23 asking about the damages part, right. So it's not you. And they've got a
24 lot to say. I mean, you haven't heard from them yet. Okay. And by the
25 way, we're the plaintiff. We've got the burden of proof. We have to

1 proof it. They don't have to disprove it which is why we always go first.
2 Okay. And so you're going to be hearing a lot from me over the next
3 couple of days, and then Mr. Roberts is going to get up and you're going
4 to hear a lot from him. And you may get a slightly different feel than
5 what you're hearing right now but I -- neither of us is going to go into the
6 facts. So --

7 PROSPECTIVE JUROR 544: So I still feel like I'm in a carnival.

8 MR. ZAVITSANOS: Yes. Maybe. Okay. So with that said,
9 and I -- I'm trying the best I can because I can't -- I can't show my hand,
10 okay.

11 PROSPECTIVE JUROR 544: Okay.

12 MR. ZAVITSANOS: So with that said, where are you at?
13 What do you think?

14 PROSPECTIVE JUROR 544: Well, luckily I took some
15 medicine so I'm feeling better.

16 MR. ZAVITSANOS: Okay. All right. So is this the kind of
17 thing where you're going to require a higher standard than
18 preponderance if we met preponderance in your mind, and you end up
19 on the jury for the 10-million plus? For me, no. No.

20 PROSPECTIVE JUROR 544: For me, nope. No. I'll probably
21 vote against the insurance company.

22 MR. ZAVITSANOS: Well --

23 PROSPECTIVE JUROR 544: They're definitely guilty and
24 didn't pay what they should pay.

25 MR. ZAVITSANOS: Okay. Fine. I'm going to move on.

1 Okay. Anybody else in the fourth row from the back, second row from
2 the front? Ma'am how you feeling? Ma'am, how do you feel?

3 PROSPECTIVE JUROR 590: No, I don't have any problem
4 with that.

5 THE COURT: Badge number, please?

6 MR. ZAVITSANOS: Oh, I'm sorry. My apologies, Your
7 Honor.

8 PROSPECTIVE JUROR 590: 590.

9 MR. ZAVITSANOS: Can we pass the microphone? Okay.
10 You don't have any issues with --

11 PROSPECTIVE JUROR 590: 590. With that level of proof?
12 No.

13 MR. ZAVITSANOS: Thank you, ma'am. Thank you very
14 much. Okay. Now, in the front row. Anybody that --

15 PROSPECTIVE JUROR 569: I was going to say something.

16 MR. ZAVITSANOS: Oh, you were? Okay. Yes, sir.

17 PROSPECTIVE JUROR 569: I mean mine -- 569.

18 MR. ZAVITSANOS: 569. Thank you, sir.

19 PROSPECTIVE JUROR 569: There you go. I mean, just gotta
20 go by facts not emotion which I see a lot of things happen like that. I'm
21 not an expert here but I see a lot of things are by emotion instead of
22 facts. So I mean, if -- you said about \$10 million, if it comes in facts that,
23 you know, that gets to that then sure [indiscernible].

24 MR. ZAVITSANOS: Yeah. In fact, I think -- again, I don't want
25 to overstep myself here, but I think if you end up on the jury, one of the

1 instructions that the Court may give you is exactly what you just said.
2 Okay. We want cases decided on the facts, not based on emotion or
3 other things -- anger, or you know, things like that, right. So I mean, how
4 do you feel about this preponderance standard I'm talking about when it
5 comes to asking for 10-plus-million dollars? And if Her Honor said that's
6 the standard, is this the kind of thing where like, okay, that's the
7 standard. I got no problem following it or is it the kind of thing like these
8 other gentlemen back here -- I'm going to need something more like
9 clear and convincing?

10 PROSPECTIVE JUROR 569: I mean, just my perspective, I
11 think it's combination of both. I mean, it just depends, you know. Every
12 case is different, for example. I mean, like I said, I don't know much
13 about it but just depends on the evidence. That's --

14 MR. ZAVITSANOS: Absolutely. Absolutely. And listen,
15 we've got the burden of proof, right, and both sides are going to be
16 submitting evidence. Both sides are going to be offering evidence, right.

17 PROSPECTIVE JUROR 569: Right.

18 MR. ZAVITSANOS: So I'm going to give a little bit of a gray
19 answer there. So let me see if I can clarify it a little bit, all right?

20 PROSPECTIVE JUROR 569: Okay.

21 MR. ZAVITSANOS: Because you said it's a little bit of both.

22 PROSPECTIVE JUROR 569: Yeah.

23 MR. ZAVITSANOS: The clear and convincing does not apply
24 to the 10 million. It does apply to the punitive which I'm going to get to a
25 little bit later --